

## CONSTITUTIONAL PATRIOTISM AS A CONCEPT OF EUROPEAN INTEGRATION

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### INTRODUCTION

The present study focuses on a comprehensive analysis of the concept of constitutional patriotism, encompassing its historical, conceptual, problematic, and value-based aspects. The term «constitutional patriotism» denotes a framework of national allegiance and loyalty exhibited by individuals towards their nation-state, which is not predicated on shared ethnic or cultural backgrounds, but rather on the political and constitutional principles endorsed by its citizens. Nevertheless, constitutional patriotism also endeavors to put forth mechanisms aimed at fostering a desired consensus regarding these principles.

This study aims to retrospectively examine, define, elucidate the essence of, identify the problematic issues, and explore the value aspects of constitutional patriotism while outlining the distinctive features of its national discourse. This objective is operationalized through several specific tasks:

- To explicate the content of the concept of constitutional patriotism, including its prehistory and evolutionary trajectory.
- To illuminate the constituent concepts that are intricately «integrated» within the framework of constitutional patriotism.
- To clarify the problematic and value-laden components inherent in the concept of constitutional patriotism.
- To delineate the specific characteristics of the discourse surrounding constitutional patriotism in Ukraine, while suggesting future avenues for productive research in this domain.

The resolution to these challenges has been addressed through a comprehensive analysis of constitutional patriotism, which offers valuable insights into fostering unity, inclusivity, and the consolidation of democratic values within contemporary diverse societies. The distinct characteristics and inclusive nature of various discourses surrounding constitutional patriotism have facilitated a deeper understanding of its role in addressing the broader predicament of promoting harmonious human coexistence within the dynamic modern world.

### 1. Constitutional patriotism: historical discourse

Constitutional patriotism is commonly defined by establishing a connection between patriotism and the Constitution, political liberties, as well as the institutions that uphold them. According to the Ukrainian scholar Danylo Lehovitsyev, the fundamental premise of constitutional patriotism is as follows: «It rests upon multiculturalism and multinationalism, wherein individuals

identify with their country of residence not on the grounds of nationality but rather through their adherence to democratic principles and the rule of law»<sup>1</sup>.

The concept of constitutional patriotism originated in Germany following the aftermath of the Second World War. It emerged as a form of introspection and atonement, encapsulating the intellectual lessons drawn from that era and aiming to shape the post-war global order following enduring principles and norms governing human coexistence. Jürgen Habermas later affirmed that «the commitment to constitutional principles, which finds its roots in the convictions of individuals, unfortunately, could only come into being <...> after Auschwitz and through Auschwitz»<sup>2</sup>.

The concept of constitutional patriotism, particularly in Germany, is commonly attributed to the renowned German philosopher Jürgen Habermas. His influential work, «Citizenship and National Identity»<sup>3</sup>, is often associated with this notion within the realms of state and legal discourse. However, J. Habermas himself acknowledges the contributions of his fellow countrymen Karl Jaspers and Dolf Sternberger as primary architects in the development of the concept of constitutional patriotism.

Karl Jaspers<sup>4</sup> held the belief that postwar Germany could effectively address the crisis of its national identity by embracing collective responsibility for its past. This responsibility, according to Jaspers, should not be understood as a universal guilt shared by all Germans simply because of their nationality. Rather, it should be perceived as a differentiated form of guilt, encompassing criminal, political, moral, and metaphysical dimensions, attributed to each individual. Jaspers asserted that «There is no other way for the Germans <...> than to purify themselves from the depths of the consciousness of guilt»<sup>5</sup>. The issue of guilt holds profound significance for the German psyche. As Karl Jaspers emphasized, it is a crucial matter that directly affects spiritual rejuvenation. He acknowledged that the condemnation imposed by the victors constitutes a political reality with significant implications for German lives. However, Jaspers noted that this external judgment does not provide a definitive answer to the

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<sup>1</sup> Леховіцер Д. 29 років тому був заснований ЄС. Як він скасував націоналізм та як буде боротися з ренаціоналізацією? URL: <https://zaborona.com/29-rokiv-tomu-buv-zasnovanyj-yes-yak-vin-skasuvav-nacjonalizm-ta-yak-bude-borotysya/> (accessed January 16, 2024).

<sup>2</sup> As cited in: *Vergangenheit, die nicht vergeht: die «Historiker-Debatte»: Darstellung, Dokumentation, Kritik / Reinhard Kühnl (Hrsg.)*. Köln: Pahl-Rugenstein Verlag, 1987. P. 50.

<sup>3</sup> Habermas J. *Citizenship and National Identity*. J. Habermas (Ed.), *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrge-n-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>4</sup> Jaspers K. *The Question of German Guilt*. Translated by E. B. Ashton. New York: The Dial Press, 1947. 123 p.

<sup>5</sup> *Ibid.* P. 42.

essential question of inner spiritual rebirth<sup>6</sup>. He stated, «We are compelled to purify ourselves, irrespective of each individual's admission of guilt, striving for a profound restoration through acts of restitution, reparation, inner revitalization, and personal transformation»<sup>7</sup>.

The revival of collective national solidarity among Germans can be facilitated by the remembrance of history, subject to ongoing discussion and open dialogue. Through this process, the self-awareness of the postwar German nation can be nurtured, leading to the formation of a shared identity rooted in constitutional principles. As Jaspers eloquently articulated, «Either the feeling of guilt <...> that our conscience continually confronts becomes the predominant feature of our German identity, thus paving the way for our soul's transformation, or we descend into the unremarkable insignificance of apathetic existence»<sup>8</sup>.

In his article «Where is Germany heading?»<sup>9</sup> published in 1966, K. Jaspers raised several significant points pertaining to the examination of the development and conception of patriotism in Germany. Firstly, Jaspers observed a connection between the legal mechanisms of the Weimar Constitution and the potential for a Nazi dictatorship. Secondly, he highlighted that the drafters of the Basic Law were keenly aware of the events that unfolded in 1933, and this historical context prominently influenced their considerations. Consequently, the primary objective of the Basic Law of the Federal Republic of Germany was to safeguard against the unexpected rise of totalitarian rule and was driven by the aspiration for security. According to K. Jaspers, an error was made in attributing the events of 1933 solely to the institutions that formed the foundation of the state. In his view, the primary factor was the individuals themselves. Jaspers emphasized that even the most well-designed institutions are ineffective if the individuals who operate within them cannot utilize them effectively. In the context of the Basic Law, an attempt was made to use laws and institutions to prevent occurrences that can only be decisively addressed through human action in politics. Jaspers concludes that the Basic Law possesses certain flaws. Firstly, it is rooted in the circumstances that led to Hitler's rise to power. Secondly, it reflects the mindset of those responsible, who seek to attribute blame to institutions rather than taking personal responsibility. Lastly, the inherent desire for security seeks to employ laws as a means of prevention, whereas political matters require human agency for effective prevention or achievement. In conclusion, constitutional patriotism extends beyond the realm of legal values, norms, and procedures. It manifests through the actions of individuals, which are essential for its preservation and continuity. Additionally, it exists as the internal convictions of individuals regarding the necessity and significance of upholding

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<sup>6</sup> Jaspers K. *The Question of German Guilt*. Translated by E. B. Ashton. New York: The Dial Press, 1947. P. 28.

<sup>7</sup> *Ibid.* P. 39.

<sup>8</sup> *Ibid.* P. 42.

<sup>9</sup> Jaspers K. *Wohin treibt die Bundesrepublik?* *Der Spiegel* Nr. 17/17.04.1966. URL: <https://www.spiegel.de/politik/wohin-treibt-die-bundesrepublik-a-85d9d8b8-0002-0001-0000-000046266482> (accessed January 16, 2024).

these principles. K. Jaspers argues that while one can acquire an understanding of institutional thinking through the study of Basic Law, institutions, and state regulations, the actual outcomes are not solely determined by these factors. The actions and interpretations of the people who inhabit these structures cannot be predicted solely based on the provisions of the Basic Law<sup>10</sup>.

The term «constitutional patriotism» was initially coined by Dolf Sternberger, as noted in an article he penned for the *Frankfurter Allgemeine Zeitung* in 1970. Sternberger emphasized the necessity for «a sufficient degree of constitutional patriotism»<sup>11</sup> within every society to prevent its disintegration due to conflicting interests. However, Thomas Schölderle, a German political scientist and author of the essay «Constitutional Patriotism – on the 50<sup>th</sup> Anniversary of the Term»<sup>12</sup>, suggests that Sternberger originally employed this term to elucidate the relationship between love for the homeland and a democratic republic, encapsulated in the following formulation: «The homeland is the ‘republic’ we establish, the homeland is the constitution we revitalize»<sup>13</sup>.

The concept of «constitutional patriotism» is often regarded as a significant contribution from Dolf Sternberger to Germany, particularly on the occasion of the thirtieth anniversary of the establishment of the Federal Republic of Germany and the adoption of its Basic Law on May 23, 1949. To mark this occasion, Sternberger published an article titled «Verfassungspatriotismus» («Constitutional Patriotism») in the *Frankfurter Allgemeine Zeitung*, as outlined in Schölderle’s work<sup>14</sup>. In this article, Sternberger expounded upon his ideas concerning «patriotic sentiments towards a constitutional state»<sup>15</sup>. Dolf Sternberger highlighted the crucial aspect that the state, functioning as a community of individuals, can thrive only if its citizens uphold and actively exercise their constitutionally guaranteed rights to freedom and engagement in the political life of the nation. Consequently, citizens develop their sense of national identity not primarily through a shared historical past, but through a profound commitment to a democratic state. As a result, Sternberger’s perspective emphasized that «The national sentiment may remain wounded; we do not dwell within the entirety of Germany. Yet, we reside within the entirety

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<sup>10</sup> Jaspers K. Wohin treibt die Bundesrepublik? *Der Spiegel* Nr. 17/17.04.1966. URL: <https://www.spiegel.de/politik/wohin-treibt-die-bundesrepublik-a-85d9d8b8-0002-0001-0000-000046266482> (accessed January 16, 2024).

<sup>11</sup> As cited in: Schölderle T. *Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung* (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>12</sup> Schölderle T. *Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung* (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

of the constitution, within the entirety of the constitutional state, and this, in itself, constitutes a form of the homeland»<sup>16</sup>.

Subsequently, Dolf Sternberger elucidated a significant paradox of constitutional patriotism, whereby «patriotism is a matter of sentiments and emotions <...> sometimes in a romantic or even mystical manner, while the constitution focuses on the rights and freedoms of citizens»<sup>17</sup>. The crux of the explanation lies in the fact that constitutional patriotism is not tied to a specific legal document but rather to a «free democratic order» and a «living constitution» that stem not from a shared historical destiny but from individuals' collective exercise of their freedom rights<sup>18</sup>. In support of his viewpoint, Sternberger asserts the thesis that patriotism predates its association with the nation and the nation-state (i.e., the reliance on «blood» ethnicity): «Patriotism is older than the entire organization of the nation-state in Europe»<sup>19</sup>. Thus, Sternberger concludes that «patriotism within the broader European tradition has always been intertwined with the state constitution, making patriotism from its inception inherently constitutional patriotism—and naturally <...>, this can still be the case in present-day Germany»<sup>20</sup>.

Hence, the notion of constitutional patriotism, characterized by its emphasis on fidelity to democratic principles and the supremacy of law, initially aimed to furnish a cohesive framework for the nation, particularly in the aftermath of World War II when Germany sought a revitalized national identity. Habermas cautioned that «Those who seek to restore Germans to their traditional form of national identity are undermining the sole dependable foundation of our affiliation with the West»<sup>21</sup>. Simultaneously, the concept of constitutional patriotism endeavored to not only foster allegiance to democratic principles but also acknowledged the intricacies and historical circumstances through which this allegiance was fostered. This recognition emerged from the understanding that «the concrete substance through which the radiance of national tradition is presently refracted is none other than the abstract idea of democratization and

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<sup>16</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> As cited in: *Vergangenheit, die nicht vergeht: die «Historiker-Debatte»: Darstellung, Dokumentation, Kritik / Reinhard Kühnl (Hrsg.)*. Köln: Pahl-Rugenstein Verlag, 1987. P. 281.

human rights»<sup>22</sup>. Moreover, it recognized that «the legal standing of a citizen was intertwined with the cultural affiliation to a nation»<sup>23</sup>.

Jürgen Habermas rejects the notion of reverting to pre-national forms of human coexistence and does not romanticize the era of nation-state formation. He highlights that the establishment of nation-states, driven by ethnonationalism, has often been accompanied by violent purification rituals and the ongoing oppression of new minority groups<sup>24</sup>. Instead, he advocates for a reevaluation of national (ethnic) traditions in favor of universalist, «post-national» principles. According to Habermas, the principles that foster social cohesion can be found within constitutional provisions and norms. This approach does not entail abandoning national traditions, religious beliefs, and social philosophies, but rather subjecting them to critical scrutiny and reassessment in light of their compatibility with constitutional values. Habermas asserts that «Each national culture, in light of its history, offers a distinct interpretation of the same principles manifested in alternative forms of republican governance, such as popular sovereignty and human rights»<sup>25</sup>.

Habermas adopts a rationalist perspective on national values, focusing on the interplay between the nation, the rule of law, and democracy in state and legal frameworks. In his own words, he expresses his interest in «the state and legal constructions of the relationship between the nation, the rule of law, and democracy»<sup>26</sup>. Through the process of «rationalizing collective identities», society transitions from a nationalistic form of patriotism that involves assimilating cultural traditions mediated by historiography and reflection<sup>27</sup>, to constitutional patriotism, which necessitates critically examining these traditions in light of universal principles. Constitutional patriotism enables the transformation of national consciousness, previously rooted in the fiction of shared ancestry, a constructed history, and a linguistically unified literary tradition, into politically conscious citizenship where individuals identify themselves with the republican Constitution and its declared purpose<sup>28</sup>.

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<sup>22</sup> As cited in: Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>23</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 171.

<sup>24</sup> Ibid. С. 204.

<sup>25</sup> Ibid. С. 173.

<sup>26</sup> Ibid. С. 191–192.

<sup>27</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrger-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>28</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 190.

Habermas argues that disagreements concerning the most suitable interpretation of fundamental rights and principles serve as a solid foundation for any constitutional patriotism that situates a system of rights within the historical framework of a legal community<sup>29</sup>. This observation indicates that the concept of constitutional patriotism in Germany has transcended its original purpose, which was to serve as a substitute for a «correct» national identity that was deemed unnecessary after the reunification of the German state<sup>30</sup>. Presently, «the concept of constitutional patriotism represents a response to the postmodern discourse in the context of the crisis of popular sovereignty ideology, which relates to integration processes and the tendency to delegate state sovereignty to supranational authorities, primarily embodied by the European Union»<sup>31</sup>.

## 2. Constitutional patriotism: a conceptual discourse

Thus, D. Sternberger's concept of constitutional patriotism harks back to pre-national eras, while Habermas's concept points towards a post-national future. In both cases, the notion of the nation remains central to constitutional patriotism, delineating not only the distinction between these two approaches but also offering a vision for reconciling them. Specifically, the focus is on the civic and ethnic nation, as Habermas discusses when expounding on the content of constitutional patriotism. He highlights that the term «natio» (alongside «gens» and «populus») stands in contrast to «civitas» and refers to peoples who are not yet organized into political unions<sup>32</sup>. This classical usage of the term «natio» aligns with the German tradition, wherein nations are regarded as tribal communities integrated geographically through settlement and proximity, and culturally through a shared language, customs, and traditions, albeit lacking a political organization to unify them<sup>33</sup>.

In contrast, the French tradition of defining the nation encompasses conflicting uses of the term, with «nation as sovereign» or «nation as people of the state» being prominent. In this context, the shift occurs from an ethnic bond to a community founded on democratic will<sup>34</sup>. The distinction between the two traditions of nationhood can be characterized as follows: the German conception perceives the nation as an organic and ethnocultural unity, while the French conception regards it as a purely political phenomenon where French identity is

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<sup>29</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 314.

<sup>30</sup> Muller J.-W. Three Objections to Constitutional Patriotism. *Constellations*. 2007. 14 (2) P. 197.

<sup>31</sup> Савчин М. Порівняльне конституційне право: навчальний посібник. Київ: Юрінком Інтер, 2019. С. 203.

<sup>32</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrgegen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

defined by citizenship and differences are relegated to the private sphere<sup>35</sup>. Consequently, in the latter case, the term «nation» no longer equates to a «pre-political unity» but instead denotes a «political community» or a «nation of citizens». The identity of the nation of citizens is not derived from ethnic and cultural similarities but rather from the active exercise of democratic rights by its citizens<sup>36</sup>. In this context, the republican aspect of the concept of citizenship becomes detached from belonging to a pre-political community based on shared ancestry, traditions, and language<sup>37</sup>.

In general, the nation of citizens within a state emerges as a result of volitional aspirations and serves as a basis for democratic legitimacy, whereas the nation of compatriots is a product of nature and facilitates social integration<sup>38</sup>. However, the nation of citizens also contributes to integration as citizens can be dedicated patriots who appreciate and defend their constitution as an accomplishment intertwined with their country's history<sup>39</sup>. Consequently, their emphasis lies not so much on national identity but on a model of constitutionalized power that derives its legitimacy from the enactment of democratic legislation, with the source being the people<sup>40</sup>. Simultaneously, the parties involved in the social contract are not bound by a shared tradition or common cultural values<sup>41</sup>. The universality of their political will is not rooted in a shared origin but in their collective agreement on a procedural framework. «This procedure of democratic opinion and decision-making <...> takes on the form of the constitutional rule of law»<sup>42</sup>. Universality, in this sense, implies that citizens aim to govern their shared existence following principles that can garner the informed consent of all, as they are based on the equal interests of

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<sup>35</sup> Больман І. Мовні війни в Європі. Пер. з фр. Київ: К.І.С., 2007. С. 11.

<sup>36</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>37</sup> Ibid.

<sup>38</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 168.

<sup>39</sup> Ibid. С. 167.

<sup>40</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>41</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 198.

<sup>42</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

everyone involved<sup>43</sup>. On the other hand, the concept of citizenship extends beyond mere birthright or residency; it entails a particular status entailing political participation and communication rights. This status requires individuals to adopt a participatory perspective rather than that of a passive observer<sup>44</sup>. In essence, a nation of citizens, unlike an ethnic nation, is not bound together by a predetermined substrate but by a shared intersubjective context of potential understanding<sup>45</sup>. However, the question arises: what constitutes this context?

In summary, the German tradition «locates the solution to the problem at the level of culture», whereas the French tradition «locates the solution to the problem at the level of democratic procedures and institutions»<sup>46</sup>. At first glance, constitutional patriotism appears to prioritize the «universalism of an egalitarian legal community» over the «particularism of a community bound by historical destiny»<sup>47</sup>. It favors a concrete nation of citizens over an imagined nation of compatriots<sup>48</sup>. Consequently, it is reasonable to conclude that constitutional patriotism emerged as a safeguard against the perils of ethnic nationalism in German society<sup>49</sup>. However, as Habermas acknowledges, the naturalistic understanding of the nation cannot be unconditionally dismissed, particularly since citizenship, by its very definition, has always been detached from national identity<sup>50</sup>. «The crucial point is that normative concepts alone cannot explain how the foundational group of individuals, who come together to legitimately regulate their coexistence through positive law, should be constituted»<sup>51</sup>. However, such an explanation becomes feasible when legally defined citizenship is situated within a cultural framework<sup>52</sup>, and the role of the citizen, as institutionalized by law,

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<sup>43</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>44</sup> Ibid.

<sup>45</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 225.

<sup>46</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 191.

<sup>47</sup> Ibid. С. 168.

<sup>48</sup> Ibid. С. 175.

<sup>49</sup> Reinkowski M. Constitutional Patriotism in Lebanon. *New perspectives on Turkey*. 1997. No 16. P. 71.

<sup>50</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>51</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 169.

<sup>52</sup> Ibid. С. 171.

is embedded in the context of free political culture<sup>53</sup>. Understanding how it is possible to «shape a nation of citizens from individuals who are strangers to one another, that is, to cultivate civic solidarity among strangers»<sup>54</sup> cannot be achieved solely through the legally mediated solidarity of citizens who are unfamiliar with one another<sup>55</sup>. This is because the individual exists «in conjunction with the context in which the processes of their formation take place»<sup>56</sup>.

Consequently, constitutional patriotism does not primarily advocate for the universalism of legal principles manifested in the «procedural consensus», but instead emphasizes the necessity of situating it within the specific context of the corresponding historically defined political culture<sup>57</sup>. As Schölderle aptly states, «Constitutional patriotism in a nation shaped by the French Revolution will inevitably assume a distinct form from that of a nation that democracy persist unchanged»<sup>58</sup>. The rights and principles inherent in democracy persist unchanged; however, constitutional patriotism contextualizes these very rights and principles within the historical framework of a specific legal community, wherein they are subjected to the «optimal interpretation» through the «diverse perspectives of various national traditions and histories»<sup>59</sup>. Hence, these rights and principles must not be apprehended in isolation but, rather, be acquired within the distinct historical and cultural contexts of their own. This is because every collective identity, even in the case of post-nationalism, encompasses specific attributes beyond the mere aggregation of moral, legal, and political principles upon which it coalesces. Habermas asserts that the modern state does not dissolve entirely into the abstract structure of institutionalizing universal legal principles; instead, it establishes a political and cultural

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<sup>53</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>54</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 198.

<sup>55</sup> Ibid. С. 219.

<sup>56</sup> Ibid. С. 199.

<sup>57</sup> Ibid. С. 315.

<sup>58</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>59</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024); Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 314.

milieu within which the universalistic principles of the constitution should be integrated<sup>60</sup>.

Each national culture, in light of its unique historical context, gives rise to distinct interpretations of the same principles embodied in various forms of republican governance, such as popular sovereignty and human rights. Constitutional patriotism enables citizens of European Union member states to perceive themselves as part of a single political community, while assimilating the constitutional principles not as abstract notions, but rather in a concrete manner, grounded in their national histories as achievements. According to Habermas, «European identity <...> can only mean unity in national diversity»<sup>61</sup>. Liberal political culture serves as a shared foundation for constitutional patriotism<sup>62</sup>, which, however, does not eradicate cultural and national traditions. Instead, it aims to enhance the awareness of differentiated diversity and the integrity of various ways of life, while upholding the rule of law's neutrality toward communities integrated at the sub-political level<sup>63</sup>.

The principle of constitutional patriotism is exemplified in documents such as the Charter of Fundamental Rights of the European Union. According to the Charter, the rights it confirms are derived from both the constitutional traditions of the Member States and the shared international obligations. The Charter emphasizes that the Union is founded on indivisible and common values, including human dignity, freedom, equality, and solidarity, as well as the principles of democracy and the rule of law. While promoting the preservation and advancement of these shared values, the Union also acknowledges and respects the diverse cultures, traditions, and national characteristics of the peoples of Europe, as well as the organization of public authorities at national, regional, and local levels<sup>64</sup>.

This is how the principle of constitutional patriotism is conceptualized within the framework of multiculturalism, particularly concerning the integration of migrants into the democracies of EU states<sup>65</sup>. One crucial aspect pertains to the

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<sup>60</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>61</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 228.

<sup>62</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrge-n-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>63</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 314.

<sup>64</sup> Хартія Європейського Союзу про основоположні права. URL: <https://ccl.org.ua/posts/2021/11/hartiya-osnovnyh-prav-yevropejskogo-soyuzu/> (accessed January 17, 2024).

<sup>65</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 315–322.

«refugee problem»), which, according to Habermas, encapsulates an underlying tension between civic and national identity<sup>66</sup>. Specifically, it raises the question of whether the inevitable transformation in the ethical and cultural composition of the population in European democracies, resulting from the influx of immigrants, will necessitate a modification of their own «historically cultivated political and cultural form of life»<sup>67</sup>. How can constitutional patriotism contribute to this matter? J. Habermas asserts that the identity of a political society, which remains resilient amidst immigration, is primarily connected to legal principles deeply rooted in the political culture, rather than any specific ethnopolitical way of life in general<sup>68</sup>. Hence, immigrants should be willing to acknowledge the existing rules within a political society and adapt to the political culture of their country of residence, while still retaining their own ethnic, religious, and cultural forms of life. «Within the framework of a democratic state governed by the rule of law, diverse forms of life can coexist on an equal footing»<sup>69</sup>.

The assertion of equal coexistence among these diverse forms should be limited to the condition that the beliefs and practices associated with them align with the established principles of the state system, as understood within the respective political culture. (However, political integration does not extend to fundamentalist migrant cultures, as fundamentalism insists on the political implementation of its own beliefs and doctrines, even when they lack universality or are not universally recognized<sup>70</sup>). The realm of a shared political culture must be distinct from the realm of subcultures and their identities, which are formed before political engagement<sup>71</sup>. The distinction between the political and cultural spheres represents a characteristic of genuine democracy, encompassing not only the entitlement to liberal freedoms and political participation but also the proficient exercise of one's rights in social and cultural domains. It entails ensuring that every citizen has an assured opportunity to

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<sup>66</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>67</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 317.

<sup>68</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>69</sup> Ibid.

<sup>70</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 312.

<sup>71</sup> Ibid. С. 172.

develop within their cultural milieu<sup>72</sup>. Nonetheless, the democratic right to self-determination, while encompassing the preservation of one's political culture, does not grant the privilege of asserting a superior cultural way of life<sup>73</sup>.

Therefore, it is essential to differentiate between two levels of integrating diverse forms of life: 1) ethical integration of groups and subcultures with their distinct collective identities, and 2) political integration, which encompasses equal inclusion of all citizens<sup>74</sup>. Interestingly, these two levels of integration bear resemblance to the German and French approaches to defining a nation. Ethical integration aims to ensure the coexistence of various life forms within the same society by fostering mutual recognition of diverse cultural memberships. This implies acknowledging individuals as members of communities that are integrated based on differing conceptions of the good.

Political integration facilitates adherence to a shared political culture that is grounded in the interpretations of constitutional principles shaped by each nation's historical experience. These interpretations establish a collective framework, often referred to as a «common horizon», within which public discussions on the political self-perception of citizens occur, addressing current issues and engaging in debates regarding the optimal understanding of fundamental rights and principles<sup>75</sup>.

Simultaneously, political culture must maintain a stance of impartiality regarding the variations that exist within a state among ethical and cultural communities, which are united by their respective conceptions of the good<sup>76</sup>. As a result, the universality of legal principles can only be affirmed through the aforementioned «procedural consensus», that is, an agreement on legitimate processes for lawmaking and the exercise of power. The core of such a consensus lies in the shared belief of politically integrated citizens that the prominence of communicative freedoms in political discourse, the democratic nature of conflict resolution mechanisms, and the subordination of authority to the rule of law justify the potential limitation of illegitimate power and the utilization of administrative power in the equitable interest of all<sup>77</sup>.

Given that the «procedural consensus» must be contextualized within the framework of the respective historically defined political culture, Habermas proposes distinguishing between two phases of immigrant assimilation: 1) the phase of embracing the principles of the state system within the bounds

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<sup>72</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 172.

<sup>73</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrge-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>74</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 313.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. С. 317.

<sup>77</sup> Ibid. С. 314–315.

of interpretation established by the country's political culture; 2) the phase of preparedness that extends beyond mere external adaptation and involves acquiring the way of life, practices, and customs of the local culture. This stage of assimilation operates at the level of ethical and cultural integration, thereby exerting a deeper impact on the collective identity of the immigrants' original culture compared to the political socialization required in the initial phase<sup>78</sup>. In Habermas's view, a democratic state governed by the rule of law can demand only the initial phase of assimilation from immigrants. The second phase represents a form of assimilation that is more of a «coerced» nature rather than legally enforced. It is a requirement imposed by the state to safeguard the integrity of its citizens' way of life. Therefore, factors such as heritage, language, communication, or recognition as a member of a specific cultural community within the host country do not grant sufficient privileges for obtaining citizenship<sup>79</sup>.

According to Habermas, the expectation for immigrants is to assimilate the political culture of their new country while retaining their existing cultural forms of life from their home country<sup>80</sup>. However, Habermas acknowledges that the established identity of a society, which is subject to influence from immigration, will inevitably change. It is unrealistic to demand immigrants completely abandon their traditions. Instead, they contribute to expanding the «common horizon» within which citizens interpret the shared principles of the state system<sup>81</sup>. A shift in the cultural composition of an engaged citizenry inevitably leads to a transformation in the context wherein the ethical and political self-understanding of the entire nation occurs. Consequently, open immigration has the potential to alter the nature of a community without entirely erasing its distinctive character<sup>82</sup>. This character is determined by the constitution, not merely as a written document, but as the embodiment of «the principles of a modern state governed by the rule of law»<sup>83</sup>. Habermas emphasizes that patriotism involves a shared identification with a historical

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<sup>78</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 318.

<sup>79</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 319-320.

<sup>83</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

community founded on shared values, particularly those that embody freedom<sup>84</sup>. This form of identification is known as constitutional patriotism.

The concept of constitutional patriotism not only distinguishes between ethical and political integration but, due to its historical context, functions as a «functional equivalent that binds together the civic and ethnic nation»<sup>85</sup>. However, this binding is not based on equal importance assigned to both elements but rather places greater emphasis on political integration, wherein the realization of fundamental rights takes priority<sup>86</sup>. As Schölderle states, constitutional patriotism implies loyalty solely to a state that safeguards fundamental freedoms and human rights<sup>87</sup>. Furthermore, considering that «universalist legal principles» can be interpreted differently in various nations<sup>88</sup>, constitutional patriotism does not rival or exclude national patriotism. Instead, it serves as an essential correction to national patriotism, preventing the exploitation of patriotic sentiments for anti-democratic ends<sup>89</sup>. Thus, as Schölderle argues, constitutional patriotism without national patriotism is not questionable, whereas national patriotism without constitutional patriotism raises concerns<sup>90</sup>.

Another aspect supporting the compatibility of constitutional patriotism with the French tradition of defining the nation is the integration of «universalist legal principles» within the framework of «national interpretation». This linkage establishes a connection between the exercise of fundamental rights and the motivations and beliefs of citizens<sup>91</sup>. Such a connection is crucial as it enables

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<sup>84</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>85</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 171.

<sup>86</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 175.

<sup>87</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>88</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>89</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>90</sup> Ibid.

<sup>91</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 314.

these rights to serve as the guiding force behind the formation of an «association of free and equal»<sup>92</sup>. As Habermas highlights, citizenship provides answers to the questions of «Who am I?» and «What should I do?» within the public sphere<sup>93</sup>. According to Habermas, a significant transformation is occurring within the French tradition of interpreting the nation. Notably, all the inherent indicators of origin, such as place of birth and residence, are now seen as outcomes of a deliberate assimilation of tradition. As Habermas states, «Out of inherited nationality emerges acquired nationalism, a form of spirit that is constituted by its forces»<sup>94</sup>. This signifies that a nation of citizens is forged not solely based on ethnic and cultural resemblances, but through the active engagement (emphasizing the term «practice» here) of citizens in exercising their democratic rights, and their commitment to the extent of self-sacrifice<sup>95</sup>. «The readiness to engage in combat and make sacrifices for one's homeland was evident in both national consciousness and republican convictions»<sup>96</sup>. In the former case, it represented a willingness to sacrifice for the homeland rooted in a «shared history», which, in the latter case, evolved into a readiness to sacrifice for the homeland defined by «shared rights». This transition occurred because the realization of the latter can only be achieved through «intersubjectively performed practice»<sup>97</sup>.

No individual can be compelled to engage in such a practice solely through legal norms; instead, their motivation relies entirely on their motives and beliefs. Consequently, the «status of a citizen established by law continues to depend on the alignment with the underlying motives and beliefs of a citizen-oriented towards the common good, which cannot be coerced by legal means»<sup>98</sup>. Merely ensuring the presence of certain institutions through constitutional law is insufficient, as the value of these institutions can only be upheld by a population that is habituated to political freedom, engaged in the practice of self-determination conducted from a collective standpoint of «we», rather than from

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<sup>92</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 314.

<sup>93</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>94</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

an individualistic perspective of self-interest<sup>99</sup>. Furthermore, constitutional principles acquire their status as social practices through their integration with the motives and beliefs held by citizens<sup>100</sup>. «It is through the collective determination to establish the existence of the state, and as a result of that decision, it is through the practice of constitution-making that the participants are constituted as a nation of citizens of a state»<sup>101</sup>.

Constitutional patriotism is closely aligned with the concept of «res publica» as a collective or community endeavor. In this regard, it does not necessitate a specific tradition of interpreting the nation, but rather emphasizes a «nation of will». This aligns with Ernest Renan's well-known statement on the nation's existence as a «daily plebiscite», a notion also supported by Habermas<sup>102</sup>. «A nation is a vast community bound by a sense of solidarity and shaped through collective sacrifices. While it draws from the past, its present existence is determined by an explicit and ongoing desire to coexist. The nation's survival is subject to a daily plebiscite, much like an individual's existence continually affirms life»<sup>103</sup>. As a result of this «ongoing plebiscite», the abstract nature of the rights system diminishes. These rights are not merely reproduced within a specific political and cultural context; rather, they are intersubjectively constructed through the collaborative efforts of citizens. «A nation that emerges within the sphere of political publicity becomes its own sovereign»<sup>104</sup>.

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<sup>99</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrge-n-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>100</sup> Ibid.

<sup>101</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 201.

<sup>102</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrge-n-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024); Renan E. Was ist eine Nation? Rede am 11. März 1882 an der Sorbonne. Europäische Verlagsanstalt, Hamburg 1996, 71 p. [https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan\\_Was%20ist%20eine%20Nation.pdf](https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan_Was%20ist%20eine%20Nation.pdf) (accessed January 15, 2024).

<sup>103</sup> Renan E. Was ist eine Nation? Rede am 11. März 1882 an der Sorbonne. Europäische Verlagsanstalt, Hamburg 1996, 71 p. [https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan\\_Was%20ist%20eine%20Nation.pdf](https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan_Was%20ist%20eine%20Nation.pdf) (accessed January 15, 2024)

<sup>104</sup> Едер Клаус Публічність і демократія. *Європейська інтеграція*. Укладачі М. Яхтенфукс і Беатра Колер-Кох. Київ: Видавничий дім «Київсько-могилянська академія», 2007. С. 57.

### 3. Constitutional patriotism: a problematic discourse

The distinctive feature of constitutional patriotism lies in individuals' focus on their political affiliation within the existing regime, rather than their ethno-national identity. As Jan-Werner Müller, a professor at Princeton University, suggests, it involves contemplating the question of «Who and how do we want to be in terms of political domination over ourselves?»<sup>105</sup>. In this regard, constitutional patriotism can be seen as a collection of normative beliefs and commitments that do not advocate for a specific form of government or incite people to defend it. Instead, it emphasizes the importance of «sharing political space on fair terms»<sup>106</sup>. According to J.-W. Müller, the focus lies not on individual laws, but on the justification of the entire system of lawmaking and its underlying principles for all citizens<sup>107</sup>. Constitutional patriotism rejects the notion of public life being solely defined by «who is who», as it aligns with the concise definition of power as domination<sup>108</sup>. Instead, it entails a collective undertaking shared by all citizens and shaped through public discourse and the cultural context of the state<sup>109</sup>. This perspective supports the concept of European society as a deliberative legal association, a space for public discussion and dialogue governed by law, characterized by «mutual deliberative interaction»<sup>110</sup>. The ideas outlined in Article 11 of the Treaty on European Union exemplify the principles of providing citizens and representative associations with opportunities to express their views and engage in public discourse on all areas of Union action<sup>111</sup>. Additionally, the institutions are mandated to maintain an open, transparent, and regular dialogue with representative associations and civil society<sup>112</sup>. As J.-W. Müller emphasizes, citizens are invited to support a

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<sup>105</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>109</sup> Calhoun Craig Imagining Solidarity: Cosmopolitanism, Constitutional Patriotism, and the Public Sphere. *Public Culture*, 2002. Vol. 14. No. 1. P. 147–171. URL: <https://calhoun.faculty.asu.edu/sites/default/files/publications/articles/calhounimaginationsolidarity.pdf> (accessed January 17, 2024).

<sup>110</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>111</sup> Consolidated version of the Treaty on European Union URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> (accessed January 18, 2024).

<sup>112</sup> Ibid.

system of lawmaking rules that serves their interests and does not give them compelling reasons for rejection. This framework allows for ordinary laws, ordinary politics, and reasonable disagreements regarding specific interpretations of the constitution to be acceptable even to minority groups<sup>113</sup>. This is important because constitutional patriotism offers minorities a genuine moral incentive to safeguard the constitutional regime as a whole<sup>114</sup>. Thereby promoting their integration rather than their disintegration.

In the framework of constitutional patriotism, reintegration necessitates the active involvement of citizens and political associations in the ongoing development and elucidation of the underlying principles of the constitutional regime<sup>115</sup>. This raises two important questions. Firstly, who should be included or excluded from this process of clarification, and what criteria should be used for such exclusions? Secondly, what aspects can or should be subject to clarification? For instance, in Germany, amendments to the Basic Law that impact democratic principles, the rule of law, and human dignity are prohibited. Should the principles themselves be subject to clarification, or should the focus be on refining the procedures for their implementation?

Drawing attention to the notable «Call of 300 Intellectuals for the Re-foundation of the European Union» in 2017<sup>116</sup>, which included prominent signatories like the renowned Norwegian scholar John Fossum, it becomes evident that the focus lies on establishing procedures to effectively implement principles considered immutable. The call emphasizes that our European social model, grounded in liberal democracy and a social market economy, can only endure through a multi-level system of public administration guided by the principle of subsidiarity<sup>117</sup>. Consequently, the authentic realization of liberal democracy and a social market economy necessitates the adoption of procedures such as multi-level governance and subsidiarity.

Applying J.-W. Müller's reasoning, we encounter a scenario where individuals acknowledge each other as free and equal beings, subsequently establishing conditions for harmonious coexistence grounded in freedom and equality<sup>118</sup>. Hence, according to Müller, constitutional patriotism entails that citizens prioritize their allegiance to the idea of the constitution itself, rather than

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<sup>113</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Справжній Європейський Союз заради загального блага, безпеки та демократії. URL: <https://blogs.korrespondent.net/blog/world/3910892/> (accessed January 18, 2024).

<sup>117</sup> Ibid.

<sup>118</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

an unconditional acceptance of every specific aspect of a given constitution<sup>119</sup>. The principles of freedom and equality, serving as the foundation for coexistence, are delimited by a process of clarification that exclusively pertains to the conditions required to uphold these principles. Consequently, it follows logically that individuals possess valid reasons to support the pursuit of the optimal realization of these principles, even through reasonable disagreement<sup>120</sup>.

In general, the process of determining who is excluded from the process of clarification and what is beyond the scope of clarification remains a subject of inquiry. The formation of this list, if it exists, raises questions about its origin and authority. Is it compiled by a specific group or institution, and on what grounds are these exclusions determined? Furthermore, does the realm of what cannot be clarified take the form of a fixed set of concepts or an evolving list of ideas? While the concept of democracy itself can undergo clarification and reevaluation, what it represents as a larger construct remains open to interpretation. The perception of democracy can vary among individuals, shaping their understanding of the world in terms of divisions between «us» and «them», distinctions between «friends» and «enemies», and the role of civil society. It becomes evident that the focus of the concept lies not only on the establishment of representative institutions but also on the active engagement of private individuals in public decision-making, irrespective of their social status determined by birth. These varying interpretations of the concept of democracy can lead to different behavioral models, as the dominant emotional disposition associated with the concept influences individual attitudes and actions. While the guidelines may appear similar (advocating for a «democratic society» and opposing those who are against it), the emphasis on different emotional attitudes can result in distinct patterns of behavior.

It is undeniably challenging to argue against the notion that the response of «Together» to the inquiry of «How do we want to live?»<sup>121</sup> necessitates the presence of what Habermas refers to as «political publicity». This concept allows citizens to collectively address a particular issue, which holds no lesser significance than others<sup>122</sup>. Similarly, Klaus Eder describes it as «the continuous formation of a shared understanding of problems», which requires cognitive harmony to engage in reflection on collectively acknowledged legal

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<sup>119</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>120</sup> Ibid.

<sup>121</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>122</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 226.

principles<sup>123</sup>. And this state of «cognitive consonance» must be consistently upheld. But at what cost? Should something that is deemed non-negotiable still be subject to periodic examination and discussion to reinforce its «bracketed» status? Moreover, wouldn't such deliberation aid in the conceptualization and definition of the values and preferences that citizens must endorse, including the emotional support for «a particular form of political governance»<sup>124</sup>? How can this be effectively ensured?

There are no definitive solutions to these inquiries. However, constitutional patriotism merits attention as it prompts such inquiries and underscores the significance of «establishing specific social relations» or, more precisely, elucidating the requirements for universal involvement in such establishment. As Robert Dahl astutely observes, «Before we can assert that all individuals <...> have the right to participate in the democratic process, we must confront a more fundamental question: Under what conditions does the totality of individuals comprising this entity-the «people»-possess the right to democratic self-governance?»<sup>125</sup>.

#### 4. Constitutional patriotism: a value discourse

According to J.-W. Müller, constitutional patriotism posits that political allegiance should not only be based on the norms and procedures of a democratic constitution but also on values<sup>126</sup>. Thus, the notion of a fundamental value system that is (or should be) shared among EU citizens assumes great importance. This idea is articulated, for instance, in Articles 1 and 2 of the Treaty on European Union, which state: «The European Union, to which the Member States have conferred competence for the pursuit of their common objectives <...>, is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for the rights of persons belonging to minorities. These values are shared by the Member States within a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men»<sup>127</sup>.

Simultaneously, the abstract and normative nature of these values allows different researchers of European integration to construct their lists of universally recognized European values, thereby indirectly reinforcing the notion

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<sup>123</sup> Едер Клаус Публічність і демократія. *Європейська інтеграція*. Укладачі М. Яхтенфукс і Беата Колер-Кох. Київ: Видавничий дім «Київсько-могилянська академія», 2007. С. 75.

<sup>124</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

<sup>125</sup> Dahl R. *Democracy and Its Critics*. Yale University Press, 1989. P. 193.

<sup>126</sup> Muller J.-W. *Constitutional Patriotism*. Princeton: Princeton University Press, 2007. P. 1, 48, 50–51.

<sup>127</sup> Consolidated version of the Treaty on European Union URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> (accessed January 18, 2024).

that periodic reflection on «cognitive consonance» (K. Eder) is advisable to solidify its status as a «bracketed» concept. For instance, Michael Emerson, in his work «The Existential Problem of Europe»<sup>128</sup>, presents his «Ten European Commandments» outlining the values and systemic characteristics of the European development model:

- Democracy and human rights, as enshrined in the European Convention and the Court of Human Rights of the Council of Europe, are also included in the European Constitution and the Copenhagen political criteria for EU membership acceptance.

- A common legal framework for the four freedoms, encompassing the single economic market and free movement, residence, and employment for EU citizens.

- The social model, comprising fundamental social security and access to healthcare.

- The multinational nature of society, rejecting nationalism and striving to cultivate qualities that blend regional, national, and European characteristics.

- A secular multicultural approach, acknowledging the efforts of Muslim minorities in Europe to foster a religious multicultural approach (with complexities in the case of Turkey).

- Opposition to totalitarianism and militarism in both foreign and domestic policy, while not embracing pacifism.

- A multilateral approach in international politics and internal European affairs.

- Multilevel governance, typically structured in a three-tiered federal system of European Union, national, and subnational levels, with mandatory supranational governance within the European Union.

- Openness to all European democracies.

- Recognition of the constantly evolving borders of the European Union, emphasizing a flexible conception of Europe rather than a rigid division into allies and adversaries, thereby portraying the European Union as a neo-Westphalian federal state.

According to Emerson, this list «includes certain points of contention and is thus contingent upon the reader's subjective perspective. Nevertheless, it provides valuable insights for the ongoing discourse on European values and serves as a basis for comparative analysis with the values embraced by other nations, such as the United States, Russia, and China»<sup>129</sup>.

Sandro Hotsi not only defines the values of the European Union as its commitment to human rights, intercultural dialogue, and mutual understanding but also presents a perspective on these values as imperatives that should characterize the EU's future endeavors. Specifically, he emphasizes the significance of creativity, openness, and reliability. Creativity entails the ability to attract and compel Europe to provide appropriate responses to strategic

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<sup>128</sup> Емерсон М. Екзистенціальна дилема Європи. *Незалежний культурологічний часопис «І»*. 2007. № 50. С. 55–71.

<sup>129</sup> Ibid.

challenges it confronts. Openness signifies the refusal to betray its essence and transform into an isolated entity, thereby forfeiting any substantial role on the international stage. Reliability necessitates the pursuit of acceptable solutions in the realm of security<sup>130</sup>.

Emmanuel Todd highlights prominent values in Europe, including agnosticism, peace, and balance<sup>131</sup>. Europe is characterized by a climate of agnosticism, where religious practices are minimalized. Todd emphasizes that the European Union exemplifies the biblical commandment «Thou shalt not kill» through its abolition of the death penalty<sup>132</sup>. Europeans have a deep understanding of economic equilibrium due to centuries of suffering caused by the bellicose inclinations of their rulers. Todd further suggests that the concept of balance is associated with notions of labor and compensation from a practical moral perspective, as well as with production and consumption in terms of accounting<sup>133</sup>.

Mark Leonard highlights the European countries' continuous interest in the shared values of other states, particularly regarding their constitutional systems and legislative frameworks. The cornerstone value that holds utmost importance for Europeans is the rule of law. Leonard emphasizes that Europe's unwavering commitment to the rule of law empowers it to bring about profound transformations in the countries it engages with, rather than merely exerting superficial influence<sup>134</sup>.

Milada Vachudova identifies functional liberal democracy and market economy as the fundamental values of Europe<sup>135</sup>. These values represent significant benefits and rewards granted to those who have successfully fulfilled a multitude of requirements during the pre-accession process to the European Union. Vachudova emphasizes that the substantial advantages associated with EU membership have motivated political elites to diligently meet the extensive membership criteria<sup>136</sup>.

Gérard Mere asserts that responsibility is a core value of Europe, contending that «Europe can only exist as a community if it is characterized by this type of consciousness»<sup>137</sup>. According to J. Mere, Europe can discover the foundations of its new freedom by embracing responsibility instead of adhering to the patterns of thought and behavior that once resulted in the catastrophic events of Auschwitz and suicide. Mere challenges Europeans to grapple with the

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<sup>130</sup> Гоці С. Нові кордони та нова політика в Європі. *Гоці С. Урядування в об'єднаній Європі*. Київ : К.І.С., 2003. С. 284.

<sup>131</sup> Тодд Е. Після імперії. Есе про загинання американської системи. Львів : Кальварія, 2006. С. 160.

<sup>132</sup> Ibid. С. 161.

<sup>133</sup> Ibid.

<sup>134</sup> Leonard M. *Why Europe Will Run the 21st Century*. Fourth Estate, 2005.

<sup>135</sup> Вахудова М. Нерозділена Європа. Демократія, важелі впливу та інтеграція після комунізму. Київ: ВД «Києво-Могилянська академія», 2009. С. 12.

<sup>136</sup> Ibid.

<sup>137</sup> Мере Ж. Принцип суверенітету. Історія та основи новітньої влади. Львів: Кальварія, 2003. С. 116.

unprecedented reality that Europe has brought about its demise, stating, «The challenge, then, is to comprehend what it means for us Europeans <...> to have the unprecedented fact that <...> Europe has committed suicide...»<sup>138</sup>. The reference to suicide arises from the impact of Auschwitz, which Mere argues «eradicates the ontological basis of modern freedom – shared existence and what constitutes the foundation of its very possibility: the concept of humanity»<sup>139</sup>.

The continuous formulation of various versions of the «fundamental value order» and the invitation to debate their prioritization effectively exemplify constitutional patriotism as an «exceedingly rational category of political orientation» guided by «widely accepted rational criteria» rather than emotional motivations<sup>140</sup>. Through this ongoing discourse of «cognitive consonance», constitutional patriotism not only fosters «rational political unity»<sup>141</sup> but also, as D. Sternberger argues, becomes «a pivotal term for political education»<sup>142</sup>. As Peter Ricoeur aptly states, it is through engaging in debates with opponents that one can persuade them of the universality of certain rights<sup>143</sup>. Therefore, «teaching fundamental constitutional norms and values does not imply an end to the consideration of alternatives»<sup>144</sup>.

## 5. Constitutional patriotism: national discourse

Ukraine's position as a candidate country for European Union accession necessitates the consideration of European integration practices, including the concept of constitutional patriotism and its emphasis on the significance of political integration within society. This proposition alone suffices to underscore the pertinence of the subject of constitutional patriotism for the Ukrainian state.

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<sup>138</sup> Мере Ж. Принцип суверенітету. Історія та основи новітньої влади. Львів: Кальварія, 2003. С. 205.

<sup>139</sup> Ibid. С. 204.

<sup>140</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>141</sup> Maichel A. Das Konzept des Verfassungspatriotismus – Dolf Sternberger (Dolf Sternbergers Antwort auf die Suche nach einem Identitätskonzept für die Deutsche Nation). Seminar Paper, 2003. URL: <https://www.grin.com/document/142419> (accessed January 17, 2024).

<sup>142</sup> As cited in: Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>143</sup> As cited in: Kearney R. States of Mind. Dialogues with contemporary thinkers on the European mind. NYU Press, 1995. Part 1.

<sup>144</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

Nevertheless, existing domestic research on this topic primarily focuses either on the examination of patriotism as a broad phenomenon or the exploration of specific variants thereof. Alternatively, studies are dedicated to constitutional patriotism within other nations, notably the United States and Germany.

In the latter scenario, an opportunity arises to acquaint ourselves with the historical progression of the concept of constitutional patriotism and its transformative nature over time. For instance, Oleksandr Trehub explores the topic of constitutional patriotism, delving into aspects of nation-building in contemporary Germany and analyzing the notion of solidarity in the «spirit of E. Renan as the desire of the nation to live together»<sup>145</sup>. Oleksandra Trokhymenko establishes a connection between constitutional patriotism and the necessity to cultivate a distinct state-national consciousness for postwar Germany, one that is firmly rooted in the recognition of democratic principles and values. Trokhymenko also considers constitutional patriotism as a transitional bridge for the German collective consciousness following the disillusionment with national sentiments in the aftermath of World War II<sup>146</sup>. Andrii Kudryachenko examines the concept of constitutional patriotism within the framework of Germany's «Vergangenheitsbewältigung» policy, which aims to overcome the burdens of the past in the national memory<sup>147</sup>. Meanwhile, Yulia Ivchenko conducts an analysis of constitutional patriotism using the United States as a case study, where it is rooted in the belief in the superiority of American democratic values<sup>148</sup>. This pertains to the so-called «American creed» which encompasses universal ideological and cultural principles such as freedom, democracy, religion, rule of law, individualism, progress, and more. Moreover, it includes reverence for the fundamental institutions of the U.S. government and the U.S. Constitution. In recent decades, cultural pluralism, racial equality, and ethnic equality have also become integral components of the American creed<sup>149</sup>.

Regarding constitutional patriotism as a distinct form of patriotism, it is noteworthy to explore an intriguing article authored by Serhiy Shyrokov<sup>150</sup>. In this

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<sup>145</sup> Трегуб О.І. Основні аспекти становлення нації у сучасній Німеччині. *Наукові записки НаУКМА*, 2007. Т. 69: Політичні науки. С. 29.

<sup>146</sup> Трохименко О.О. Етнонаціональна ідентичність німців в контексті міграційних процесів другої половини ХХ – початку ХХІ століття : дис....канд.іст.наук : 07.00.05. / Київський національний університет імені Тараса Шевченка. Київ, 2016. С. 158–159.

<sup>147</sup> Кудряченко А.І. Становлення та розвиток політики «подолання минулого» в національній пам'яті ФРН. *Проблеми всесвітньої історії*, 2018. № 1(5). С. 96–121.

<sup>148</sup> Івченко В.Ю. Приклад конституційного патріотизму в США та його перспективи в умовах українських державотворчих процесах. *Вчені записки ТНУ імені В. І.Вернадського*. Серія: юридичні науки. Філософія права, 2018. Том 29 (68). № 1. С. 103.

<sup>149</sup> Ibid. С. 104.

<sup>150</sup> Широков С. Сучасні концепти патріотизму в зарубіжних наукових дослідженнях. *Державне управління та місцеве самоврядування*, 2019, вип. 4(43). С. 14–19.

work, an endeavor is made to «systematize contemporary Western conceptions of this phenomenon», and constitutional patriotism is categorized as «the most prominent exemplification of a value-oriented form of patriotism»<sup>151</sup>. Shyrokov further elucidates that constitutional patriotism, as an attitude, entails a sentiment and dedication to a specific constitutional system, while as an identification, it encompasses active participation in the fundamental principles of state functioning enshrined within the constitution, along with the regulations that may be derived from these principles<sup>152</sup>. The author concludes that the realization of constitutional patriotism transpires through ongoing discussions concerning the common good. These deliberations serve the dual purpose of influencing the formulation of fundamental principles that govern the functioning of the state, and fostering a sense of participation among their participants, in terms of their incorporation into these principles, their constitutionalization, and their reflection within the Constitution itself<sup>153</sup>. In essence, this conclusion substantiates Habermas' proposition regarding constitutional patriotism as a product of interconnected discourses, which collectively establish a model of deliberative politics<sup>154</sup>. It also echoes E. Renan's assertion that the existence of a nation is akin to a «daily plebiscite»<sup>155</sup>. In the context of studying deliberative democracy, Elizaveta Batrakina also touches upon constitutional patriotism. Rather than relying on a shared ethnocultural identity, which is a characteristic of republicanism, the deliberative theory of democracy promotes the idea of citizens embracing a dedication to political discourse. This form of dedication is referred to by Habermas as «constitutional patriotism»<sup>156</sup>.

It is important to note that in the study of constitutional patriotism, it is crucial to avoid venturing into the realm of jurisprudence, as this may lead to the concept of «legal patriotism». This aspect is discussed by Iryna Kuyan and Iryna Andrushko who examine constitutional patriotism as one among various types of patriotism, including ethnic, territorial, and state patriotism. They further conclude that the challenges of fostering constitutional patriotism in Ukraine stem from the transitional nature of society, the continuous state of constitutional

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<sup>151</sup> Широков С. Сучасні концепти патріотизму в зарубіжних наукових дослідженнях. *Державне управління та місцеве самоврядування*, 2019, вип. 4(43), С. 15.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Habermas J. Citizenship and National Identity. *J. Habermas (Ed.), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996. P. 491–516. URL: <https://teddykw2.files.wordpress.com/2012/07/jc3bcrngen-habermas-between-facts-and-norms.pdf> (accessed January 16, 2024).

<sup>155</sup> Renan E. Was ist eine Nation? Rede am 11. März 1882 an der Sorbonne. Europäische Verlagsanstalt, Hamburg 1996, 71 p. [https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan\\_Was%20ist%20eine%20Nation.pdf](https://austria-forum.org/attach/AEIOU/%C3%96sterreichbewusstsein/Renan_Was%20ist%20eine%20Nation.pdf) (accessed January 15, 2024).

<sup>156</sup> Батракіна С. С. Криза «мозаїчного» мультикультуралізму та деліберативна модель демократії. *Грані*, березень, 2016. № 3 (131). С. 46.

reform, and the quest for its own constitutional identity<sup>157</sup>. Therefore, I. Kuyan and I. Andrushko argue that a model of legal patriotism is both acceptable and appropriate for Ukraine. This model integrates elements from other recognized types of patriotism while also possessing its distinct content<sup>158</sup>. They explain that legal patriotism is founded on the principle of the rule of law, which encompasses both natural and positive law. The policy of a rule-of-law state is grounded in the preservation and promotion of natural and inalienable human rights and freedoms, which constitute its primary duty. Without these foundations, the legitimacy of state power becomes unattainable, thereby jeopardizing its stability and impeding the sustainable development of society<sup>159</sup>.

The foundation of constitutional patriotism, as a reminder, lies in the intersubjective act of creation rather than mere reproduction or adherence to legal norms and principles. This is why Habermas emphasizes that «from a normative perspective, there can be no European federal state worthy of being called a democratic Europe unless a pan-European integrated public sphere is created, rooted in a shared political culture: a civil society comprising interest groups, non-governmental organizations, citizen movements, and so on»<sup>160</sup>. Such creation cannot be imposed through coercion or administration; it must be voluntary and driven by the internal convictions of its participants regarding the legitimacy of «law-making as such»<sup>161</sup>. These convictions are nurtured through ongoing debates about this legitimacy, rather than through a simple belief in it. It is for this reason that constitutional patriotism is regarded by D. Sternberger as «a crucial term for political education»<sup>162</sup>.

Further examination of constitutional patriotism, including within the domestic context, should be grounded in the differentiation proposed by British scholar Alan Dashwood between two types of constitutions<sup>163</sup>. This differentiation is referenced by Ukrainian researcher Andriy Tyushka in his monograph

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<sup>157</sup> Куян І., Андрушко І. Правовий патріотизм як оптимальна модель державницької ідеології України. *Часопис Київського університету права*, 2018. № 3. С. 18.

<sup>158</sup> Ibid. С. 19.

<sup>159</sup> Ibid.

<sup>160</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 227.

<sup>161</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (дата звернення 17.02.2024).

<sup>162</sup> As cited in: Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 17, 2024).

<sup>163</sup> Dashwood A. The constitution of the European Union after Nice: law making procedures. *European law review*, 2001. № 3. P. 215–238.

titled «The Treaty on a Constitution for Europe»<sup>164</sup>. Specifically, it pertains to the distinction between the «constitution» of the European Union in terms of «constitutionalization» and the «constitutional acts» of the European Communities and the European Union, and the «Constitution» for Europe, which encompasses the «Constitutional Treaty», «Basic Law», and, from a documentary perspective, the «Constitution» of the European Union<sup>165</sup>. Constitutional patriotism concerns itself with the Constitution as a process of constitutionalization, co-creation, and the establishment of principles and rules of coexistence.

Let us recall the words of Thomas Schöderle: «Constitutional patriotism is not directed towards a cumbersome textual document, but towards the core principles of the modern rule of law»<sup>166</sup>. Furthermore, «Sternberger did not associate his constitutional patriotism with a legal document like the Basic Law of the Federal Republic of Germany with all its 146 articles, but rather with the essence of the modern constitutional state, with the ‘foundations of a free democratic order’»<sup>167</sup>. These principles or foundations should not only be shared intersubjectively but also created intersubjectively. Therefore, the notion of «post-national socialization» discussed by Habermas, taking into account that «such unifying formulas as a common language, shared poetry, collective failures or victories, successful revolutions (less suitable are unsuccessful ones) are outdated»<sup>168</sup>, does not necessitate the eradication of «all cultural, historical, or ethical sentiments of the community»<sup>169</sup>, but rather the existence of «a network of communicative pan-European political discourse that is part of a common political culture, with civil society serving as its vehicle»<sup>170</sup>.

In the context of the European Union, the term «constitution» refers to the process of establishing principles and rules of coexistence, creating a «communication network of pan-European political discourse»<sup>171</sup>. This network exists as a result of the participation of individual and collective actors who engage in public communication. Without such a network, democracy cannot

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<sup>164</sup> Тюшка А.В. Договір про Конституцію для Європи: генезис, юридична природа, політична цінність. Київ: К.І.С., 2007. 228 с.

<sup>165</sup> Ibid. С. 9.

<sup>166</sup> Schöderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>167</sup> Ibid.

<sup>168</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 74.

<sup>169</sup> Schöderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>170</sup> Габермас Ю. Залучення іншого. Студії з політичної теорії. Перекл. з нім. Андрій Дахній. Львів: Астролябія, 2006. С. 219.

<sup>171</sup> Ibid.

thrive, as it is through this process that the people, united as a nation, have deprived traditional sources of the sovereignty of their legitimacy and claimed it for themselves<sup>172</sup>. Constitutional patriotism, on the other hand, entails active participation in the creation of this network, driven by a rational belief in the inviolability of fundamental principles of human coexistence, such as the principle of freedom, rather than blind devotion. It also involves preserving the cultural, historical, and ethical sentiments of one's community while respecting those of others from different communities<sup>173</sup>.

P. Ricker emphasizes that certain rights, such as freedom of speech, possess a universal character, even if they are not yet embraced by other cultures. However, as mentioned earlier, it is through dialogue and engagement with these cultures that their recognition of the universality of such freedoms can be achieved<sup>174</sup>. P. Ricoeur provides another example, stating that there is an inherent universality in advocating for women's rights to pleasure and bodily integrity, regardless of their current recognition. Nevertheless, it is crucial to bring these rights to the forefront of discussion and debate<sup>175</sup>. Deborah Stone argues that the abstract notion of freedom, defined as the capacity to act freely without causing harm to others, obtains specific meaning through political battles concerning the determination and assessment of the harm inflicted by human actions on individuals, as well as the criteria that justify state intervention in the choices and behaviors of its citizens<sup>176</sup>.

As a result of these deliberations and conflicts, constitutional patriotism aligns with what P. Ricker terms as «the endeavor towards a form of a universal republic»<sup>177</sup>, where universally applicable principles of coexistence are crafted through collective endeavors.

## CONCLUSIONS

Constitutional patriotism is highly important concept for Eurointegration discourse, in which the basic conception of the latter is peculiarly crystallized – European integration is a product of joint efforts of all its participants, efforts, constituting certain regulations for European joint life. Familiarity with such concept, cognizance its historical, conceptual, problem and valuing discourses

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<sup>172</sup> Едер Клаус Публічність і демократія. *Європейська інтеграція*. Укладачі М. Яхтенфукс і Беатра Колер-Кох. Київ: Видавничий дім «Київсько-могилянська академія», 2007. С. 57, 75.

<sup>173</sup> Schölderle T. Verfassungspatriotismus – Zum 50. Geburtstag einer Wortschöpfung (Akademie-Kurzanalyse 1/2020), Tutzing (Akademie für Politische Bildung), 2020. URL: <https://www.apb-tutzing.de/news/2021-03-02/verfassungspatriotismus-dolf-sternberger> (accessed January 16, 2024).

<sup>174</sup> As cited in: Kearney R. States of Mind. Dialogues with contemporary thinkers on the European mind. NYU Press, 1995. Part 1.

<sup>175</sup> Ibid.

<sup>176</sup> Стоун Д. Парадокс політики. Мистецтво ухвалення політичних рішень. Київ: «Альтернативи», 2000. С. 93-109.

<sup>177</sup> As cited in: Kearney R. States of Mind. Dialogues with contemporary thinkers on the European mind. NYU Press, 1995. Part 1.

seem necessary condition/pledge for understanding of essence of the «new stage for creation process for more and more close union of the European nations, where decisions are made the most public and close to people», stipulated in the Article 1 of the Treaty on European Union<sup>178</sup>.

Concept of the constitutional patriotism in native discourse is not rather, than sufficiently present, but not enough intelligent and, to my mind, is acquiring as something theoretically refined and practically insipid. At the same time, it is quite difficult to analyze without this concept, let's say, reintegrating practices, absolutely actual for the Ukrainian realm, because reintegration means not only procedure for restoring in citizenship, it is also «creation of specific social relations», and, rather conditions for participation in such creation<sup>179</sup>.

Constitutional patriotism while focusing attention on a norm as value and value of a norm itself force us to think that only norm of joint creation is/can be really valuable (and, therefore, both reformation and maintenance of inviolability) of social joint life. Those rules possesses universality and acquire legitimacy under the said conditions only, since their making is the creation, according to Müller, convictions and inclinations required for to people for supporting of «true form of political regency»<sup>180</sup>. In addition, vice versa, those convictions and inclinations are created as joint creation of rules for joint life in the society (not afterwards or along with).

## SUMMARY

Investigation is devoted to the analysis of the constitutional patriotism concept in unity of its historical, conceptual, problem and valuing discourses. Historical discourse accentuates attention on complicated evolution of the concept from its historical conditionality with problems of separated Germany after the Second World War to representation of integrating processes at the territory of the European Unity. Conceptual – on concept of the nation and two traditions of its definition (civic and ethnic), as well as on a problem of their interweaving in specific political practices. Problem – on difficulties for transfer the answer «Together» to question «What way do we wish to live?» (Müller, J.-W.) into plane of real organizational efforts. In addition, at last, valuing – on grounds of claims of the values connected with Eurointegration, on universality.

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<sup>178</sup> Consolidated version of the Treaty on European Union URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> (accessed January 18, 2024).

<sup>179</sup> On importance of the constitutional patriotism for domestic reintegration practices see: Шульга М. А. Конституційний патріотизм: українські контексти та європейські практики. *Політичні технології пропаганди та контрпропаганди у російсько-українській війні (до річниці повномасштабного вторгнення)*: збірник матеріалів Круглого столу з міжнародною участю, м. Київ, 21 лютого 2023 р. [Електронний ресурс]. К. : КНЕУ, 2023. С. 45–48. ISBN 978-966-926-434-3

<sup>180</sup> Müller Jan-Werner A general theory of constitutional patriotism *International Journal of Constitutional Law*, 2008. Volume 6, Issue 1, January. P. 72–95. URL: <https://academic.oup.com/icon/article/6/1/72/669052?login=false> (accessed January 17, 2024).

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