Contents

	List of figures	x
	List of tables	xii
	List of boxes	xiii
	List of abbreviations	xv
	Notes on contributors	xvii
	Preface	xx
	Introduction	
	Joseph Marko	1
		1
	1.2 From minority protection to multiple diversity governance: the main	
	hypotheses of the book	4
	1.3 The structure of the book	7
,	The interdisciplinery entropy to law, easiele and a divisit of a standard	40
	The interdisciplinary approach: law, sociology and political sciences Joseph Marko	12
	2.1 Law in practice: thinking like a lawyer	12
	2.2 Theoretical approaches and methods in sociology and political sciences	22
	2.2.1 System	28
	222 Functions	28
	2.2.3 Structures	28
	2.2.4 Institutions	28
		29 29
	2.2.5 Social roles 2.2.6 Social and system integration	29 29
	2.2.7 Discourse, discourse analysis and deconstruction	
	2.2.8 Reification and naturalisation	31
		31

vi	Contents

3	The historical-sociological foundations: state formation and nation building in Europe and the construction of the identitarian							
		nation-cum-state paradigm						
			Marko, Edith Marko-Stöckl, Benedikt Harzl and Hedwig Unger	33				
			duction: are minorities dangerous for modern national states?	33				
		The processes of state formation and nation building and the construction						
	5.4	of the identitarian nation-cum-state paradigm						
			Western Europe	38 41				
		5,2,1	3.2.1.1 Spain: Muslims and Jews – the 'other'	41				
			3.2.1.2 Religious division and violent conflict in France and England	42				
			3.2.1.3 The American and French political and legal revolutions	53				
		377	Central Europe	59				
			Eastern and Southeastern Europe	68				
	22		brities between the two World Wars: trapped between the claim to	08				
	5.5		letermination and actual deportation	71				
	31		l standard setting and monitoring of human and minority rights law after 1945	78				
	5.4	-	The period between 1945 and 1989	78				
			The period after 1989	83				
			How effective is standard setting and monitoring of minority rights instruments?	87				
	2 5		mary conclusions and learning outcomes	91				
	5.5	Juin	mary conclusions and rearming outcomes	91				
4		Law and ideology: the ideological conundrums of the						
	liberal-democratic state							
	Jos	eph N	Marko					
	4.1	4.1 Introduction: the ideological framing of law		96				
	4.2	4.2 The family resemblance of race, ethnicity, nation and culture: the ideolog						
		of racism and nationalism						
	4.3	Fault lines of liberalism and nationalism: the conundrums of the						
		liberal-democratic state						
		4.3.1	The nexus of the identity fiction, the majority principle and the myth					
			of neutrality	112				
		4.3.2	Sovereignty or autonomy? Two forms of collective self-determination	120				
		4.3.3	The dichotomy of formal versus substantive equality and the dilemma					
			of difference	128				
	4.4	The	remaining civic–ethnic–national oxymoron	132				
	4.5	Sumi	mary conclusions and learning outcomes	135				
5	Law and sociology: the constructivist and interpretative turn							
		loseph Marko						
	5.1	1 Introduction: from essentialism to social constructivism						
	5.2	The i	nterplay of social and system integration	140				
			Social integration: the construction of social categories and					
			social identity formation	140				
		5.2.2	Group formation through social organisation and institutionalisation	148				

Contents vii

		5.2.3 The interplay of social and system integration: a typology of societies	159	
	5.3	The multidimensionality of and integration by law	162	
		5.3.1 Individual versus collective rights? A false dichotomy	162	
		5.3.2 Integration by law through norm contestation	167	
	5.4	Summary conclusions and learning outcomes	175	
6	Against annihilation: the right to existence			
		gainst annihilation: the right to existence seph Marko, Hedwig Unger, Roberta Medda-Windischer,		
		xandra Tomaselli and Filippo Ferraro		
	6.1	Introduction: the three dimensions of the right to existence	178	
	6.2	The right to existence in terms of physical and psychological security	180	
		6.2.1 Legal standard setting: genocide, crimes against humanity, ethnic		
		cleansing and war crimes	180	
		6.2.2 Implementation through case law	185	
		6.2.3 Remaining problems and legal developments	192	
		6.2.3.1 Retributive and/or restorative justice? Perpetrators and victims		
		between vengeance and reconciliation	193	
		6.2.3.2 From punishment ex post facto to prevention: the responsibility to		
		protect doctrine	196	
	6.3	The right to existence in terms of basic needs and capabilities as economic		
		subsistence rights	199	
		6.3.1 Legal standard setting: indigenous peoples under international law	200	
		6.3.2 Implementation through monitoring reports and case law	205	
		6.3.3 Remaining problems and developments	212	
		6.3.3.1 The necessity for the recognition of the interdependence of land		
		rights and cultural rights as collective rights	212	
		6.3.3.2 Mutual reinforcement of economic deprivation and racial		
		discrimination: ghettoisation, forced mass expulsion and structural		
		discrimination of Roma and Sinti	215	
	6.4	'The right to have rights': statelessness and denials of citizenship	220	
	6.5	Summary conclusions and learning outcomes	224	
7	Aci	ainst assimilation: the right to multiple identities	227	
			227	
		eph Marko, Sergiu Constantin, Günther Rautz, Andrea Carlà and ena Wisthaler		
			207	
		Introduction: the politics of difference – language, religion and law	227	
	1.2	The duality of languages and the dualism of religions in the normative		
	7.3	structures of minority rights and state duties Multiple identities: the sociocultural sphere	233	
	1.5	-	236	
		7.3.1 The structural duality and multidimensionality of language rights	236	
		7.3.1.1 The relationship of official languages and minority languages:		
		the dual dichotomy of private versus public use and individual		
		versus group rights	236	
		7.3.1.2 Minority languages in the administration and judiciary	243	

		7.3.2 The	e structural dualism of religion		251
		7.3.	2.1 Positive versus negative religious freedoms and positive and		
			negative equality of religions		253
		7.3.	2.2 Corporate rights		268
	7.4	The socio	political dimension		272
		7.4.1 Mir	porities and freedom of speech		273
		7.4.2 Mir	norities and the media		281
		7.4.	2.1 The status of minorities and their media in Europe		284
		7.4.	2.2 Perspectives for a European public sphere		288
		7.4.3 Org	anisations promoting minority cultures		289
	7.5 The socioeconomic dimension			292	
		7.5.1 Mir	nority languages in education		293
		7.5.2 Mir	nority languages in the labour market		295
	7.6	Monoling	gual or multilingual equality?		299
	7.7	Summary	conclusions and learning outcomes		303
8	Against discrimination: the right to equality and the dilemma				
	ofc	ifferenc	8		307
	Joseph Marko				
	8.1 Introduction: equality – an empty idea?			307	
	8.2 From anti-discrimination to substantive equality in case law: the				
		legal-dogi	matic development		311
	8.3	Structura	l discrimination; is there a need for quotas?		324
	8.4	Summary	conclusions and learning outcomes		336
9	Against marginalisation: the right to effective participation			340	
	Joseph Marko and Sergiu Constantin				
	9.1	Introduct	ion: the analytical framework – autonomy, subsidiarity and integratic	m	340
	9.2 Preconditions for effective participation: liberal freedoms and political rights			343	
		9.2.1 Free	edom of association as a prerequisite for political representation		
		of r	ninorities		344
		9.2.2 Rig	ht to free elections		349
		9.2.3 The	e impact of electoral engineering on minority representation and participatio	m	357
			erved seats, proportional representation and veto powers: effective mechanism	n	
			louble-edged sword?		370
			tive mechanisms		380
	9.4		to internal self-determination		385
	9.5	Summary	conclusions and learning outcome		393
10	From minority protection to multiple diversity governance				396
	Joseph Marko				
			tion: changing the paradigm		396
	10.2	-	olitanism and the fault lines of universalism, communitarianism/		
		particula	rism		398

10.3 Cosmopolitan constitutional pluralism	404	
10.4 Cosmopolitan constitutional law in the making	413	
10.5 Reconceptualisation through triangulation and the translation of princip	les	
and norms into institutional arrangements	416	
10.6 The model of multiple diversity governance: a summary overview	421	
10.6.1 The politics of fear	423	
10.6.2 The Janus face of the nation-cum-state paradigm	423	
10.6.3 Deconstructing the monist-identitarian meta-ideology	425	
10.6.4 What is the alternative? The model of multiple diversity governance	427	
Bibliography	430	
Documents of international organisations	467	
Table of cases		
Index	489	

٤.