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**THE ROLE OF HISTORICAL NARRATIVES IN
CONSTITUTIONAL DESIGN: THE CASE OF YUGOSLAVIA
AND SUCCESSOR STATES**

- DOCTORAL DISSERTATION -



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**ULOGA ISTORIJSKIH NARATIVA U USTAVNOM DIZAJNU:
JUGOSLAVIJA I DRŽAVE NASLEDNICE**

- DOKTORSKA DISERTACIJA -



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THE DISSERTATION BACKGROUND

THE ROLE OF HISTORICAL NARRATIVES IN CONSTITUTIONAL DESIGN: THE CASE OF YUGOSLAVIA AND SUCCESSOR STATES

SUMMARY

The dissertation's goal is to test the hypothesis that historical narratives played a legitimizing role in shaping constitutional solutions in Yugoslavia and its successor states, regardless of political systems. It examines three periods: early liberal democracy and royal dictatorship (1918-1941), authoritarian self-managing socialism (1945-1991), and transitional democracy post-1990. Primary sources include constitutions and stenographic notes of the constitution-making bodies.

The dissertation comprises an introduction, four chapters, and conclusions. Chapter I establishes the analytical framework, exploring constitution, constitutionalism, constitutional authority concepts, and the role of historical narratives in constitution-making. The following chapters mix chronological and problem-oriented analysis: Chapter II focuses on historical narratives influencing constitutional values; Chapter III on narratives shaping state territorial organization; and Chapter IV on narratives' role in determining government forms.

Historical narratives' prominence in constitutional design correlates with the novelty of constitutional solutions, especially evident in 1921 and 1946 constitutions. Key themes include "national unity" in the Kingdom's constitutions (1921, 1931), "brotherhood and unity" in socialist Yugoslavia (1946–1974), and "national traditions" in post-Yugoslav period.

The use of narratives more in public assembly speeches than in closed sessions implies their role as argumentation tools rather than deep constitutional motivations. They evoke emotions,

crucial in constitution-making, and offer rational constitutional provision foundations, following the idea of history as *magistra vitae*. Thus, they effectively address emotional and rational decision-making dimensions.

KEYWORDS: Constitutional design, historical narratives, Yugoslavia, Yugoslavia's successor states, constitutional values, state organization, forms of government, constitutionalism, socialist constitutionality, constitutional history

SCIENTIFIC FIELD: Legal studies

PODACI O DISERTACIJI

ULOGA ISTORIJSKIH NARATIVA U USTAVNOM DIZAJNU: JUGOSLAVIJA I DRŽAVE NASLEDNICE

SAŽETAK

Cilj disertacije je da testira hipoteze da su istorijski narativi imali legitimizujuću ulogu u oblikovanju ustavnih rešenja u Jugoslaviji i državama naslednicima, bez obzira na politički sistem. U istraživanju se prate tri epohe: nascentna liberalna demokratija praćena kraljevom diktaturom (1918-1941), period autoritarnog samoupravnog socijalizma (1945-1991) i tranziciona demokratija u državama naslednicama (od 1990). Primarni izvori za istraživanje bili su ustavi i stenografske beleške ustavotvornih tela.

Nakon kratkog Uvoda, disertacija je organizovana u četiri poglavlja, praćena glavnim Zaključcima teze. Poglavlje I postavlja okvir za analizu, diskutujući o konceptima ustava, ustavnosti, ustavotvorne vlasti i uloge istorijskih narativa u procesu stvaranja ustava. Sledeća tri poglavlja su strukturirana kombinujući hronološki i problemski orijentisanu analizu: Poglavlje II fokusira se na istorijske narative koji utiču na glavne ustavne vrednosti; Poglavlje III se bavi istorijskim narativima koji su oblikovali teritorijalnu organizaciju države; Poglavlje IV ispituje ulogu istorijskih narativa u određivanju oblika vlasti (parlamentarna monarhija, socijalistička republika i parlamentarna republika).

Zastupljenost istorijskih narativa u ustavnom dizajnu bila je direktno srazmerna novini ustavnog rešenja, što je posebno vidljivo u ustavima iz 1921. i 1946. Među temama naročito snažno potkrepljenim istorijskim narativima nalaze se “nacionalno jedinstvo” u ustavima Kraljevine (1921. i 1931), “bratstvo i jedinstvo” u ustavima socijalističke Jugoslavije (1946–1974), i “nacionalne tradicije” u ustavima nastalih raspadom Jugoslavije.

Okolnost da su istorijski narativi više korišćeni u javnim nastupima u skupštini, nego na sednicama zatvorenog karaktera, sugeriše da su ti narativi više instrument argumentacije nego dublje motivacije za ustavna rešenja. Njihova važno svojstvo je da izazivaju emocije, koje su značajan faktor u procesu stvaranja ustav, ali da sadrže i racionalnu osnovu za konkretne ustavne odredbe, oslanjajući se na ideju istorije kao *magistra vitae*. U tom smislu, istorijski narativi su posebno korisni budući da istovremeno adresiraju dve važne dimenzije relevantne za donošenje odluka: emotivnu i racionalnu.

KLJUČNE REČI: Ustavni dizajn, istorijski narativi, Jugoslavija, države naslednice Jugoslavije, ustavne vrednosti, državno uređenje, oblici vlasti, konstitutionalizam, socijalistička ustavnost, ustavna istorija

NAUČNA OBLAST: Pravne nauke

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INTRODUCTION

*“[T]he nature of a polity is to be a plurality...
So, we ought not to attain this greatest unity even if we could,
for it would be the destruction of the state.”
Aristotle, Politics, (II.2, 1261a)*

“History matters. It matters not just because we can learn from the past, but because the present and the future are connected to the past by the continuity of a society’s institutions”.¹ And discontinuity as well. However, the beginning of this seemingly indisputable viewpoint highlights the significance of the past, which is always mediated through narratives about it. The end of the quote points to “social institutions,” whose shaping is partially yet undeniably influenced by constitutional design. Bridging these two ends is the pursuit of this thesis.

That “history matters” also for the constitutional design and interpretation is all but a new idea. It has been epitomized in another simple, well-established claim that “history constitutes an intrinsic ingredient of constitutionalism”.² The constitutional scholarship in the United States, for example, has experienced from the last decade of the 20th century the phenomenon referred to as a “turn to history”, thoroughly explored by Edward White.³

However, until now, constitutional scholarship has predominantly regarded history as a tool for interpreting constitutional provisions.⁴ Nenad Dimitrijević highlights the extensive literature that provides guidance for a “historically conscious reading of constitutions,” but also notes that the experience of reading this literature is “somewhat disappointing”: “almost all are devoted to the question of how the constitutional court, or in America the Supreme Court, reads that text.”⁵

Some scholars also deny even the interpretative role of history. Antonin Scalia, the advocate of textualism in constitutional interpretation, belonged to the camp that strongly opposed the use of history in constitutional interpretation, except within a very limited scope. In his book *Reading Law*, Scalia engages in a debate with his opponents, including Stephen Ross and Daniel Trane:

¹ D. C. NORTH, *Institutions, institutional change and economic performance*, Cambridge University Press, 1990, p. viii.

² B. N. SON, *Restoration Constitutionalism and Socialist Asia*, in *Loyola of Los Angeles International and Comparative Law Review*, 37, 2015, p. 72.

³ E. G. WHITE, *The Arrival of History in Constitutional Scholarship*, in *Virginia Law Review*, 88(3), 2015, 485–633.

⁴ *Ibidem*; R. S. KAY, *Constitutional Chrononomy*, in *Ratio Juris*, 13(1), 2000, pp. 31-48.

⁵ N. DIMITRIJEVIĆ, *Ustavna demokratija shvaćena kontekstualno*, Fabrika knjiga, 2007, p. 31.

“[W]hen legislative history is excluded,” they would assert, “the remaining interpretive tools available to a judge effectively permit unfettered discretion.” Scalia responds to this in his typical manner: “Nothing is more unfetteredly discretionary than the selective use of legislative history. Since the proponents of legislative history do not assert that it replaces rather than supplements the traditional principles of interpretation, it is unfettered discretion added to unfettered discretion.”⁶

Nevertheless, even though interpretation has not been the only motive for exploring the historical origins of the constitutions, the historical aspects of the constitution-making process have not garnered significant attention. Research regarding historical narratives in constitutional design largely presupposes exploring the broader context in which constitutions are created. As has been asserted, the “strong pathos” of declarations of independence “most often reflect a difficult historical experience.”⁷

It appears that this wider dimension is increasingly gaining importance. “Most manifestations of the positivistic agenda lead to a division of the normative from the empirical, a separation of the law from social reality[...] In response to the establishment of the positivistic agenda, the call for an integration of ‘reality’ and ‘fundaments’ into constitutional and public law studies rang out almost everywhere, albeit with significant variation in volume and pitch.”⁸ What is more “real” than history itself? (This question tinged, of course, with sarcasm, intentionally overlooks the less enthusiastic stance about the “reality of history” often held by professional historians.) Yet, letting them alone the question at hand, like the two faces of Janus, allows for another perspective that decisively affirms: none, indeed! In essence, our perception of history, the narrative we construct about the past – what we know, think we know, or choose to believe – remains unyielding as bedrock, forming a foundation for many of society’s crucial structures. Among these, do constitutions stand? I strongly believe – they do. Determining the extent, intent, and, most crucially, the implications of the influence of historical narratives in the constitution-making process are questions worth exploring.

⁶ A. SCALIA, B. A. GARNER, *Reading Law*, Thomson/West, 2012, p. 293.

⁷ N. DIMIRTIJEVIĆ, *Ustavna demokratija shvaćena kontekstualno, cit.*, 2007, p. 27.

⁸ A. VON BOGDANDY, *Comparative Constitutional Law: A Contested Domain*, in M. ROSENFELG, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, 2012, p. 29.

It is already clear at first glance that many constitutions contain an explicit historical narrative. The very presence of historical narratives in constitutions is enough to ask the question: What lies behind this?

To answer this question in this dissertation, two insights were of great significance. The first is the well-researched importance of emotions in constitutional design, to which A. Sajo paid particular attention in his book *Constitutional Sentiments*.⁹ The second, related to empirical research in social psychology, confirms that historical narratives have a significantly pronounced ability to emotionally engage an individual.¹⁰ The conjunction of these two insights lends credence to the notion that historical narratives likely influence constitutional design. Considering the legitimizing power of the past, a key attribute of *'magistra vitae'*, and the inherent need for 'rootedness' and justification of social phenomena indicate that the role historical narratives have in shaping constitutional design is unavoidable.

Certain guidelines already existed in the constitutional scholarship. Reflecting on a crucial role of fear in defining human rights in the constitutions of former socialist countries, Nenad Dimitrijević notes: “[P]rovisions of fear’ can be found in post-communist constitutions, which almost all explicitly guarantee ideological and political pluralism [...] Only reading from the perspective of a specific historical context helps us understand the purpose of such a system of multiple defenses.”¹¹

This thesis aims to empirically test and answer the following hypotheses: First, in a specific regional and historical context of the former Yugoslavia and its successor states, historical narratives have played a legitimizing role in designing mainly the basic constitutional solutions, including guiding constitutional values, the territorial organization, and the forms of government. Second, regardless of a particular political system, either liberal or socialist, turning to historical narratives in constitutional design has been equally relevant. In addition to these hypotheses, this dissertation will address the following two questions: First, whether historical narratives amounted to actual reasons, a genuine motivation for a particular constitutional solution, or they rather served more to legitimize predetermined goals that needed to be “historically justified.” Second, which emotions have historical narratives triggered or reflected? The first two hypotheses have directly

⁹ A. SAJÓ, *Constitutional Sentiments*, Yale University Press, 2011.

¹⁰ See for instance: J. LÁSZLÓ, *Historical Tales and National Identity: An introduction to narrative social psychology*, Routledge, 2014, pp. 63-70.

¹¹ N. DIMITRIJEVIĆ, *Ustavna demokratija shvaćena kontekstualno, cit.*, pp. 28-29.

influenced the structure of the work, while the answers to the posed questions, although well supported by the empirical evidence, may to some extent remain speculative.

The case of Yugoslavia and its successor states turns out to be a very suitable framework for addressing these issues. The context has already served as a test for a diverse array of constitutional issues. Moreover, dynamic social changes are frequent in the region, making it an abundant research setting. Take, for example, the emergence and dissolution of states, revolutionary socio-economic changes, transitions, wars, and post-conflict developments. Historically, three distinct periods are relevant: the faltering liberal democracy and royal dictatorship in the First Yugoslavia (1918-1941), the authoritarian “democratic socialism” in the Second Yugoslavia (1945-1991), and the transitional democracy in the successor states of Yugoslavia (from 1990 onwards). In each of these periods, characterized by vastly different socio-economic and historical conditions, constitutional designs ended up in a new constitutional order. A setting of this kind offers a rich environment for in-depth investigation.

The primary sources of this research were the stenographic notes of the constitution-making bodies, including constituent assemblies, national assemblies and constitutional committees in cases they existed. Published speeches or memories of direct participants in constitutional debates and members of constitutional committees were also of certain relevance.¹² The available sources largely influenced the focus of this dissertation on guiding constitutional values, the territorial organization, and the forms of government rather than on other constitutional arrangements, including human rights and freedoms, as sources do not testify about the significant or even minor presence of historical narratives in their constitutionalization.

The thesis is divided into six parts. The introductory considerations are followed by four chapters and the conclusions. Chapter I is devoted to the constitutional design issues developed in constitutional theory. The issues of what constitutes a constitution, constitutionalism, the idea of a constituent power and its institutions, and constitution-making processes are discussed from a general and transhistorical perspective. Additionally, this chapter offers the theoretical framework necessary to understand the role of historical narratives in constitutional design.

Chapter II focuses on the historical narratives influencing the guiding values of constitutional design. In the Kingdom of Yugoslavia, this included, primarily, national unity in the

¹² The temporal framework and certain logistical barriers presented limitations for more comprehensive research. For instance, due to COVID pandemic, the Archive of Yugoslavia established a regular working regime only in April 2023.

Socialist Yugoslavia – fraternity and unity—and the national (nation-state) tradition in the post-Yugoslav states.

Chapter III deals with the historical narratives that shaped the state territorial organization. In all historical periods relevant for this thesis, constitutional solutions concerning territorial organization strongly relied on historical argumentation, either in connection with a federal or unitary state. The discussion examines whether the historical experience represented a negativity to be overcome by a unitarian arrangement (*e.g.* in the Kingdom of Yugoslavia), or a determinative factor to be considered when establishing a federal state (*e.g.* in the socialist period). In the post-socialist era, the case of Serbia is highlighted due to the specificity of its territorial organization, which included the autonomy provinces and created a historical narrative of the intentional “fragmentation” of Serbia during socialism.

Chapter IV addresses the role of historical narratives in determining the forms of government, particularly the parliamentary monarchy, the socialist republic, and the parliamentary republic. Again, Serbia is in focus for its brief yet significant experience with parliamentarism in the 19th and early 20th centuries. Then social Yugoslavia is in focus because the historical narrative about monarchy was crafted in a way that justified its abolition without, however, delegitimizing individual rule. Contrarily, during Marshal Tito’s rule, personality cult was not only emphasized but also constitutionally safeguarded. However, following Tito’s death, the concept of individual power was radically relinquished. Given that Serbia and Croatia had a relatively significant tradition of popular representation, historical narratives about this experience were revived in the post-socialist constitutional design.

In conclusion, I will underline: (1) In the former Yugoslav region, historical narratives mainly served two purposes in constitutional design: the first was to legitimize a constitutional novelty, while the second was to emphasize the relevance of a particular constitutional arrangement. The historical narratives served these purposes notwithstanding the type of political regime; (2) historical narratives were more a matter of argumentation than motivation in designing constitutions; (3) historical narratives offered “emotional back-up” in designing constitutions throughout the Yugoslav region; finally, (4) historical narratives also contain an element of rationality, reflecting a belief that they express experiences that should be relied upon.

I began this introduction with Aristotle and somehow “lost” him in the exposition. This was not by chance. Disregarding the statistical “others” and looking only at the “major entities,”

the “Yugoslav space” has been distinguished by its remarkable plurality: six nations adhering to three principal religions and utilizing two alphabets created, combined, an exceptionally diverse setting. Yet, throughout history, none of the constitutional frameworks in the region successfully translated the existing plurality into a functional form of pluralism.¹³ The first Yugoslav state, though exhibiting elements of political pluralism, imposed national uniformity from above: in reaction, political grouping predominantly confined itself within national frameworks. Second Yugoslavia, through a federal formula based on the self-determination principle, fully affirmed multinationalism but was politically monistic. Its successors began their post-socialist life by derogating the constitutional status of other nations within their “nation states.” These are only some of the anti-pluralistic features. To claim that Yugoslavia disintegrated solely because of this, or that the successor states embedded a systemic flaw that, as Aristotle would say, leads them to the “destruction of the state,” would be overly hypothetical. However, this factor should not be entirely dismissed either.

¹³ “Plurality is an empirical fact, such as the biological diversity of the human species. In contrast, pluralism is a normatively underpinned social pattern according to which the diversity of interests, opinions, values, ideas, etc., of individuals and groups is recognized as a constitutive element of a political order.” U. K. PREUSS, *Law as a source of pluralism?*, in *Philosophy & Social Criticism*, 41(4-5), 2015, p. 357.

CHAPTER I

Constitutional Design and Historical Narratives

Gathering together disparate elements from the real or mythical national past and the varied experience of other polities, constitution makers produce a document to structure government and express fundamental values.

Tom GINSBURG, *Comparative Constitutional Design*, p. 1.

1. Constitutional Design

The notion of constitutional design encompasses two distinct aspects: processual and formal. As Beau Breslin explains

“[t]he concept of constitutional design refers both to the process of situating the institutions of a polity in a specific and particular manner and to the general architectural nature of the modern constitutional instrument itself.”¹⁴

As a process of “situating the institutions of the polity,” it obviously refers to constitution-making, while “constitutional instrument” refers to a form (a single document, or set of documents) of articulating and announcing the rules that represent *materia constitutionis*. This dissertation focuses on the first aspect, which pertains to the process of constitution-making. I hasten here to say that the notion of constitutional design also encompasses constitutional change or redesign.

To put my views into perspective on the role of historical narratives in designing particular constitutional solutions, including constitutional values, principles of territorial organization, and various forms of government, which are principal subjects of this dissertation, I will first briefly summarize preliminary and related issues of the notion of a constitution, the concept of constituent power, and methods of constitutional design. A transhistorical approach to understanding these concepts, recognizing their relevance across different time periods, will be undertaken. This broader perspective will allow me to identify commonalities and patterns that persist in constitutional design and its outcomes. By looking beyond specific historical contexts, it will be possible to uncover the enduring principles that form the backbone of constitutional design across

¹⁴ B. BRESLIN, *From Words to Worlds: Exploring Constitutional Functionality*, Baltimore, The Johns Hopkins Ser. in Constitutional Thought, 2008, p. 69.

various epochs and, also, political systems. This broad approach is crucial when addressing a topic that spans a wide range of social, political, and ideological contexts, each with its own unique and sometimes conflicting worldviews. In addition, this method allows for a deeper understanding of the universal elements in constitutional design, regardless of the specific historical circumstances in which they are applied.

1. 1. The Constitution

Over time, defining what constitutes a constitution has become an increasingly complex task. This complexity originates from the various uses of the term “constitution” in different historical backgrounds.¹⁵ Tackling questions of the substance and role of a constitution has emerged as a broad and challenging arena for constitutional law scholars, who delve into them with diverse levels of commitment and interest. The diversity of definitions, though not infinite, certainly represents a challenge. It’s probably rare for two constitutional law scholars to arrive at an identical understanding of the notion of “constitution.” While they may converge on certain key concepts such as structuring the government, guaranteeing rights, or the idea of a supreme law, the nuances lie in how much emphasis each places on these different elements and what additional elements one may consider utterly important for the proper definition. And this variance in emphasis might be crucial in shaping each scholar’s profound understanding of the concept. Some more specific categorization of this variety of definitions might very well turn out to be a complicated research task in itself. That is why the chapter dedicated to defining the notion of constitution in Andras Sajó and Renata Uitz’s book *Constitution of Freedom* begins with: “Warning, danger! Definitions.”¹⁶

The definition of the constitution hinges on two questions that are of utmost significance. The initial question concerns the matter of the function of the constitution, while the second concerns the matter of its essential attributes. These two questions are interrelated.

¹⁵ For different meanings and the evolution of the concept see: A. SAJÓ, R. UITZ, *The Constitution of Freedom*, Oxford University Press, 2017, pp. 21-23; B. SZLACHTA, *The ambiguity of constitutionalism*, in A. GÓRNISIEWICZ, B. SZLACHTA (Eds.), *The Concept of Constitution in the History of Political Thought*, DeGruyter, 2017, pp. 1-12; P. KACZOROWSKI, *Epistemology of Constitution*, *Ibidem*, pp. 14-29;

¹⁶ A. SAJÓ, R. UITZ, *The Constitution of Freedom*, *cit.*, p. 13.

The first refers to the functions of the constitution. Thus, there is a stance that a constitution only exists in a polity with a separation of powers, which prevents abuse of power, and guarantees rights and freedoms, what a constitution primarily provides for.¹⁷ Moreover, this concept aligns with the doctrine of constitutionalism, which, in a nutshell, encompasses “a set of interrelated concepts, principles, and practices aimed at organizing and limiting government power to prevent despotism.”¹⁸ Such an understanding of constitution and constitutionalism is a logical extension of the ideas expressed in the 1789 Declaration of the Rights of Man and of the Citizen: “Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.”¹⁹ According to Dieter Grimm, constitutionalism emerged in the 18th century, coinciding with the “age of revolutions.”²⁰ However, the constitutional scholarship offers a “dissenting opinion”. Thus, the broader approach to this issue acknowledges the existence of structured and effectively limited government – therefore of the constitutionalism and of the constitution – much earlier than the late 18th century, tracing these concepts back to the earliest forms of organized societies. For example, McIlwain points out that even in ancient Rome the distinction was clearly established between *ius privatum* and *ius publicum* and this distinction “lies to this day behind the whole history of our legal safeguards of the rights of the individual against encroachment of government.” However, McIlwain concedes that revolt was the only viable strategy to defend against the unstable government.²¹

Note that one should distinguish between the notions of constitution and constitutionalism. Contemporary authors, while often accepting a transhistorical concept of the constitution, typically do not extend the concept of constitutionalism to the distant past. Constitutionalism is more often

¹⁷ D. GRIMM, *Constitutionalism. Past, Present, Future*, Oxford University Press, 2016, pp. 3-6; G. F. STRONG, *Modern Political Constitutions*, Macmillan, 1963, p. 12.

¹⁸ A. SAJÓ, R. UITZ, *The Constitution of Freedom*, cit., p. 13. On constitutionalism as a political doctrine and its relation to constitution see: N. MATTEUCCI, *Costituzionalismo*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica*, UTET, 1983, pp. 270-282; R. BELLAMY, *Constitutionalism*, in B. BADIE, D. BERGSCHLOSS, L. MORLINO, *Encyclopaedia of Political Science*, Vol. 1, SAGE, 2011, pp. 416-420; S. HOLMES, *Constitution and Constitutionalism*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 189-216; D. GRIMM, *Constitutionalism. Past, Present, Future*, Oxford University Press, 2016; N. W. BARBER, *The Principles of Constitutionalism*, Oxford University Press, 2018; A. SAJÓ, *Limiting Government An Introduction to Constitutionalism*, CEU Press, 1999.

¹⁹ G. VERGOTTINI, *Diritto costituzionale comparato*, CEDAM, 2013, p. 226.

²⁰ D. GRIMM, *Constitutionalism: Past, Present, and Future*, cit, p. 3.

²¹ C. H. McILWAIN, *Constitutionalism: Ancient and Modern*, Liberty Fund, 1975; On the notion of historical development of constitutionalism from pre-modern period see also: A. BURATTI, *Western Constitutionalism, History, Institutions, Comparative Law*, Springer, 2016, pp. 2-9; P. SPRINGBORG, *Constitutionalism ancient and Oriental*, in T. GINSBURG, *Comparative Constitution Making*, Edward Elgar, 2019, pp. 363-384.

associated with the categories of modern liberal ideas. In this context, Sajó and Uitz's stance is paradigmatic. On one hand, they acknowledge that "the foundational laws of the Greek city states (polis)[...] concerned with the institutional structure of government and its fundamental organs and their relationship" belongs to the category of the constitution.²² On the other, their view on constitutionalism is more aligned with modern liberal principles: "Liberalism is intimately related to constitutionalism".²³ Therefore, it cannot be expanded back into the Middle Ages or Antiquity.

The second question relates to a constitution's inherent legal character and its superior hierarchical position within the legal system. In the constitutional scholarship, it is notable that the debate over the legal or political character of the constitution has undergone evolution over time.²⁴ Initially, it was not deemed that this document, or occasionally a collection of documents, possessed inherent legal character. A notable exception was the United States Constitution. In 1786, before the Philadelphia Convention took place, James Iredell, a representative of North Carolina, plainly stated that the Constitution contained legal rules as any other law "with the difference only, that it is the fundamental law, and unalterable by the legislature, which derives all its power from it."²⁵ Later on, Hamilton reiterated this very same idea, arguing in Federalist 78 that a constitution is "a fundamental law", and that should be regarded as such by the judges.²⁶ In 1803, the United States Supreme Court in *Marbury v. Madison* solidified the recognition that the U.S. Constitution possesses the character of supreme law: "A Law repugnant to the Constitution is void."²⁷

In the European context, the understanding that "constitution is a law" only gradually emerged. Albert Dicey, who belonged to Anglo-Saxon or Common Law tradition, titled his seminal work on the UK constitution *Introduction to the Study of the Law of the Constitution*. However, it was Hans Kelsen's contributions that had a particular and ground breaking influence. Namely, prior to Kelsen's influential works *Pure Theory of Law* and *General Theory of Law and*

²² A. SAJÓ, *The Constitution of Freedom*, cit., p. 23.

²³ A. SAJÓ, *Constitution of Freedom*, cit., p. 13

²⁴ See: L. PAPADOPOULOU, "Political" or "Legal" Constitution? *Beyond Dichotomy*, in J. CREMADES, C. HERMIDA (Eds.), *Encyclopedia of Contemporary Constitutionalism*, Springer, 2020, pp. 1-26.

²⁵ R. A. GOLDWIN, A. KAUFMAN, *Constitution Makers on Constitution Making: The Experience of Eight Nations*, American Enterprise Institute for Public Policy, 1988, p. 169.

²⁶ "The Federalist No. 78, [28 May 1788]," Founders Online, National Archives, <https://founders.archives.gov/documents/Hamilton/01-04-02-0241>. [Original source: The Papers of Alexander Hamilton, vol. 4, January 1787–May 1788, ed. Harold C. Syrett. New York: Columbia University Press, 1962, pp. 655–663.

²⁷ E. CHERMERINSKY, *Constitutional law. Principles and Policies*, Wolters Kluwer, 2019, pp. 42-49. See also *Marbury v. Madison*, 5 U.S. 137 (1803).

State, the acceptance of the idea that the constitution has a legal nature in European jurisprudence was vague. By highlighting the hierarchical structure of the legal norms and emphasizing the constitutional norm's preeminent position within the legal order, Kelsen provided a theoretical basis for recognizing the constitution as a legally binding document and a law by itself. According to Kelsen, "the constitution represents the highest level of positive law" which means "the positive norm or norms which regulate the creation of general legal norms. The constitution may be created by custom or by a specific act performed by one or several individuals, that is, by a legislative act."²⁸ Over time, this has become a predominant, but still not unanimously accepted approach. Thus, "[n]ot only has the idea of a (written) constitution spread to virtually every corner of the world but constitutions are gaining recognition as enforceable legal documents, rather than mere declarations."²⁹

In contrast to other concepts, like the political and sociological ones, which focus on different parts of the constitution that are pertinent to their fields, the legal conception of the constitution assumes a constitution as a supreme law.³⁰ Consequently, all other laws are required to adhere to the constitutional provisions and principles. Therefore, as demonstrated in Kelsen's pure theory of law, "the essence of a constitution is its regulation of the creation of norms."³¹ The characteristic of a constitution as the supreme law implies a complex amendment proceedings. On the account of this feature, so integral to its nature, it is possible to define a constitution as "a higher law' that cannot be changed through normal lawmaking procedures in a popularly elected assembly."³² This is also a Kelsenian tradition.³³

At this point, it is appropriate to ask what then is a constitution? It seems difficult to dispute that "the presence of stable forms of social organization and the hierarchical structure of legal norms" indicates the existence of a constitution.³⁴ These elements – forms of social organization and hierarchically structured system of norms – might be methodically and intentionally crafted and their interplay meticulously delineated within a formal document. Alternatively, these

²⁸ H. KELSEN, *Pure Theory of Law*, The Lawbook Exchange, 2005, p. 222.

²⁹ V. PERJU, *Constitutional Transplants, Borrowing and Migrations*, In M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, cit., p. 1305.

³⁰ VERGOTTINI, *Diritto costituzionale comparato*, cit., pp. 223-224.

³¹ H. KELSEN, *General Theory of Norms*, Oxford, Clarendon Press, 1991, p. 257.

³² S. HOLMES, *Passions and Constraint: On the Theory of Liberal Democracy*, University of Chicago Press, 1998, p. 135.

³³ H. KELSEN, *Pure Theory*, cit., p. 222.

³⁴ V. BEŠIREVIĆ, *Ustav bez demosa: Zašto Evropska Unija ipak ima Ustav*, in *Pravni zapisi* 4(1), 2013, p. 29.

components and their unique interplay might evolve organically from customary practices, or *via facti*. As constitutional history indicates, throughout history every organized polity implied more or less stable forms of social organization, primarily in the form of a structured government serving as its backbone. The same holds true for the hierarchy of legal norms: although the existence of a well-established hierarchy of legal norms is indisputably the phenomenon of modern times, it emerged through factual circumstances also in the early stages of the state organization.

The missing feature of this definition is the constitutional protection of rights and freedoms. Vergottini reminds us that, under some views, the mere existence of a constitution is linked to the protection of human rights and freedoms. However, he emphasizes:

“This conception attempts to limit the concept of a constitution to those forms of state organization that have adopted liberal ideology. However, the now predominant doctrine recognizes that, once the incidental superstructure of the liberal state is removed, the constitution remains primarily defined as an orderly normative system that forms the basis of any organized state order, regardless of the chosen ideology.”³⁵

This approach is especially valuable in research that encompasses various constitutional traditions, for example, liberalism and socialism, which is the case in my dissertation. Therefore, what remains to be done here is to briefly address the distinctions between socialist and liberal constitutions.

The classification stems from the broader categorization of democratic and authoritarian constitutions, but is not identical to it, as for instance, there are authoritarian constitutions which are not socialist. Influenced by Marx’s social and political thought, socialist systems and constitutions are inherently opposite to liberal constitutionalism.³⁶ A weak link exists only with regard to social organization. In Marxist theory (as it was developed by the ruling communists in the socialist states) the state was seen as a transitional form of social organization, inheriting many characteristics of the previous system. Besides, in a “dictatorship of the proletariat,” the constitution (and law in general) is viewed as a surviving form, ideally weaponized in the (also inherited) class struggle that continues under socialism, albeit with altered roles.³⁷

³⁵ G. VERGOTTINI, *Diritto costituzionale comparato, cit.*, p. 238.

³⁶ D. GRIMM, *Types of Constitutions*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law, cit.*, p. 128.

³⁷ The foundation for such an understanding could be found in Marx’s writings on the role that law generally takes in the state. An overview of excerpts from Marx’s and Engels’ writings on the constitutional law is available in: M. CAIN, A. HUMT, *Marx and Engels on Law*, Academic Press, 1979, pp. 220-235. The foundation of the Soviet theory in state and law was laid by Lenin in 1917, in his seminal work *State and Revolution*. As it was common practice in the USSR, Lenin’s and also Stalin’s thoughts were further elaborated. The most important piece of work on the

The perspective reflects the differences between socialist and liberal constitutional traditions although the birthplace of both, in the European context, is the French Revolution. Their “founding fathers” are Sieyès and Robespierre. The liberal tradition rests upon the 1789 French Declaration, which made the separation of powers principle a crucial element of a constitution, while the socialist tradition excludes the separation of powers, like the 1793 French Declaration, which explicitly did not link the separation of powers principle with the existence of a constitution.³⁸

The liberal paradigm advocates for individual freedoms, private property, a free market economy, representative democracy, political and civil rights, and the rule of law. It disputes the constitutionalization of social and economic rights, although this approach has recently become less resonant. In economics, it primarily sets the stage for free market competition. Furthermore, any intervention in that domain is considered harmful to political and civil liberties. Liberal constitutionalism also promotes minimal government interference and prioritizes safeguarding individual freedoms from encroachment by the state. The goal is to establish a framework that distributes power among various branches and incorporates mechanisms to safeguard against potential abuse of power.

Contrarily, socialist constitutions are based on Marxist-Socialist political philosophy and strive for collective ownership of the means of production, wealth redistribution, equality, social justice, the proactive involvement of the government in economic planning through state-owned enterprises, and the provision of welfare services. Socialist constitutions functioned as a tool to facilitate a planned or mixed economy, where the state held a pivotal position in allocating resources and making economic decisions. They refer to civil and political rights without insisting on their protection, as well as economic and social rights (including the healthcare or social security). It advocates for an engaged and proactive role of the government in socio-economic

Marxist-Leninist concept of state can be consulted in: A. Y. VYSHINSKY, *The Law of the Soviet State*, Macmillan, 1948, pp. 38-62, 74-87 et passim.

³⁸ For the broader context see: G. SCHOENFELD, *Uses of the Past: Bolshevism and the French Revolutionary Tradition*, In G. M. SCHWAB, J. R. JEANNENEY (eds.), *The French Revolution of 1789 and Its Impact*, Westport, Connecticut: Greenwood Publishing Group, 1995; J. BERGMAN, *The French Revolutionary Tradition in Russian and Soviet Politics, Political Thought, and Culture*, Oxford UP, 2019.

affairs.³⁹ In a nutshell, socialist constitutions were mostly programmatic, future oriented guidelines.⁴⁰

The common birthplace of the liberal and socialist constitutional traditions is, at the same time, the determinant that separates them, too, along with another critical distinction: the socialist revolution departed from the French revolutionary tradition, which remained more of a distant cousin than a direct ancestor. At the same time, as has already been mentioned, only liberal tradition speaks about constitutionalism.

1. 2. Who Possesses Constitution-Making Power?

Constitution-making power refers to the capacity to determine the content of a constitution in terms of its creation and modification. It is often, and indeed more frequently, referred to as a constituent power. The term “constituent power” largely implies reliance on a specific constitutional-theoretical tradition that begins with J. E. Sieyès.⁴¹ However, for the discussion in this thesis, it might be of limited value. Therefore, the focus here is primarily on the central query: who possesses constitution-making power?

The constitution-making power is inextricably linked to the formation of a polity, transcending mere arbitrary force, as the objective of wielding this power is the establishment of a constitutional order. The legitimacy of the constitution-making power is a crucial attribute, underscoring its significance in the creation, maintenance, and change of a structured

³⁹ Kelsen’s well known study still offers a very balanced insight into socialist constitutional theory, especially the chapters ‘The Marx-Engels Theory of State and Law’ and ‘Lenin’s Theory of State and Law’. See: H. KELSEN, *The Communist Theory of Law*, Frederick A. Preager, 1954, pp. 1-62 et passim; See also: G. BRUNER, *The Function of the Communist Constitutions*, in *Review of Socialist Law*, 2, 1977, pp. 130-137; D. GRIMM, *Types of Constitution*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 128-129; W. B. SIMONS, *The Constitutions of the Communist World*, Brill, 1980.

⁴⁰ A. SAJÓ, R. UITZ, p. 23; A. SAJÓ, *Limiting Government An Introduction to Constitutionalism*, CEU Press, 1999, p. 33.

⁴¹ “Pouvoir constituant” (constituent power) and “pouvoir constitué” (constituted power) are pivotal concepts in constitutional law and political theory, originally articulated by the French political thinker Emmanuel-Joseph Sieyès. “Pouvoir constituant” refers to the authority to create or amend a constitution. This power is typically vested in the people or a sovereign body that acts as the source of all legal authority. In contrast, “pouvoir constitué” denotes the various governmental bodies and institutions created by the constitution. These entities are “constituted” powers because they derive their authority from the constitution and are limited by its provisions. The distinction between these two types of power is crucial in understanding the dynamics of constitutionalism, as it delineates the difference between the creator of the legal framework (constituent power) and the entities operating within that framework (constituted powers). It was particularly important in relation to representative government. For a comprehensive examination of the diverse interpretations of the concept of “constituent power” see: L. RUBINELLI, *A Constituent Power. A History*, Cambridge University Press, 2019, pp. 1-32.

constitutional framework.⁴² Jose Colin Rios claims that the constitution-making power is an uncontrollable force outside legal regulation. However, it is also legally bound, capable of altering or replacing a constitution under specific rules, thus integrated within a legal, constitutional framework.⁴³

The reflection on constitution-making power is sometimes available in judicial practice. For example, the courts refer to people's constitution-making power to reject reviewing constitutional amendments. Thus, in 1992 the French Constitutional Council ruled: "the constituent power is sovereign; it has the discretion to abrogate, modify or supplement any constitutional rule in any form it deems appropriate." This case well illustrates how the concept of constitution-making power is recognized and utilized within legal systems.⁴⁴

Ideally, the creation of a polity can be the result of an individual act or an agreement within a community. In the case of individual acts, these are either mythical figures (Theseus, Romulus) or individuals conveniently recognized as the founders, who were not, by any means, bound to the consent of any other person or entity.⁴⁵ Historically, even though the role of an authentic individual in constitution-making could be enormous, sometimes decisive, as was the case with Solon in Athens or Napoleon in the case of the Constitution of the Year VIII, they could not act completely voluntarily: in Solon's case, the reforms he carried out were required by the people of Athens,⁴⁶ and Napoleon's Constitution, at least formally, underwent legislative procedure in which the people had a say in the referendum.⁴⁷ However, it was much more common for constitution-

⁴² J. COLÓN-RÍOS, *Weak Constitutionalism. Democratic legitimacy and the question of constituent power*, Routledge, 2012, pp. 9-10; R. BELLAMY, *Constitutionalism and Democracy*, Routledge, 2006, p. 370; R. PRADANI, *Morphogenesis of Constitutionalism*, in P. DOBNER, M. LOUGHLIN, *The Twilight of Constitutionalism?*, Oxford University Press, 2012, p. 320; C. KLEIN, A. SAJÓ, *Constitution-Making: Process And Substance*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 422-425.

⁴³ J. COLÓN-RÍOS, *Constituent Power and the Law*, Oxford University Press, 2020, p. 4.

⁴⁴ M. TROPER, *Sovereignty*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, cit., p. 364.

⁴⁵ N. MACHIAVELLI, *Prince*, Penguin Classics, 2003, pp. 22-25. See also: G. HAMMIL, *The Mosaic Constitution: Political Theology and Imagination from Machiavelli to Milton*, University of Chicago Press, 2012, pp. 40-43 et passim; A. M. BERNAL, *Beyond Origins Rethinking Founding in a Time of Constitutional Democracy*, Oxford University Press, 2017; A. ARATO, *The Adventures of the Constituent. Power beyond revolutions?*, Cambridge University Press, 2017, pp. 45-55.

⁴⁶ Such being the constitution in the body politic, and the bulk of the people being in bondage to the few, the people was in a state of opposition to the upper classes. As strife ran high, and the two parties had saced each other for a considerable time, they agreed to choose Solon as mediator and archon, and entrusted the constitution to him. ARISTOTLE, *Constitution of Athens*, Seeley and Company, 1891, p. 9.

⁴⁷ M. DUVERGER, *Les Constitutions de la France*, Presses universitaires de France, 1998, pp. 54-55.

making power to be composite, consisting of multiple agents.⁴⁸ The notable exceptions are, of course, the imposed or granted constitutions.

On the other hand, understanding of constitution-making power involves grappling with its relationship to sovereignty, which is a notion of many color.⁴⁹ Determining whether sovereign power also encompasses the role of constitution-making (and the other way around) is a matter that lacks a definitive answer.

The political philosophers of the early modern period, notably Jean Bodin and Thomas Hobbes, focused on the concept of the sovereign.⁵⁰ Whether a sovereign is also a constitution-maker is difficult to grasp. In practice, there are examples of the octroyed constitutions, “granted” by the ruler acting as a constituent power. The entire modern political thought, including the advocates of monarch’s absolutism, at least implicitly acknowledge the constituent power of the people and not of the sovereign Prince, which inevitably leads to the conclusion that such constitutions represent a form of violence. Namely, the understanding that the constitution making power resides with people (usually through the contract, covenant), recognized and expressed by writers such as Marsilius of Padua, Hobbes, Locke, Rousseau and other, precedes the clearly articulated notion of popular sovereignty.⁵¹ Rousseau was the first to clearly articulate the idea that the people are both the constitution-maker and the sovereign,⁵² yet Sieyès later tempered this concept, aiming to discard the notion of sovereignty (or sovereign power) entirely.⁵³

⁴⁸ Modern anthropological theories, of course, do not accept the “foundation” theories in any form. Instead, they follow the evolution of the human communities, from more primitive towards more complex social organizations (bound, tribe, chiefdom, state). See: E. SERVICE, *Primitive Social Organization*, New York: Random House, 1962.

⁴⁹ For more See: N. MATTEUCCI, *Sovranità*, in N. BOBBIO, *Dizionario*, cit., 1103-1110; G. De VERGOTTINI, *Diritto costituzionale comparato*, cit., 142-147 et passim; M. TROPER, *Sovereignty*, in M. TROPER, *Sovereignty*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, 2012, pp. 350-370; D. GRIMM, *Sovereignty*, Columbia Studies in Political Thought, 2015.

⁵⁰ M. FORSYTH, *Thomas Hobbes and the constituent power of the people*, in *Political Studies*, 2 (2), 1981, 191-203; C. H. McILWAIN, *Constitutionalism & the Changing World: Collected Papers*, The Macmillan Company & The University Press, 2010, pp. 51-56; J. COLÓN-RÍOS, *Rousseau, Theorist of Constituent Power*, in *Oxford Journal of Legal Studies*, 36(4), 2016, pp. 1-24; D. EDELSTEIN, *Rousseau, Bodin, and the Medieval Corporatist Origins of Popular Sovereignty*, in *Political Theory*, 50 (1), pp. 142-168; J-O. PAMBERTON, *Sovereignty: Interpretations*, Palgrave, 2009, p. 34.

⁵¹ For an overview of the scholarship on this issue see: L. RUBINELLI, *Constituent Power. A History.*, cit., pp. 1-33 et passim; R. G. INGRAM, C. BARKER, *People Power: Popular Sovereignty from Machiavelli to Modernity*, Manchester University Press, 2022, pp. 1-27. For the variety of related questions see: J. COLÓN-RÍOS, *Rousseau, Theorist of Constituent Power*, in *Oxford Journal of Legal Studies*, 2016, pp. 1-24; M. LOUGHLIN, *The Concept of Constituent Power*, in *European Journal of Political Theory*, 13(2), 2014, pp. 218-237;

⁵² J. COLÓN-RÍOS, *Rousseau, Theorist of Constituent Power*, cit, pp. 1-24; ID., *Constituent Power and the Law*, cit., pp. 29-56 et passim.

⁵³ L. RUBINELLI, *How to think beyond sovereignty: On Sieyès and constituent power*, in *European Journal of Political Theory*, 18(1), 2019, pp. 47-67.

However, the concept of popular sovereignty, along with the people's constitution-making power, is arguably the most potent form of constitution making power in human history. The unification of both powers under popular sovereignty negates the need for external validation, either secular or divine, and resolves the complexities in the relationship between sovereign and constitution-making powers. Some issues still remained: for instance the question of whether constitution-making power is inherently unlimited or not. Sieyès argues for its limitation, while Carl Schmitt contends it is unlimited.⁵⁴ This ambiguity persists in many discussions. This ambiguity is further compounded by the fact that the concept of popular sovereignty has essentially absorbed the notion of constitution-making power.⁵⁵

Yet, it's plausible to maintain a distinction between these two concepts to ensure a more precise understanding of each. For instance, constitutional changes implemented by the constitution-making authority can sometimes impact the existing sovereign. This suggests that sovereign and constitution-making powers should not be conflated. For clarity, constitution-making power shouldn't be viewed as a prerogative of sovereign power.

The evolution of constitution-making power essentially represents the development of people's power as an agent in constitutional design. In order for a constitutional change to occur in a polity, as historical evidence shows, a broader consensus is usually required. The people were always a part of this consensus, indicating that they were also participants in constitution-making. This assertion is illuminated through several historical examples.

As the archon of Athens in the 6th century BCE, Solon, according to widespread consensus among the citizens, executed a reform of Athenian society and its constitution. However, these reforms were notably influenced by the sentiments of the Athenian people. Plutarch offers an interesting insights into this process. Although it is highly improbable that he quoted actual Solon's words, even the fact that he probably made it up, still bears significance: "Therefore when he was

⁵⁴ R. N. FASEL, *Constraining constituent conventions: Emmanuel Joseph Sieyès and the limits of pouvoir constituant*, in *International Journal of Constitutional Law*, 20(3), July 2022, pp. 1103–1129.

⁵⁵ A. Waltermann writes that the popular sovereignty is "the power to constitute, maintain and deconstruct a legal system". A. M. WALTERMANN, *Reconstructing sovereignty*, Springer, 2019, p. 46. "Sovereign power is ultimately defined as power freed from previously existing legal limitations. However, it is actually only constituent power that meets such a condition... Therefore, from the perspective of legal doctrine, constituent power is the one defined as sovereign, an attribute that is transferred to the state as an established authority." G. De VERGOTTINI, *Diritto costituzionale comparato, cit.*, p. 137.

afterwards asked if he had enacted the best laws for the Athenians, he replied, ‘*The best they would accept.*’⁵⁶

For instance, the very name of the Roman Republic – *Senatus Populusque Romanus* (the Senate and People of Rome) – is quite telling.⁵⁷ One may also consider an example from the early Middle Ages, specifically from the Frankish Kingdom. This involves the contentious change in the Frankish throne, namely the overthrow of the Merovingians and the establishment of the new Carolingian dynasty. This undoubtedly significant constitutional change, such as a dynasty shift in an early medieval patrimonial state, required, among various other preparations, approval by the people: the new king Pepin “electus est ad regem[...] et unctus[...] *et elevatus a Francis in regno in Suessionis civitate*” [“was elected king... and anointed... *and raised to the kingship by the Franks in the city of Soisson*”].⁵⁸

In the 14th century, Marsilius of Padua expressed the view that “the efficient power to institute or to elect a principate belongs to the legislator or the universal body of the citizens, just as [...] the passing of laws belongs to this same body; and any correction of the principate – or even its deposition if that is necessary for the common advantage – likewise belongs to it.”⁵⁹ Even in the era of absolutism, from XVI to XIX century “in reality, most European nations could be placed on a spectrum between the abstract poles of absolutism and popular sovereignty.”⁶⁰ The irony of history is that the only true individual constitution-makers were absolute rulers who gave to their polities so-called granted constitutions, by which they would usually impose certain self-limitations.

At the close of the 18th century, a pivotal shift occurred in the traditional power structure, most notably in France. This shift was marked by a specific event on June 20, 1789, at the Salle du Jeu de Paume in Versailles, where the Third Estate’s representatives proclaimed themselves the National Assembly, and the Constituent Assembly. This act transcended mere tactical response to the king’s efforts to impede the General Estates’ proceedings. It was underpinned by a profound

⁵⁶ PLUTARCH, *Solon*, in *Lives*, A. STEWART, G. LONG (Eds.), G. Bell and Sons, 1925, p. 142. Available on: <https://archive.org/details/plutarchslivesvo001797mbp>, last visit 10. 1. 2023.

⁵⁷ See for instance: V. ARENA, *Popular sovereignty in the late Roman Republic*, in R. BOURKE, Q. SKINNER, (eds.), *Popular Sovereignty in Historical Perspective*, Cambridge University Press, 2017, pp. 73-96.

⁵⁸ F. KURZE, G. H. PERTZ (Eds.), *Annales regni Francorum: inde ab a. 741. usque ad a. 829. : qui dicuntur Annales Laurissenses maiores et Einhardi*, Impensis bibliopolii Hahniani, 1895, p. 10 (available on: <https://archive.org/details/annalesregnifran00anna/page/n5/mode/2up>, last visit 1. 10. 2022)

⁵⁹ M. of PADUA, *The Defender of the Peace*, Cambridge University Press, 2006, p. 88.

⁶⁰ K. L. CAMPBELL, *Western Civilization: A Global and Comparative Approach, Volume II: Since 1600*, Taylor and Francis, 2015., p. 3.

doctrinal shift: the recognition of the constituent power of the nation, embodied in the people's right to determine their state's constitutional framework in alignment with their values and interests. This moment signified not just a political maneuver by the Third Estate delegates, but a foundational doctrine asserting the people's authority in shaping the state's constitutional structure.⁶¹

As demonstrated above, the idea of popular participation in constitution making gradually evolved and significantly influenced the shaping of the idea of popular sovereignty. Popular sovereignty, although a concept was clearly present in earlier political thought, gained real prominence only during the 18th century, in the Age of Enlightenment. Philosophers from that era like Locke, Montesquieu, to certain extent also Hobbes and above all Jean-Jacques Rousseau in his work *The Social Contract*, emphasized not only the importance of individual rights and the consent of the governed, but that political power should be derived from the people. Popular sovereignty embodies the principle that the ultimate authority in a state rests with its people. This concept forms the democratic foundation of governance, asserting that all legal and political authority originates from the collective will of the citizenry. It upholds the idea that a constitution, its amendments, and the government it establishes derive their legitimacy from the consent of the people. Central to this principle is the notion of self-governance, where the people participate, directly or indirectly, in creating and enforcing laws and policies.⁶² This can be seen as the Hegelian "conquering of freedom," representing the culmination of the historical progression where people strive for political rights. As Grimm astutely observes, "popular sovereignty is a necessary element of the achievement of constitutionalism, not just one way among others to establish constitutional rule."⁶³

Therefore, the ascension of the principle of people's power in constitution-making to a prominent position in political and constitutional theory is of critical significance. This is how sovereign authority and the constitution-making power were effectively merged and became indistinguishable from one another. The people are both the sovereign and the constitution-maker, requiring no external legitimization, whether terrestrial or celestial. The methods by which

⁶¹ A. BURATTI, *Western Constitutionalism. History, Institutions, Comparative Law*, Springer, 2016, p. 55.

⁶² For an overview on the idea of popular sovereignty see: R. BOURKE, Q. SKINNER, (eds.), *Popular Sovereignty in Historical Perspective*, Cambridge University Press, 2017; R. G. INGRAM, C. BARKER, *People Power: Popular Sovereignty from Machiavelli to Modernity*, Manchester University Press, 2022.

⁶³ D. GRIMM, *Types of Constitutions*, in M. ROSENFELD, A. SAJÓ, *The Oxford Handbook of Comparative Constitutional Law*, *cit.*, p. 115.

sovereignty and constitution-making power are exercised are not a matter of principle but of organization. This transformation underscores the evolution of constitution from a tool of governance to a manifestation of the collective will of the people, embodying their rights, freedoms, and collective identity. In a certain sense, this can be seen as a unique form of the “end of constitutional history,” to borrow Francis Fukuyama’s notion: under the given theoretical and historical development, it is difficult to envision thinking beyond the concept of popular sovereignty.⁶⁴ This would require abandoning centuries long intellectual tradition.

However, a radical interpretation of popular sovereignty, often favored by revolutionary, populist, and authoritarian figures, suggests that constituent power is perpetual and unlimited, allowing for the unilateral revocation of constitutions. In contrast, constitutionalism asserts principle of representation and that the constitution-making power must adhere to its own rule. Therefore, constituent assembly cannot be equated directly with the people’s constitution-making power. Legitimacy requires that the assembly not only represents the polity but also follows established rules in creating constitutional documents.⁶⁵ This is an important element of constitutionalism and this constraint, necessary for a undisturbed functioning of a polity, Andrew Arato termed a “post-sovereign constituent power”.⁶⁶

1. 3. The Methods of Constitution Making

Constitution-making encompasses a variety of constitutional design processes. The methods of constitutional design pertain to the procedural dimension involved in the formulation of foundational principles and structures that delineate the governance of a polity. These methods elucidate how constituent power is exercised and practically implemented, shedding light on the operational mechanisms through which the power to create or amend a constitution is concretely realized. From a theoretical perspective, these methods can be categorized into three distinct types: the individual model, the mixed model, and the collective model of constitution-making.

⁶⁴ For an opposite view see, for instance: A. ARATO, *Post-sovereign Constitution Making. Learning and Legitimacy*, Oxford University Press, 2016. Arato basically suggests abandoning the concept of popular sovereignty, but does not imply the exclusion of the people. He proposes different forms of inclusion, participation, that the process of creating a constitution should be a multi-leveled, multi-staged, to include various interested groups, organizations, instead of a simple appeal to the people.

⁶⁵ A. SAJÓ, UITZ, *Constitution of Freedom*, p. 56.

⁶⁶ A. ARATO, *Post-Sovereign Constitution Making. Learning and Legitimacy*, Oxford University Press, 2016, p. 77 et passim

The first model includes cases of establishing institutions and social relations, often involving labor division and hierarchy, as exemplified by mythical founders like Lycurgus, Theseus, Romulus, or Servius Tullius.⁶⁷ Servius Tullius is particularly significant here, as he fundamentally reformed the Roman constitution, according to sources, by his sole will. There is no mention of collaboration with any other entity in the state; others simply accepted the new order. Essentially, these are various founding myths which usually gain significance by bestowing supposed successors or other “followers” of such creators with authority. For instance, the dynastic principle in monarchies is often based on such notions of a “founding father” figure that emanates legitimacy and charisma.⁶⁸ Imposed constitutions, however, represent the best example of individual constitutional design. In this regard, the Charter of 1814 by Louis XVIII is particularly interesting, especially considering its prehistory. Namely, the still-existing French Senate drafted a constitution in 1814, but the Bourbon refused to accept it.⁶⁹

The mixed type of constitutional design often emerges in contexts where an individual possesses significant political authority within a polity but either cannot or chooses not to unilaterally impose the constitution. Instead, this approach seeks to involve other stakeholders in the constitutional design process. Sometimes it involves contemporary methods such as constitutional committees, conventions, and constituent assemblies. This model represents a balance between the influence of individual leadership and the broader political consensus. Solon of Athens is a quintessential historical example. As a highly regarded statesman and archon endowed with extraordinary powers, Solon implemented reforms in Athens’ political, social, and economic structures through new legislation, merging his authority with the need for approval by the Athenian people. Another case is that of Napoleon Bonaparte’s role in drafting the 1799 French constitution. As consul, Napoleon significantly influenced the drafting process, demonstrating his

⁶⁷ On an individual constituent power see: PLUTARCH, *Solon*, in *Lives*, A. STEWART, G. LONG (Eds.), G. Bell and Sons, *cit.*, 146; N. MACHIAVELLY, *Prince*, *cit.*, pp. 22-24; J. J. ROUSSEAU, *The Social Contract*, Numilog, 2000, pp. 72, 74, 213-218. In the accounts of these authors one can recognize the whole variety of interpretations. What matters here is the model of the individual constituent power itself. For more details see: M. BERNAL, *Beyond Origins Rethinking Founding in a Time of Constitutional Democracy*, Oxford University Press, *cit.*, pp. 108-109, 111-123, 125-126; A. ARATO, *The Adventures*, *cit.*, pp. 47-55.

⁶⁸ M. LOUGHLIN, *The concept of constituent power*, in *European Journal of Political Theory*, 13 (2), 2014, pp. 218-237; R. CRISTI, *Schmitt on Constituent Power and the Monarchical Principle*, in *Constellations*, 18(3), 2011, pp. 352-364.

⁶⁹ M. J. PRUTSCH, *The Charte and Constitutional Monarchism*, In *Making Sense of Constitutional Monarchism in Post-Napoleonic France and Germany*, Palgrave Macmillan, 2013, pp. 10-17; M. J. PRUTSCH, *Constitutionalism in Post-1814 Europe: Monarchy, Parliament and Sovereignty*, in *Giornale di storia costituzionale*, 35, I, 2018, pp. 33-46.

capacity to shape constitutional development, though the constitution was ultimately put to a referendum. Mustafa Kemal Atatürk, the founder of modern Turkey, also fits this model. His vision greatly influenced the drafting of the 1924 Constitution, which, despite his strong influence, still required ratification by the Grand National Assembly of Turkey, underscoring the combination of individual leadership and collective consent. Such constitutions typically consolidate the position of the *de facto holder* of power.

The constitution-pact also falls under this category of mixed constitutional design. This model is characterized by the sanction given to the constitution by the head of state, whose constitutional position is ultimately weakened compared to the initial state. A good example is the 1791 French Constitution.⁷⁰ The 1888 Serbian Constitution also belongs to this category: the king personally presided over the sessions of the constitutional committee and directly influenced the constitutional solutions, defending the prerogatives of the crown as much as possible.⁷¹

The most elaborated and highly formalized method of constitution-making is the collective approach, involving conventions, constitutional committees, and constituent assemblies. In many cases, it also includes the participation of the people at various stages, such as electing a constituent assembly or approving the constitution through a referendum. The choice of which method to apply, mainly when not predetermined by a previous constitution, largely depends on the context and the decision of a select group of individuals to determine the optimal solution for a given moment.

Constitutional conventions and constituent assemblies are mechanisms for constitution drafting, but they differ in their purpose, composition, and scope of authority. Constitutional conventions are often comprised of representatives selected from existing structures, narrower and less transparent in their work, while constituent assemblies have a broader and more diverse membership and are elected, convened and authorized to create entirely new constitutions or carry out fundamental revisions. Constitutional texts adopted at conventions require confirmation, often through a referendum, whereas a constituent assembly can adopt a constitution without subsequent confirmation. Additionally, constitution-making can also fall within the jurisdiction of regular legislatures, providing for a mandatory referendum on certain issues. However, in each of these cases, constitution-making entails a specific procedure that is typically more demanding than the

⁷⁰ B. AGUILERA-BARCHET, *History of Western Public Law*, Springer 2015, p. 399.

⁷¹ D. POPOVIĆ, *Constitutional History of Serbia*, Brill, 2021; A. DRAGNICH, *The Development of Parliamentary Government in Serbia*, Columbia University Press, 1978, pp. 83-86.

process for ordinary laws, often prescribed by the constitution itself. In that sense, a common requirement is a specific qualified majority for its adoption.⁷²

The adoption of the US Constitution and the French Constitutions of 1791, 1793, and 1795 well illustrate these two methods of collective constitution-making.

The story of the US Constitution begins at the Convention in Philadelphia. The Constitutional Convention, held in Philadelphia in May 1787, originally was convened with the intention of amending the Articles of Confederation. However, it eventually, in a somewhat secretive manner, evolved into a complete overhaul of the government. A Committee of Detail was tasked with documenting the decisions made during the Convention, and a Committee of Style and Arrangement finalized the Constitution in its ultimate form. On 17 September 1787, the delegates officially signed the Constitution, marking the transformation from an attempt to amend the existing government to the creation of an entirely new one. The ratification process followed a unique path, bypassing the state legislatures in favor of special ratifying conventions in each state. The Constitution, having secured approval in ratifying conventions instead via referendum, epitomized the dedication to representative decision-making, a steadfast feature of the American political system to this day.⁷³

The French constitutions of 1791, 1793, and 1795 established the basis for the model of a constituent assembly or constitutional referendum. The 1791 Constitution was adopted by the body that declared itself a constituent assembly and confirmed by the King. Therefore, it was a model of the constitutional pact. The constitutions of 1793 and 1795 were adopted by the National Convention (*Convention Nationale*), initially elected as a constituent assembly in 1792. To adopt the 1793 constitution, the National Convention introduced a mechanism of referendum for the first time in constitutional history. After adopting the 1793 Constitution, the National Convention continued to function as a legislative body. Then, after enduring the revolution's most challenging period (the Terror), it adopted the 1795 constitution. Thus, in a brief span from 1791 to 1795,

⁷² On this topic see: J. ELSTER, R. GARGARELLA, V. NARESH, B. E. RASCH, (Eds.), *Constituent Assemblies*, Cambridge University Press, 2018; P. FAFARD, R. DARREL, *Constituent Assemblies: a comparative survey*, Queen's University, 1991; A. ARATO, *The Adventures of the Constituent Power*, Cambridge UP, 2017; A. ANDREW, *Forms of Constitution Making and Theories of Democracy*, in *Cardozo Law Review* 17, 1995, pp. 191-227; G. MARSHAL, *Constitutional Conventions. The Rules and Formes of Political Accountability*, Oxford University Press, 1984.

⁷³ D. J. BODENHAMER, *The Revolutionary Constitution*, Oxford University Press, 2012; C. COLLIER, J. L. COLLIER, *Decision in Philadelphia*, Blackstone Publishing, 2012; M. J. KLARMAN, *The Framers' Coup*, Oxford UP, 2016.

France experimented with nearly every method of constitution-making that would later be seen in other contexts.

2. Historical Narratives in Constitutional Design

Why does history matter? In a course of centuries-long endeavors to explain the relevance of history, many answers to this idea appeared. However, even modern empirical scholarship – such as social Psychology – upholds an obvious answer:

“History provides us with narratives that tell us who we are, where we came from and where we should be going. It defines a trajectory which helps construct the essence of a group’s identity, how it relates to other groups, and ascertains what its options are for facing present challenges. A group’s representation of its history will condition its sense of what it was, is, can and should be, and is thus central to the construction of its identity, norms, and values. Representations of history help to define the social identity of peoples, especially in how they relate to other peoples and to current issues of international politics and internal diversity.”⁷⁴

Thus, it is not difficult to anticipate that the questions the historical narratives provide the answers to (“who we are, where we came from and where we should be going” etc.) fall undoubtedly within the scope of the constitutional design.

There are many ways in which history – either as well-established knowledge or as a variety of less accurate representations of the past – influences the law. It sometimes plays a notable role, indeed, in debating various legal topics, in legitimizing particular legal provisions, and in the interpretation of the law.⁷⁵ In this inquiry I will follow R. M. Cover’s idea, that history is, *mutatis mutandis*, equally influential in designing constitutional provisions:

“The first amendment tale can begin with ancient Egypt, with 1776, or with 1789. The point is that constitutional scripture can be part of a sacred history that starts when God’s church and man’s earthly dominion coincide, or it can be a specific answer to a specific question raised about the national compromises struck between 1787 and 1789.”⁷⁶

⁷⁴ J. H. LIU, J. H. D. J. HILTON, *How the past weighs on the present: Social representations of history and their role in identity politics*, in *British Journal of Social Psychology*, 44(4), 2005, pp. 537-556.

⁷⁵ L. J. SIRICO JR., *How Law Employs Historical Narratives: The Great Compromise as an Example*, in *Pepperdine Law Review*, 2017(1), 2018, 65-100. R. UITZ, *Constitutions, Courts, and History: Historical Narratives in Constitutional Adjudication*, Central European University Press, 2005; V. PETROVIĆ, *The Emergence of Historical Forensic Expertise: Clio Takes the Stand*, Routledge, 2013.

⁷⁶ R. M. COVER, *Foreword: Nomos and Narrative*, in *Harvard Law Review*, 97(4), 1983, p. 17.

One way or another, it is a *tale*, i.e., a *narrative*, historical one, that lies beneath the origin and directs the interpretation of the famous provision of the Constitution of the United States. Following this idea, it is the task of this research to answer the questions regarding the origin, meaning, creators, content, and employment of such *narratives* throughout (post)Yugoslav constitutional history.

In this subchapter, I will, first of all, focus on the general issue of historical argument in constitutional design. Then I will turn to the question of historical narrative as a means through which representations of the past are mediated. In the third section, I will offer a more detailed examination of the specific mechanism by which the narrative operates within this process. Finally, in the last section, I will examine the functions of historical narratives in designing constitutions.

2. 1. The Importance of History for Constitutional Design

The plausibility of the idea that “history matters” in the field of law is, perhaps, most obvious in the domain of constitutional law. This is understandable since constitutions articulate – among other matters – values, and identity (primarily national identity),⁷⁷ the two phenomena tightly related to historical accounts. This fact has been recognized in early constitutional scholarship for example, in the works of Thomas Cooley who, in his essay from 1889, noticed that “a good constitution must be of gradual formation”, and that it must be the result of the historical experiences of the people, “the natural and deliberate expression of their thoughts, wishes, and aspirations in government”.⁷⁸ Cooley also points out that

“[n]o constitution otherwise formed can so completely adapt itself to the needs and thoughts of the people as the one that springs directly from the national life, has been moulded by the events of national history, and constitutes an expression of the popular idea of government, and of what are its proper functions and limitations”.⁷⁹

⁷⁷ “It is commonplace in European constitutional practice and theory to use the terms ‘national identity’ and ‘constitutional identity’ interchangeably”. E. CLOOTS, *National Identity, Constitutional Identity, and Sovereignty in the EU*, in *Netherlands Journal of Legal Philosophy*, 45, 2016, p. 82.

⁷⁸ T. M. COOLEY, *Comparative Merits of Written and Prescriptive Constitutions*, 2 *Harvard Law Review*, 1889, p. 341.

⁷⁹ *Ibid.*, p. 346. This line of thinking survived, *mutatis mutandis*, in the American constitutional theory until modern times. For this development see: S. A. SIEGEL, *Historism in Late Nineteenth-Century Constitutional Thought*, in *Wisconsin Law Review*, 1990, pp. 1431-1547; B. ACKERMAN, *Constitutional politics/constitutional law*, in *Yale Law Journal*, 99(3), 1989, pp. 453-547.

This is, of course, 19th-century scholarship, which was deeply influenced by historicism, an intellectual approach that placed great importance on the power of historical analysis and was bolstered by the groundbreaking “Rankean revolution” in the field of historiography at the time. It clearly overestimated past experience in analyzing society and its phenomena. Yet it is worth mentioning as an early theoretical alert on the presence of the historical argument in constitutional design. However, if Cooley’s positivist elaboration on the importance of history is exaggerated, it seems reasonable to accept a more moderate idea that, this way or another, “history matters”. The question, then, is: which history?

It is the history of the state itself – both constitutional and national history in general – that matters in the first place. But some authoritative voices – for instance, Bruce Ackerman – would argue that the imitation of the US constitution making might be a proper role model to follow. Ackerman suggested this path for the “new democracies” after the Cold War. Andrew Arato, on the other hand, criticizes this idea of the “imitation” as “a poor reason, due especially to the fact that [...] concrete models have a way of turning into something quite different when adopted under dramatically different circumstances”.⁸⁰ Therefore, the circumstances of the given state “must take priority in the analysis, for among them lie the important factors of a country’s or a culture’s own constitutional experience, from which it is possible to learn”.⁸¹ Finally, Andras Sajó brings the tone of the compromise between the two approaches: even when the universal experiences have been addressed in the constitution making process, those “various historical references to universalism served particular identity needs”.⁸²

Interestingly enough, modern constitutional history (XVIII century) begins with a rupture with historical authorities and with the authority of history. The French revolutionaries illustrate this point well:

“[C]onsistent Enlighteners tolerated no allusion to the past. The declared objective of the *Encyclopédie* was to work through the past as quickly as possible so that a new future could be set free. Once, one knew exempla; today, only rules, said Diderot. ‘To judge what happens according to what has already happened means, it seems to me, to judge the familiar in terms of the unfamiliar,’ deduced Sieyès. One should not lose the nerve to refuse a turn to history for something

⁸⁰ A. ARATO, *Forms of constitution making and theories of democracy*, in *Cardozo Law Review*, 17(2), 1995, p. 219.

⁸¹ *Ibid.*

⁸² A. SAJÓ, *Constitutional Sentiments*, Yale University Press, 2011, p. 65.

that might suit us. These revolutionaries then supplied in dictionary form a directive to write no more history until the Constitution was completed”.⁸³

However, the subsequent monumentalizing of the revolutionary moment led to the establishment of the new authoritative narrative – the one that referred, indeed, to recent events (the Revolution). Yet that one, too, was unable to abandon the structure of the historical account of the glorious events, heroes, *lieux de mémoire*. Praising the past or breaking with it, both, eventually, involve the reference to the events and persons worthy of commemoration. And every commemoration – as well as the *damnatio memoriae* – is by its very nature history-oriented.

Although the constitutional design is by definition future-oriented, this work will demonstrate that, at some point along the erratic trajectory of this endeavor, the past is inevitably summoned. Zim Nwokora, for example, argues that, while a constitutional design is oriented toward the future the “process should remain sensitive to a country’s distinctive characteristics, especially those that matter for understanding its political dynamics.”⁸⁴ Here, again, one cannot deny that the representation of history constitutes pretty much of the content of what Nwokora labels as “distinctive characteristics”. In other words, whenever the issue of “distinctiveness” comes into play, history is an almost inevitable reservoir of arguments.

2. 2. *Historical Narrative as a Herald of History*

The question at hand is how history can influence, shape, or inform law. The obvious answer is – through historical narratives. It might be considered a common wisdom that “constitution-making routinely implicates multiple authors, constituencies, and narratives”.⁸⁵ Some of them are related to the past events, persons or phenomena. The historical narratives are the most common means of conveying representations of the past, making them the most frequent mediator between past and present. Furthermore, it has been recognized in the constitutional theory that these narratives play a significant role in the constitution-making process. Thus, this work aims to examine the relevance of historical narratives in the constitution-making process within the historical and geographical scope of the (post)Yugoslav context. This context provides a

⁸³ R. KOSELLECK, *Future’s Past: On the Semantics of Historical Time*, Columbia University Press, 2004, p. 39.

⁸⁴ Z. NWOKORA, *Constitutional design for dynamic democracies: A framework for analysis*, in *International Journal of Constitutional Law*, 20(2), 2022, p. 584-585.

⁸⁵ D. GALLIGAN, M. VERSTEEG, *Social and political Foundations of Constitutions*, Cambridge University Press, 2013, p. 264.

unique opportunity to explore the ways in which historical narratives shaped the creation of constitutions, given the complex and often fraught history of the region. The examination of historical narratives in the constitution-making process provides insight into the ways in which the past can influence the present, and how it can shape the legal framework that governs a society. Understanding the role of historical narratives in this process is of critical importance, since the role they played was considerable.

However, it is not easy, if possible at all, to strictly define or classify historical narratives. For the purpose of this research, I have adopted the broadest understanding of this complex notion. This approach understands the historical narrative as “the representation of a set of chronologically and logically connected events”, the notion of “representation” and “set of events (what can loosely be called plot)” being common to almost all definitions of the narrative.⁸⁶ It posits that the notion of historical narrative in constitutional design encompasses all sorts of references to history that are being invoked with the intention to be used as an argument in favor of the preferred (or rejection of the unwanted) solution in the constitution making process.⁸⁷ This implies all the references to the past, tradition, legacy, experience, myth.⁸⁸ A broad and almost commonsensical understanding of the notion of historical narrative is necessary since both notions (i.e. historical and narrative) went through many changes. The research, however, doesn’t require bonding to any particular intellectual tradition of theorizing the notion of the narrative.

Although the role of historical narratives has been recognized in scholarship, it has attracted only peripheral attention, and, with a handful of notable exceptions, it has never been

⁸⁶ C. LORENZ, S. BERGER, N. BRAUCH, *Narrativity and Historical Writing*, in S. BERGER, N. BRAUCH & C. LORENZ (Eds.), *Analysing Historical Narratives: On Academic, Popular and Educational Framings of the Past*, Berghahn Books, 2021, 40, p. 2.

⁸⁷ The concept of historical narrative with almost the same meaning is used by Renata Uitz, who understands by historical narrative the “accounts of, or, more properly, representations of, past events and practices”. R. UITZ, *Constitutions, courts, and history: historical narratives in constitutional adjudication*, Central European University Press, 2005, p. 10.

⁸⁸ For instance, Cover makes reference to the myths as “narratives in which the corpus juris is located by those whose wills act upon it. These myths establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic. These myths establish a repertoire of moves - a lexicon of normative action - that may be combined into meaningful patterns culled from the meaningful patterns of the past. The normative meaning that has inhered in the patterns of the past will be found in the history of ordinary legal doctrine at work in mundane affairs; in utopian and messianic yearnings, imaginary shapes given to a less resistant reality; in apologies for power, and privilege and in the critiques that may be leveled at the justificatory enterprises of law.” R. M. COVER, *Foreword: Nomos and Narrative*, cit., pp. 4-5. This, obviously, perfectly fits into what historical narrative may also be.

thoroughly analyzed from a specific constitutional history perspective. Cover almost aphoristically wrote that “for every constitution there is an *epic*”, adding that

“[o]nce understood *in the context of the narratives, that give it meaning*, law becomes not merely a system of rules to be observed, but a world in which we live. In this normative world, *law and narrative are inseparably related*. Every prescription is insistent in its demand to be located in discourse – to be *supplied with history and destiny, beginning and end, explanation and purpose* [emphasis mine S. M.]”.⁸⁹

The epic that stands behind the constitution, however, may be expressed through the most diverse contents. It is *prima facie* discernible that references to historical events and phenomena are distinguishable among many other subjects articulated through various narratives (cultural, political, societal, etc).

Constitutional history, in the broadest sense, offers a plethora of evidence for the presence of historical narratives in constitutional design. As Greta Olson indicated, “[p]articularly in constitutions, narrative authority is evoked through references to a common historical narrative”.⁹⁰ The agents of the constitution making process, from the beginning of modern constitutional history, have been engaged in preparing the public for the new constitutional reality by advertising their preferences through agitation, media, and debates in constituent assemblies. This, however, required convincing *narratives* through which the whole constitutional structure becomes understandable and acceptable for the people who would, eventually, vote on the constitution and be governed by it.⁹¹

Beau Breslin points out, the answer to “[t]he question of how a regime alters its collective identity through the process of constitutional transformation depends on the specifics of a polity’s particular historical narrative.”⁹² The intervention in the field of identity is being achieved through transcending the variability of diverse and, sometimes, even conflicting historical narratives. It

⁸⁹ R. M. COVER, *Foreword: Nomos and Narrative*, cit., pp. 4-5.

⁹⁰ G. OLSON, *Narration and Narrative in Legal Discourse*, in P. HÜHN, J. C. MEISTER, J. PIER, W. SCHMID (Eds.), *Handbook of Narratology*, Vol. 1, De Gruyter, 2014, p. 378.

⁹¹ Sieyes' pamphlet, “What is the Third Estate” (January 1789), contains a famous critique of the conditions in France. He discredited the absolutist regime by comparing it to the conditions in Ancient Egypt, which he regarded as archaic and inhumane. This comparison led Sieyes to the conclusion that the French system was just as “despicable, monstrous, destructive of all industry” as the old Egyptian system. Although Sieyes acknowledged that such historical analogies “increase the importance of the subject and throw light upon it”, he did not further exploit such comparisons. The well-known consequence of the events that followed was the abolition of feudalism, which marked a major constitutional change.

⁹² B. BRESLIN, *From Words to Worlds*, cit., 2009, p. 30.

reduces them to one that is considered the most suitable for the goal set by the constitutional designers, which is the dynamic common to all (or at least to the majority of) constitutional polities.

What I claim here is that historical narratives are usually invoked in order to advance a particular purpose in constitutional design. But the constitutions emanate an authority and as such articulate and affirm themselves a certain historical narrative, whenever they contain an explicit or implicit historical reference. William Partlett and Herbert Küpper argue that “constitutions are also critical in the creation of [...] national identity, in part by defining historical narratives”.⁹³ This idea, at first glance, turns upside down the approach which posits that historical narratives predispose specific solutions in the constitutional text, rather than the other way around. However, it is not necessarily so. It is highly improbable that a constitution *ex nihilo* or “by mere chance” defines a new historical narrative or affirms the existing one. It is always a pre-existing content (i. e. narrative) – no matter how recent it might be – that the constitution virtually adopts and, consequently, affirms, proves its validity, empowers and builds on it. As a matter of fact, it is not of crucial importance if one claims that the constitutions define historical narratives or the other way round. What matters is the nexus between the two, while the influence may go, of course, both ways. Moreover, this dual track is, eventually, an expected outcome: if the constitutional provisions, swayed by the particular narrative, are carefully observed within a given society, it would consequently mean that this particular narrative stands upheld by the constitution.

It should be emphasized that it is not crucial for the narrative whether it remains faithful to the truth or not (yet sometimes it may be relevant to explain the roots and purpose of the “unfaithfulness”). The importance of the historical narrative is arguably most obvious in the cases in which the narrative itself has been shaped so that it fits the desirable institutional outcome.⁹⁴ It is, indeed, not the “real history” that matters; what matters for the narrative is to be recognized as an authoritative account of the past, even though it might be manifestly made up. For *auctoritas, non veritas facit legem*, and the *auctoritas* of history has been rarely denied. Combined with the famous proverb that *historia magistra vitae est* this clearly opens up the space for creativity in

⁹³ W. PARTLETT, H. KÜPPER, *Introduction: Understanding East European and Eurasian Constitutions through the Post-Colonial Lens*, in *The Post-Soviet as Post-Colonial*, Edward Elgar Publishing, 2022, pp. 1-6.

⁹⁴ In explaining Bolivarianists’ success in pursuing constitutional change in Venezuela in 1999, Pedro Sanoja noticed that “an important part of their success compared to rival political projects, was to frame this exercise of the will in a historical narrative that substantially redefined the interpretation of Venezuelan history and fit it to an on-going political conflict”. P. SANOJA, *Ideology, Institutions and Ideas: Explaining Political Change in Venezuela*, in *Bulletin of Latin American Research*, 2009, 28(3), p. 408.

shaping the historical narratives. Furthermore, it creates an evident contradiction: history is recognized as an authority, but if it does not support a specific agenda the “real history” would be neglected and the “proper” one invented.

Within the complex notion of historical narrative, not only the “narrative” segment requires an explanation, but also the segment “historical”. It is by no means self-explanatory, and it also invites certain clarifications. Obviously, “historical” refers to past phenomena – events, persons, processes. Yet, within the specific context of the “historical narrative”, “historical” means not only pertaining to the more or less distant past but also being particularly significant for the present and for the future. The quality of being historical in that sense can be attributed to quite recent experiences. This is being achieved through the historicization of that experience, *i.e.*, by recognizing the groundbreaking or pivotal importance of the recent events, or, in some cases, even of those that have just occurred. Whenever it can be convincingly claimed that what has just happened closes the “chapter of history” or, for that matter, opens the new one – the phenomenon of historicization comes into play (e.g. the glorification of the fallen heroes of the revolution that has recently triumphed; the events and fighters from the war that has just ended; the struggle against the nefarious regime that has been overturned, and so forth). Put differently, it does not take centuries or decades for the past experience to become a subject of historical narrative. What matters is the assumed importance of the past event, process, or even person that is a subject of the narrative, which means – the potential to be historicized.

Finally, “historical” may also be the narrative of the historicized present. Namely, elaborating on the character of historical knowledge, Zoltán Simon, Marek Tamm, and Ewa Domańska write about the phenomenon of “depresentification” which amounts to “the historicization of the present, distancing from it and looking at the present as if it is already past”. This makes the knowledge of the “depresentified” phenomenon functioning “as anticipatory knowledge”.⁹⁵

It seems that, *mutatis mutandis*, this remains valid for the historicized narratives (hence not necessarily only for the knowledge) about the present events, processes, or persons, too. By emphasizing their importance and anticipating the relevance of these events, processes, and people in the foreseeable future, these narratives virtually operate as “historical” in the sense that they are

⁹⁵ Z. B. SIMON, M. TAMM, E. DOMAŃSKA, *Anthropocenic Historical Knowledge: Promises and Pitfalls*, in *Rethinking History*, 25(4), 2021, pp. 406-439.

thematizing something or someone significant. (For instance recognizing the “historical character” of the present event, of an incumbent statesman, or of an ongoing process). This historicization of the present phenomenon confirms *ex silentio* the importance of being *historical*.

Thus, what distinguishes the historical narrative from any other systematized account that invokes the experience, is the idea that the value of the particular occurrence resides in the awareness of the already proved or foreseeable long-lasting effects of the phenomenon or situation that the particular narrative thematizes. It is, thus, *historical* in a sense that presupposes a specific legitimizing capacity derived from being “proven value”, from abiding or predictable durability. This is, for instance, what tips the difference between *historical event*, on one hand, and an “ordinary business of life”, on the other.⁹⁶

Apart from the content it thematizes (i.e. distant or recent, real or imagined past or even present), there is another important characteristic of the narrative, historical as well as any other. This is the requirement that the specific account has to fulfill in order to gain the status of the narrative: it needs to be in public circulation; it has to be harbored and promoted by a relatively significant group that is able to exercise influence over the decision-makers (in this particular case over the participants of the constitution making process).

Finally, the historical narrative may be explicitly stated, directly built-in the constitution, usually in the preambles,⁹⁷ or may be implicitly present in the constitutional text, which means that “the historical narrative unfolds from the historical references” in the constitution itself.⁹⁸

2. 3. *The Dynamics of Historical Narratives in Constitutional Design*

It has been emphasized that the past or rather what people know or believe about the past was mediated through historical narratives. Thus the role of the historical narrative in constitutional design mirrors the relevance of history itself in that process. Donald Lutz, for example, claims: “A constitution rests not only on the history and present circumstances of a

⁹⁶ According to French historian Michel Winock, what constitutes a difference between historical events and everyday occurrences are, basically, four characteristics of the historical event: intensity, unpredictability, resounding and consequences. M. WINOCK, *Qu'est-ce qu'un événement*, in *L'Histoire*, 268, pp. 30-35.

⁹⁷ S. LEVINSON, *Do Constitutions Have a Point? Reflections on “Parchment Barriers” and Preambles*, in *Social Psychology and Policy*, pp. 150-178; A. ADDIS, *Constitutional Preambles as Narratives of Peoplehood*, in *International Constitutional Law Journal*, 12(2), 2018, pp. 125–181.

⁹⁸ P. APOR, P. SÓLYOM, *The New Constitution of Hungary: Historical Narratives and Constitutional Identity*. Available at SSRN 2276398.

people but also on probable future developments”.⁹⁹ Thus, it is critical for constitutional design to take into consideration all three aspects of historical time: past, present, and future.

In order to show how historical narrative operates on different time levels, it is advisable to commence with the following pithy assertion by Jiří Příbáň:

“The constitution-making process and legislation always reflect present and past experiences. Normative changes are therefore closely tied to existing social reality, its past developments and changes. The historical dimension of social action, knowledge and experience is not lost during the flight of the arrow of time. However, the effective and critical nature of all history means that the historical dimension has to be first recognized as meaningful for the present time. The past is to be discovered and recognized in relation to the changing future expectations of the legal system.”¹⁰⁰

According to this view, constitutional ideals and principles are shaped by the endless history and thus, to certain extent, turned to cultural symbols.¹⁰¹

Pursuing this analytical trajectory, the issue of how historical narrative impacts constitutional design with regard to the underlying dynamics or mechanisms could be suitably approached through the utilization of a theoretical structure founded upon Reinhard Koselleck's philosophical perspectives. Drawing on Koselleck's philosophical reflections, this research conceptualizes the content of the historical narrative as the embodiment of the “space of experience,” while the constitutional text represents a “horizon of expectation.”

Koselleck posits that experience is the

“present past, whose events have been incorporated and can be remembered. Within experience a rational reworking is included, together with unconscious modes of conduct which do not have to be present in awareness. There is also an element of alien experience contained and preserved in experience conveyed by generations or institutions. It was in this sense that *Historie*, since time immemorial, was understood as knowledge of alien experience.”¹⁰²

On the other hand, the very process of constitutional design, and in particular its' final product – the constitution, functions as an embodiment of the horizon of expectations:

⁹⁹ D. S. LUTZ, *Principles of Constitutional Design*, Cambridge University Press, 2006 p. 220.

¹⁰⁰ J. PŘIBÁŇ, *The Time of Constitution-Making: On the Differentiation of the Legal, Political and Moral Systems and Temporality of Constitutional Symbolism*, in *Ratio Juris*, 19(4), 2006, p. 471.

¹⁰¹ *Ibid*, 468.

¹⁰² R. KOSELLECK, *Future's Past: On the Semantics of Historical Time*, *cit.*, p. 258.

“expectation also takes place in the today; it is the future made present; it directs itself to the not-yet, to the nonexperienced, to that which is to be revealed. Hope and fear, wishes and desires, cares and rational analysis, receptive display and curiosity: all enter into expectation and constitute it.”¹⁰³

These two notions – experience and expectations – reveal the most eloquently the idea that stands behind the utilization of historical narratives in constitutional design. Historical narratives are often leveraged towards expected and desired consequences or outcomes (expectations), which are, in this case, enshrined in the constitutional text. Such narratives are crafted and deployed to foster particular expectations, aspirations, and ideals that are deemed necessary for a given polity. The present, in which experience (as the present past) meets expectations (as the present future, or the future made present) is the moment of constitutional design.

2. 4. The Function of Historical Narratives in Constitutional Design

To explain the function of historical narratives in constitutional design, one can rely on the instructive findings of social psychology. In this field, it has been firmly established that historical narratives play an important role in mobilizing people, engaging them for action, and articulating their decisions. In other words, the historical narratives

“shape perceptions of and reactions to contemporary events through historical analogies and historical attributions. Historical narratives can foster or impede forms of consciousness that lead to seeking social change and influence processes that facilitate or inhibit collective action.”¹⁰⁴

It is not difficult to recognize in “forms of consciousness” elements of ideology, with the narratives functioning as its units (ideologemes). This sets the stage for addressing the final aspect of this chapter: the function of the historical narratives.

In the process of constitutional design, in order to earn support for their work, the constitutional drafters are usually faced with an obligation to extend before the nation or other relevant factors justification or rationale for the choices they made. Keeping that in mind, it is safe to conclude that

¹⁰³ *Ibidem*, p. 258.

¹⁰⁴ S. H. FREEL, R. BILALI, *Putting the Past into Action: How Historical Narratives Shape Participation in Collective Action*, *European Journal of Social Psychology*, 2022, 52(1), pp. 204-222.

“[t]here is therefore no such thing as a constitution that lacks an implicit narrative and ideology of the state; indeed, in certain cases, these ideological and narrative functions may be of paramount importance to the regime.”¹⁰⁵

What the constitution needs, among many other requirements, is a convincing historical narrative for the outcome it strives to accomplish. This preferred outcome is, quite usually, the force that shapes the historical narrative, and not the other way around. This is utterly important for understanding the constitution, not only as a legal document but as the embodiment of identity, ideology, values, political agenda, etc.

Historical narratives usually serve as a source of powerful mobilizing and legitimizing symbols.¹⁰⁶ The legitimizing role of the historical narrative, very much depends on the authority of the source, personal views, or propaganda. This authority of the “historical” emanates the legitimizing power in the constitution making whenever the circumstances of the constitutional moment may be associated with the memorable experiences. This legitimizing power of past experiences – realistic or alleged – and the appropriateness of the historical narratives to be utilized as a tool for legitimization have been already recognized in the theory of constitutional law.¹⁰⁷ However, it has to be emphasized that this authority of the *historical* is not of the same strength in each particular situation: it ranges from a useful example to binding precedent.

Regarding the legitimation of the constitution-making process, historical narratives serve a dual purpose. Firstly, they function as a rational source of legitimation, predominantly employing logical arguments grounded in historical precedent (*historia magistra vitae*). Secondly, such narratives frequently assume an emotional role, relying on sentimental arguments in decision-making. These two functions are not inherently incompatible; even historically accurate narratives may evoke an emotional response. Their relative prominence is contingent upon proportional considerations rather than mutual exclusion.

¹⁰⁵ W. C. CHANG, D. S. LAW, *Constitutional Dissonance in China*, in G. JACOBSON, M. SCHOR (Eds.), *Comparative Constitutional Theory*, Edward Elgar Publishing, 2018, p. 492.

¹⁰⁶ J. H. LIU, D. J. HILTON, *How the Past Weighs on the Present: Social Representations of History and Their Role in Identity Politics*, in *British Journal of Social Psychology*, cit., pp. 537–556; J. H. LIU, J. LÁSZLÓ, *A Narrative Theory of History and Identity*, in G. MOLONEY, I. WALKER (Eds.), *Social Representations and Identity*, Palgrave Macmillan, 2007, pp. 85–107.

¹⁰⁷ The *past* is considered as one of the sources of legitimacy along with other three sources: the legitimacy arriving from *below* (present will of the people), from *above* (scientific or quasi scientific knowledge, or moral law), or from *ahead* (project of attaining progress). Z. OKLOPCIC *Beyond the people: social imaginary and constituent imagination*. Oxford University Press, 2018, p. 53. Obviously this scheme is an ideal-type and, *in concreto*, more than one of the sources of legitimacy can (and usually do) come into interplay.

The creators of public opinion generally and, more specifically, the agents of the constitution-making process (politicians, legislators, intellectuals supporting or opposing certain conceptions etc.) sometimes tend to accept and promote a particular historical narrative that fits their agenda. They use it as an authoritative argument without much deliberation and even without necessarily considering it true. Again: what they rely upon is its symbolic forcefulness. Some widely accepted historical narratives may exercise strong legitimizing authority despite having been conspicuously false.

How can this kind of historical narrative (e.g. historical reminiscences that have been debunked as false, certain historical myths, or almost legendary interpretations of the events from the past) exercise influence over constitutional design? First of all, they contain analogies or metaphors associating the present situation with some compelling yet fictitious narrative about an alleged past experience. But what makes those narratives particularly powerful is their effectiveness in provoking emotions such as pride, anger, or fear. Thus, although a particular historical narrative may not be entirely accurate, its ability to incite an emotional response regarding the constitutional matter makes it a valuable tool for constitutional design.

In recent times, the field of constitutional theory has undergone a thorough examination of the impact that emotions exert on the process of constitution-making. It came up with bold conclusions about the critical role the emotions play in the process. In contemporary scholarship, Andras Sajó and Jon Elster, dedicated much of their work to this topic.¹⁰⁸ The very idea of looking into the relationship between emotions and legal order is by no means a new one. Like in many other intellectual endeavors, one can trace the vestiges of this interest back to Aristotle, who claimed that constitutional change could be the result, along with other reasons, of citizen's fear of the current threats to their security.¹⁰⁹ Yet, as Sajó suggests, the strong impact of the emotions on the constitutional design is a modern phenomenon:

¹⁰⁸ A. SAJÓ, *Constitutional Sentiments*, Yale University Press, 2011; ID., *Constitutional sentiments*, in *Acta Juridica Hungarica*, 47(1), 2006, pp. 1-13; ID., *Emotions in constitutional design*, in *International Journal of Constitutional Law*, 8(3), 2010, pp. 354-384; ID., *Emotions in constitutional institutions*, in *Emotion Review*, 8(1), 2016, pp. 44-49; J. ELSTER, *Forces and Mechanisms in the Constitution-Making Process*, in *Duke Law Journal*, 45, 1995, pp. 364-396; ID., *The night of August 4, 1789. A study of social interaction in collective decision-making*, in *Revue européenne des sciences sociales. European Journal of Social Sciences*, (XLV-136), 2007, pp. 71-94; ID., *The two great fears of 1789*, in *Social Science Information*, 50(3-4), 2011, pp. 317-329; ID., *Emotions in Constitution-making: The 2016 Johan Skytte Prize Lecture*, in *Scandinavian Political Studies*, 40(2), 2017, pp. 133-156.

¹⁰⁹ "And so, as I have already intimated, the beginnings of change are the same in monarchies as in forms of constitutional government; subjects attack their sovereigns out of fear or contempt, or because they have been unjustly treated by them." ARISTOTLE, *Politics: Book VI*. (B. Jowett, Trans.), 1885. The Internet Classics Archive: <http://classics.mit.edu/Aristotle/politics.5.five.html> (Original work 350 B.C.E)

“Fear and disgust have existed before and throughout history, but it was during a change in social relations and perceptions in the eighteenth century that emotionally driven people acting in a new frame of reference could emotionally interact. In these interactions they followed the impetus of these emotions, and started to abhor cruelty systematically, ultimately crystallizing this sentiment in the prohibition of torture. Likewise, the empathy that supported some fundamental rights was a social reaction to specific distress; such empathy could socially consolidate itself only at a given historical moment when consolidation was feasible politically and viable economically.”¹¹⁰

Therefore, the constitutionalization of fundamental human rights came only in the XVIII century and not before that time. Besides, those “constituent emotions” are the historical category, hammered, among other means, “through the representation of events”,¹¹¹ which is, again, transmitted through historical narratives. Contextualizing his fundamental position that much of the constitutional design is an emotion-driven process, Sajó points out that

“[c]onstitutions are, among other things, about identifying a pre-foundational injustice that is to be undone by the constituent act. This is a choice of history—from a set of possible histories. The selection of historical memories is a moral act, a matter of moral responsibility”.¹¹²

The Constitution, thus, expresses the fear of further unjust behavior that has to be prevented and compassion and empathy with victims of oppression that are never to be revived.

¹¹⁰ A. SAJÓ, *Constitutional Sentiments*, p. 36.

¹¹¹ *Ibid.*, p. 41.

¹¹² *Ibid.*, p. 279.

CHAPTER II

The Role of Historical Narratives in Shaping the Fundamental Constitutional Values

1. Introduction: On Constitutional Values

Discussions about constitutional values are predominantly centered on judicial interpretations of the Constitution. Conversely, these values are seldom addressed in the context of the constitution-making process. Additionally, the concept of constitutional values is seldom clearly defined or broadly explained, let alone thoroughly theorized beyond specific constitutional contexts. This lack of comprehensive understanding often results in discussions on constitutional values being overly “casuistic” and lacking a solid conceptual foundation that would establish a firm ground for *constitutional axiology*.¹¹³

Efforts to define and elucidate the meaning and role of constitutional values vary from strictly legal to more political and sociological perspectives. Some scholars assert that “the only real relevance of the identification of the constitutional value is to serve as a yardstick in order to determine whether the impugned provisions’ statutory purpose is legitimate”.¹¹⁴ In contrast, others take a broader view, arguing that certain values are considered constitutional “if and because they are indispensable to the system guaranteeing peaceful coexistence.”¹¹⁵ Nonetheless, Francois Venter has contributed a valuable elucidation of the essence of constitutional values, presenting what appears to be a practical “middle ground” between definitions that are excessively broad and those that are too narrow. As Venter posits, the constitutional values are an “abstract concept” that

“indicates a standard or a measure of good. A constitutional value may therefore be deemed to set requirements for the appropriate or desired interpretation, application and operationalization of the constitution and everything dependent thereupon. If something were not to conform to the standards of a particular value, it would mean that the standards

¹¹³ A. SZIGETI, *Constitutionalism and Value Theory*, in SAJÓ, R. UITZ (Eds.), *Constitutional Topography: Values and Constitutions*, 2010, pp. 21-44.

¹¹⁴ C. HENCKELS, R. SIFRIS, T. PENOVIĆ, *Dignity as a constitutional value: Abortion, political communication and proportionality*, in *Federal Law Review*, 2021, pp. 554-568.

¹¹⁵ H. NISHIHARA, *The significance of constitutional values*, in *Potchefstroom Electronic Law Journal*, 2001, p. 10.

of a lower, different, conflicting or extra-constitutional measure are being applied, which would therefore lead to unconstitutional results.”¹¹⁶

Constitutional values can manifest themselves in two distinct ways: externally, where these values are mirrored within the constitution, and internally, where they are explicitly codified within the constitution itself. In the first scenario, the constitution reflects the overarching principles and societal ideals that guide a governance and legal framework. These values may not be explicitly written into the constitutional text but are implied through its interpretation and application by the judiciary. In the second scenario, constitutional values are explicitly enshrined into the constitution, entrenched, serving as the cornerstone of the nation’s legal and political ethos.¹¹⁷

Regardless of how constitutional values are expressed or defined, change remains a constant force within the constitutional framework, inevitably influencing the nature and interpretation of these values. It can manifest in two ways: firstly, the meaning of a particular value may evolve over time as society undergoes transformations, reflecting shifting societal norms and beliefs. Secondly, the interpretation of constitutional norms can vary, sometimes even contradicting earlier interpretations, as courts and legal authorities adapt to new contexts and perspectives.¹¹⁸ This change in articulation of constitutional values happens more often than not with references to history and tradition. Therefore, judges must be attentive to societal values embedded in a nation’s long-standing traditions. Principles may be universalistic, but their success or failure in concrete application depends on how they are adapted to the circumstances and contexts of a given time and place. This process entails absorbing and integrating values from the society’s dominant traditions, culminating in some modification in the scope and depth of

¹¹⁶ F. VENTER, *Utilizing constitutional values in constitutional comparison*, in Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad, 4(1), 2001, pp. 6-7. The distinction between constitutional principles and values is more thoroughly explained in: G. J. JACOBSON, *Constitutional Values and Principles*, in M. ROSENFELD, A. SAJÓ (Eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., 777-791

¹¹⁷ I. J. KROEZE, *Doing Things with Values: The Role of Constitutional Values in Constitutional Interpretation*, in Stellenbosch Law Review, 12(2), 2001, p. 267.

¹¹⁸ On this issue see: J. PŘIBÁŇ, *Constitutional Values as the Normalization of Societal Power: From a Moral Transvaluation to a Systemic Self-Valuation*, in Hague Journal on the Rule of Law, 11, 2019, 451–459; M. B. TROCHMANN, M. E. GUY, *Meanings matter: The relationship between constitutional values and social justice*, in Journal of Public and Nonprofit Affairs, 2022, 8(2), 281–293. <https://doi.org/10.20899/jpna.8.2.281–293>.

constitutional principles without leaving them transformed with respect to their underlying and most fundamental commitments.¹¹⁹

On the other hand, although the historical background plays an important role, it is important to underscore that constitutional values should not be perceived as arbitrary value judgments determined by the drafters of constitutional texts. It has become especially indefensible to use constitutional values as a rationale for justifying discrimination and inhumane treatment of individuals, with reference to tradition. In fact, in contemporary constitutional developments, there exists a worldwide consensus regarding the importance of upholding the integrity of democratic processes and the injustice of denying people their political rights.¹²⁰ Or, as Sajo and Utz asserted, “[e]ven when one notes that not all indicators are equally present in all countries or on all continents, it is easy to form the impression that twenty-first century governments run on a self-perpetuating supra-national constitutional algorithm reproducing global constitutional values.”¹²¹ This phenomenon is partially attributable to the adoption of constitutional models from Western democracies by post-socialist countries, a process that also involved the assimilation of constitutional values.¹²²

The constitutional values are the means through which the influence of constitutions extends far beyond formal institutional frameworks. These constitutional values, as the fundamental point of reference in understanding constitutional framework, are embedded in all branches of law and even in private relations.¹²³ (In this regard it is particularly interesting that

¹¹⁹ G. J. JACOBSON, *Constitutional Values and Principles*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 785-786.

¹²⁰ N. H. NISHIHARA, *The significance of constitutional values*, cit., p. 1; F. VENTER, *Utilizing constitutional values in constitutional comparison*, cit., p. 1.

¹²¹ A. SAJÓ, R. UITZ, *Constitution of Freedom*, cit., p. 459.

¹²² W. PARTLETT, *Post-Soviet Constitution Making*, in D. LANDAU, H. LERNER (Eds.), *Comparative Constitution Making*, 2019, pp. 539-566.

¹²³ As another author points out: “By allowing the worker to be treated as an object in the workplace, the law tolerated denial of those values which, in the polity, it cherished”. See: J. R. GRODIN, *Constitutional Values in the Private Sector Workplace*, in *Industrial Relations Law Journal*, 13(1), 1991, pp. 1-37; For a thorough analysis of the constitutionalization of the private law see: G. BRÜGGEMEIER, *Constitutionalisation of Private Law – The German Perspective*, in T. BARKHUYSEN, S. LINDENBERGH (Eds.), *Constitutionalisation of Private Law*, Martinus Nijhoff Publishers, pp. 59-83. The impact of constitutional law on private law can be either direct, meaning that the constitutional rights are being applied to it fully, equally and specifically, or indirect, which is the situation when the courts are required to take constitutional values into account in interpreting the statutes. S. GARDBAUM, *The Structure and Scope of Constitutional Rights*, in T. GINSBURG, R. DIXON (Eds.), *Comparative Constitutional Law*, Edward Elgar Publishing, 2011, p. 394. “Today, many constitutional courts accept that, because of the supremacy of the constitution in the legal system, constitutional values have to be enforced by every court, in civil relations, too. This implies the indirect horizontal effect of the constitution through the appropriate private law channels, for example,

Germany's Constitutional Court ruled that the Basic Law does not directly govern interactions between private individuals. However, it introduced the "indirect horizontal effect" doctrine. This principle mandates that while interpreting and shaping non-constitutional laws, courts must consider constitutional values. Many global constitutional courts have adopted this approach worked out by the German Constitutional Court.)¹²⁴

Simultaneously, the prevailing societal values play an important role in shaping constitutional design and, particularly, in interpreting the constitution.¹²⁵ This reverse influence was clearly advanced by the United States Supreme Court's justice John Marshall Harlan II who wrote that in interpreting the constitution there should be a "continual insistence upon respect for the teachings of history [and] solid recognition of the basic values that underlie our society."¹²⁶ The interplay between societal values and the constitution highlights the dynamic character of constitutional values. It is evident that constitutional values serve as a bridge connecting the constitution and society, perpetuating a continuous process of mutual influence and adaptation. Consequently, it becomes clear that some constitutional values may originate within the constitution itself, while others are pre-existing and are merely reaffirmed, reinforced, i.e. constitutionalized through the constitutional text.¹²⁷

In the absence of a well-defined framework of constitutional values, the practice of constitutional law risks undue and arbitrary emphasis on certain values at the expense of others. Such a disparity could lead to biased interpretations and might distort the very idea of

by declaring discriminatory employment contracts unconstitutional and void." A. SAJÓ, R. UITZ, *Constitution of Freedom, cit.*, p. 400.

¹²⁴ M. TUSHNET, *Weak Courts, Strong Rights. Judicial Review And Social Welfare Rights in Comparative Constitutional Law*, Oxford, 2008, p. 197.

¹²⁵ To certain extent, the "values seem to have taken over the role traditionally reserved for the 'intention of the legislature' in interpretation.". See: I. J. KROEZE, *Doing Things with Values: The Role of Constitutional Values in Constitutional Interpretation*, in Stellenbosch Law Review 12(2), 2001, p. 270.

¹²⁶ G. J. JACOBSON, *Constitutional Values and Principles*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law, cit.*, 788.

¹²⁷ For instance, the constitution-making process in Iceland from 2010-2013 "began with a discussion about constitutional values, in a 'National Forum' involving more than 1000 delegates, randomly selected from the public. Following this brief, one day meeting a Constitutional Council was appointed, after an abortive electoral process, to draw up a Constitution." C. A. SAUNDERS, *Constitution Making in the 21st Century*, in International Review of Law, 4, 2012, p. 8. Available at SSRN: <https://ssrn.com/abstract=2252294> See also: A. MEUWESE, *Popular Constitution Making: The Case of Iceland*, in D. J. GALLIGAN, M. VERSTEEG (Eds.), *Social and Political Foundations of Constitutions*, Cambridge University Press, 2013, pp. 469-496.

constitutionalism.¹²⁸ Another risk is the tendency to define, by enshrining in or construing the constitution, the whole variety of constitutional values: human dignity,¹²⁹ democracy,¹³⁰ solidarity,¹³¹ equality,¹³² family,¹³³ health,¹³⁴ but also the government's accountability,¹³⁵ national security,¹³⁶ academic freedom.¹³⁷

However, in constitutional scholarship, it has been accepted that the constitutional values are hierarchically organized. Certain values are “basic” to the polity, and a judge must identify and protect those values against competing values as well as hostile governmental action.¹³⁸ For instance the human dignity belongs to the very core as a nuclear constitutional value, as most widely recognized.¹³⁹ Venter for instance considers equality and freedom as the supporting values to human dignity.¹⁴⁰

This chapter investigates the historical narratives that influenced the formation of constitutional frameworks in Yugoslavia and its successor states (specifically Serbia, Croatia, and Slovenia). These narratives, as an argument in the constitution-making process, encapsulate and transmit the values that the framers of these constitutions deemed desirable and important. They played a crucial role in shaping both the substance of the constitutional texts and the broader

¹²⁸ N. H. NISIHARA, *The significance of constitutional values*, in Potchefstroom Electronic Law Journal / Potchefstroomse Elektroniese Regsblad, 4(1), 2001, p. 2.

¹²⁹ See below fn.139.

¹³⁰ F. VENTER, *A Hierarchy of Constitutional Values*, in Konrad Adenauer Stiftung *Constitution and Law: Seminar Report III, Johannesburg*, 1997, pp. 17–18; N. H. NISIHARA, *The significance of constitutional values*, cit., p. 3; W. F. MURPHY, *An Ordering of Constitutional Values*, in Southern California Law Review, 1980, 53(2), p. 706.

¹³¹ T. H. BRANDES, *Solidarity as a Constitutional Value*, in The Buffalo Human Rights Law Review, 27, 2020, p.59.

¹³² P. M. BATOR, *Equality As a Constitutional Value*, in Harvard Journal of Law & Public Policy, 9, 1986, p. 21.

¹³³ M. STĘBELSKI, *Family as a Constitutional Value*, in Pázmány Law Review, 9(1), 2022, pp. 85-100.

¹³⁴ S. DAGRON, *COVID-19 in France: Health as a Constitutional Value and Limitations on Civil Liberties*, in Bill of Health, 28, 2020.

¹³⁵ J. BOUGHEY, G. WEEKS, *Government Accountability As a 'Constitutional Value'*, in *Australian Constitutional Values*, Hart Publishing, 2018, p. 99.

¹³⁶ R. ANANIAN-WELSH, N. MCGARRITY, *National Security: A Hegemonic Constitutional Value?*, in R. DIXON (Ed.), *Australian Constitutional Values*, cit., 2020.

¹³⁷ W. E. THRO, *Academic Freedom: Constitutional Myths and Practical Realities*, in Journal of Personnel Evaluation in Education, 19(3-4), 2007, pp. 135-145.

¹³⁸ W. F. MURPHY, *An Ordering of Constitutional Values*, cit., p. 706.

¹³⁹ F. VENTER, *A Hierarchy of Constitutional Values*, cit., 17–18; R. G. WRIGHT, *Dignity and Conflicts of Constitutional Values: The Case of Free Speech and Equal Protection*, in San Diego Law Review, 2006, 43(3), pp. 527-576; A. GEWIRTH, *Human Dignity as the Basis of Rights*, in M. J. MEYER, W. A. PARENT (Eds.), *The Constitution of Rights: Human Dignity and American Values*, Cornell University Press, 1992, pp. 10-28; N. M. I. GOOLAM, *Human Dignity - Our Supreme Constitutional Value*, in Potchefstroom Electronic Law Journal, 2001, 4, pp. 1-12.

¹⁴⁰ F. VENTER, *A Hierarchy of Constitutional Values*, cit., pp. 17–18

political and ideological landscapes of each era. By examining these narratives, we gain insight into the values that the makers of the constitution had in mind and that motivated certain constitutional solutions. The focus will be on the visions and principles of key political figures, whose ideologies and decisions were instrumental in embedding these values into the constitution.

In this chapter, I will present the main directions of the constitutional history of Yugoslavia and its successor states through the lenses of fundamental historical narratives. These narratives contained the values that the constitution makers wanted to emphasize in the constitutional design. Besides, they not only influenced the constitution-making process but also had a profound impact on broader political dynamics and the overarching ideological foundations of each distinct era. In discussing a particular historical narrative, the primary focus will be on the ideas harbored by the key political figures of the era who decisively influenced the constitution-making processes.

The historical trajectory of Yugoslavia, from its inception to its ultimate disintegration, unfolds as a tale of three markedly distinct periods, each characterized by its own specific political and constitutional dynamics. These periods – the First (monarchist) Yugoslavia, the Second (socialist) Yugoslavia, and the Post-Yugoslav period – reveal a pattern of significant discontinuities rather than consistencies, underscoring the tumultuous and multifaceted history of the Balkan region.

2. The Monarchist Yugoslavia

2. 1. From the First Unification to the First Dissolution

The first Yugoslav state – the Kingdom of the Serbs, Croats, and Slovenes (Kingdom of SCS) – emerged in the aftermath of World War I. The unification took place on December 1, 1918. This historical juncture emerged as a culmination of intensive diplomatic endeavors during the war.¹⁴¹ The representatives of all parties, and primarily the Serbian government and the

¹⁴¹ For the general overview see: B. PETRANOVIĆ, *Istoria Jugoslavije*, Vol. 1, Nolit, 1988, pp. 13-47, M-J. CALIC, *History Of Yugoslavia*, Purdue University, 2019, pp. 71-105; J. R. LAMPE, *Yugoslavia as a History. Twice There Was a Country*, Cambridge University Press, 2000, pp. 101-129; I. PELLICCIARI, *Tre nazioni, una costituzione. Storia costituzionale del Regno dei Serbi, Croati e Sloveni (1917-1921)*, Rubbettino, 2004; S. P. RAMET, *The Three Yugoslavias: State-Building and Legitimation, 1918-2005*, Indiana: Indiana University Press, 2006, pp. 31-40.

representatives of the South Slavs from Austro-Hungary in exile, gathered into an informal body, the Yugoslav Committee, displayed a willingness to form the common state, but from the very beginning had a hard time attempting to bridge conflicting views on the impending constitutional framework.¹⁴²

The Kingdom of SCS brought together a multitude of ethnicities, predominantly South Slavs, who had never before lived within a common state. Furthermore, these ethnic groups had by that time reached mutually distinct “stages” of ethnic, cultural, economic, and political integration.¹⁴³ In other words, they were not integrated to the nearly similar levels when it comes to for instance, national consciousness, literacy of the population, the existence of the standardized language, existence of the national state, stages of the economic development. In short, the whole variety of cultural, social and economic frameworks coexisted within Yugoslavia in 1918.

The geographical area that would eventually encompass the Yugoslav state represented, in terms of ethnic, cultural, religious, economic, and political attributes, one of the most fragmented regions in Europe. The dominant discourse of the era posited that Serbs, Croats, and Slovenes, though distinct in identity, constituted merely the three tribes of a singular three-named people, using the terminology of that time. Concurrently, groups such as Bosnian Muslims (Bosniaks), Montenegrins, and Macedonians were not acknowledged by other, neighbouring Slavic peoples as separate ethnicities or “tribes”. All of them were, however, the South Slavs. Importantly, the newly established state also had large minority populations, with the largest groups including Albanians residing in the southern regions, as well as German and Hungarian communities in the north, and Italians in the southwestern areas.¹⁴⁴

The prevailing South Slavic majority was itself distinctly divided by religious diversity. Orthodox Christianity was adopted by the Serbs, Macedonians, and Montenegrins. Notably, Macedonian and Montenegrin identities have often been regarded predominantly as regional distinctions within a population purportedly of Serbian origin. Indeed, there was a tendency to

¹⁴² I. BANAC, *The National Question in Yugoslavia. Origins, History, Politics*, Cornell University Press, pp. 115-140; D. DJOKIĆ, *Nikola Pašić and Ante Trumbić: The Kingdom of Serbs, Croats and Slovenes*, Haus Publishing, 2010.

¹⁴³ I. BANAC, *National Question in Yugoslavia, cit.*, pp. 21-115.

¹⁴⁴ Z. JANJETOVIĆ, *Deca careva, pastorčad kraljeva: nacionalne manjine u Jugoslaviji 1918-1941*, Institut za noviju istoriju Srbije, 2005.

consider all Orthodox Christians in the Balkans, apart from Bulgarians and Greeks, as Serbs.¹⁴⁵ Roman Catholicism characterized Croats and Slovenes, although certain Catholics in Croatia were declaring themselves as Serbs.¹⁴⁶ Islam was predominantly practiced by the Bosniaks, contributing to a more diverse ethno-religious landscape of the population, but not being acknowledged as a separate ethnicity, Bosniaks were often perceived either as Serbs or Croats. While a portion of this group self-identified as Serbs or Croats, many felt they possessed a unique identity. However, it was rare for them to be explicitly named as ‘Bosniaks’ during that period. On a broader scale, it is fairly accurate that one’s religious affiliation often defined the ethnic belonging.¹⁴⁷

The formation of a new state represented an attempt to unify distinct entities: the Kingdom of Serbia, the Kingdom of Montenegro, and the South Slavic regions previously under Austro-Hungarian rule, and from November 1918 united into short-lived independent State of the Slovenes, Croats and Serbs. Each of these entities had their own unique territories, populations, cultures, and traditions. Furthermore, the three constituent elements – Serbia, Montenegro, and the South Slavic regions – were far from uniform within themselves. Consider Serbia and Montenegro: a few years prior to unification in 1912 and 1913, both kingdoms expanded their borders into regions that had been under Ottoman Empire dominion for centuries. This territorial expansion, occurring on the brink of World War I, allowed little time for seamless integration. Serbia, once a predominantly homogeneous nation, acquired a significant number of Albanians and Turks, a population that was neither of Serb origin nor Orthodox – a novel experience for a country accustomed to ethnic and religious homogeneity.¹⁴⁸ Also Montenegro, despite its small size, exhibited extraordinary ethnic, cultural, and legal complexity.¹⁴⁹ Finally, the South Slavic peoples residing until the end of WWI under the Austro-Hungarian rule (Slovenes, Croats, Bosniaks, and a significant portion of Serbs) were partitioned within the framework of the Dual Monarchy into “eleven provincial administrations and thirteen legislatures.”¹⁵⁰

¹⁴⁵ V. PERICA, *Balkan Idols: Religion and Nationalism in Yugoslav States*, Oxford University Press, 2002, pp. 3-17 et passim.

¹⁴⁶ I. BANAC, *Vjersko pravilo i dubrovačka iznimka*, in ID, *Raspad Jugoslavije*, Durieux, 2001, pp. 67-115.

¹⁴⁷ M. EKMEČIĆ, *Stvaranje Jugoslavije 1790-1918*, Vol. I, Prosveta, 1989, pp. 15-17.

¹⁴⁸ LJ. DIMIĆ, *Istorija srpske državnosti III. Srbi i Jugoslavija*, Srpska akademija nauka i umetnosti, 2001, pp. 12-18.

¹⁴⁹ Ž. ANDRIJAŠEVIĆ, *Istorija Crne Gore*, Vukotić media, 2021, pp. 123-135.

¹⁵⁰ D. JANKOVIĆ, *Jugoslovensko pitanje i Krfska deklaracija*. Savremena administracija, 1967, p. 482.

The fledgling Yugoslav state grappled with considerable economic, cultural, and societal disparities. For instance, a stark contrast in illiteracy rates existed, with the north (Slovenia) reporting around 9%, while the south (Kosovo) experienced an alarming rate surpassing 80%. Socio-economic relations were equally varied encompassing large capitalist enterprises alongside remnants of feudal systems (Ottoman and Central-European).¹⁵¹ The agricultural landscape further underscored diversity, earning the Kingdom the moniker of a “museum of agrarian structures.”¹⁵² The state officials encountered considerable difficulty, and ultimately failed, in their attempt to comprehensively document the multitude of land property relations existing within the state.¹⁵³

Throughout its brief existence spanning 23 years, the first Yugoslav state experienced two major constitutional milestones. The first Constitution of the Kingdom of Serbs, Croats, and Slovenes, establishing a parliamentary system and unitary, centralist state structure, was ratified on June 28, 1921. This constitution was adopted in the Constituent Assembly, which convened in November 1920, nearly two years post-unification. It was drafted by a Constitutional Committee elected by the Constituent Assembly. Although there was an initial political agreement to adopt the constitution by a two-thirds majority, it was ultimately ratified by a simple majority: 223 of the 419 representatives in the Constituent Assembly voted in favor. The centralist “hardliners” that voted in favor comprised around 190 representatives, while the remaining votes in favor was casted by some of fervent supporters of anti-centralist arrangement, who ultimately acquiesced. These groups and individuals were willing to compromise their own principles in favor of striking a deal with the government.¹⁵⁴

¹⁵¹ LJ. DIMIĆ, *Kulturna politika Kraljevine Jugoslavije*, Vol. I, Stubovi kulture, pp. 19-27.

¹⁵² D. WARRINER, *Urban Thinkers and Paesant Policy in Yugoslavia, 1918-1959*, in *The Slavonic and East European Review*, 38, 1959, p. 60.

¹⁵³ *Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, IV., Debata u pojedinostima o Nacrtu Ustava i o amandmanima, Sednica XLV. do XLV., XLV. sednica – 23. maj 1921*, Beograd, Štamparija Narodna samouprava, 1921, p. 85.

¹⁵⁴ It is worth mentioning that neither had a clear majority, not to mention the qualified one. Out of 419 representatives, centralist “hardliners” amounted up to 190. Representatives of the Croatian Peasant Party (50) boycoted the Constituent Assembly, but the party clearly took federalist positions. Communists with 58 representatives were also decisively against any proposition made by the government, including the draft of the Constitution. Slovenian and Croatian representatives who participated in the sessions of the Constituent Assembly (around 35 representatives) were the anticentralist “hardliners”, occasionally joined by the representatives of the Muslims from Bosnia (24 representatives). The rest were the representatives that covered the whole spectrum of other political beliefs. S. JOVANOVIĆ, *Ustavno pravo kraljevine Srba Hrvata i Slovenaca*, Izdavačka knjižarnica Gece Kona, 1924, pp. 22-40; A. FIRA, *Vidovdanski ustav*, Srpska akademija nauka i umetnosti, 2011, pp. 90-96; I. PELLICCIARI, *Tre nazioni, una costituzione. Storia costituzionale del Regno dei Serbi, Croati e Sloveni (1917-1921)*, Rubbettino, 2004.

The Constitution of the Kingdom of SCS was secured by a narrow majority primarily through the representatives of the Serbian political parties within the Constituent Assembly. While interpretations may vary, it is generally accurate to affirm that only Serbian political parties leaned significantly toward unitarianism and centralization. Consequently, Serbs held substantial sway, exercising dominance within the political institutions and military apparatus.¹⁵⁵ In contrast, political parties representing other ethnic groups, particularly the Croats and Slovenes, alongside various minority factions, were inclined towards advocating for a composite state model.¹⁵⁶

From 1929 to 1931, King Alexander, in reaction to a political crisis, put the Constitution on hold and established a personal regime, essentially a dictatorship. He renamed the state to the Kingdom of Yugoslavia, a title that had been an unofficial alternative name for the state since its creation. The state was administratively organized into nine administrative units called *banovine* (sg. *banovina*), carefully disregarding historical regions and provinces when delineating their borders.¹⁵⁷

After a period of ruling without a constitution, in 1931, King Alexander granted a new Constitution, transitioning the state from an absolute into a constitutional monarchy, though not a parliamentary one. The 1931 Constitution essentially served to legalize the existing monarchist dictatorship, effectively continuing the monarch's personal regime under the guise of constitutional legitimacy.¹⁵⁸

In October 1934, Croatian and Macedonian nationalist organizations orchestrated the assassination of King Alexander in Marseilles during his state visit to France.¹⁵⁹ This event spurred renewed calls for state reorganization, yet the absence of an effective political authority to

¹⁵⁵ For instance, out of the 37 governments formed and disbanded from 1919 until 1941, only one non-Serb politician was entrusted with presidency of the government. R. LJUŠIĆ, LJ. DIMIĆ, *Vlade Srbije 1804–2004*, Beograd, Zavod za udžbenike, 2004.

¹⁵⁶ C. A. NIELSEN, *Making Yugoslavs: Identity in King Aleksandar's Yugoslavia*, University of Toronto Press, 2014; D. ĐOKIĆ, *(Dis)integrating Yugoslavia. King Alexander and Interwar Yugoslavism*, in ID, *Yugoslavism: Histories of a Failed Idea, 1918-1992*, The University of Wisconsin Press, 2003, pp. 136-157; I. DOBRIVOJEVIĆ TOMIĆ, *Državna represija u doba diktature kralja Aleksandra: 1929-1935*, Institut za savremenu istoriju, 2006.

¹⁵⁷ M. PAVLOVIĆ, *Jugoslovenska Kraljevina: prva evropska regionalna država*, in *Zbornik Matice srpske za društvene nauke*, 2012, pp. 503-521.

¹⁵⁸ A. BAČIĆ, *O problematici podjele vlasti pred i nakon donošenja Ustava Kraljevine Jugoslavije iz 1931. godine*, in *Zakonitost: časopis za pravnu teoriju i praksu*, 44(3), 1990, pp. 435-452; D. JEVTIĆ, *Vidovdanski i Oktroisani ustav od 3. IX 1931. godine: sličnosti i razlike*, in *Anali Pravnog fakulteta u Beogradu: tromesečni časopis za pravne i društvene nauke*, 36(1-2), 1988, pp. 107-126.

¹⁵⁹ B. GLIGORIJEVIĆ, *Kralj Aleksandar Karađorđević*, Vol. III, Zavod za udžbenika i nastavna sredstva, 2010, pp. 289-219.

implement constitutional reforms resulted in prolonged uncertainty. On the brink of World War II in August 1939 the Serbian and Croatian political representatives reached an *Agreement* that established an autonomous Croat unit within the state – virtually a *corpus separatum* known as *Banovina Hrvatska* (the Vice-Realm of Croatia).¹⁶⁰ Such a significant constitutional transformation, which virtually turned Yugoslavia into an asymmetric federation, was instituted through a governmental directive, given the absence of other constitutional authorities to legitimize the new order. Namely, the National Assembly was dissolved in 1939 *sine die* without having granted the required approval for the new arrangement, which was a constitutional prerequisite.¹⁶¹ Less than two years following this *Agreement*, Yugoslavia succumbed to disintegration under a combined onslaught by the Axis powers, their allies, and internal collaborationist organizations.

2. 2. *Historical Narratives Behind State and Nation Building in Monarchist Constitutions*

The impact of historical narratives on the 1921 Constitution of the Kingdom of SCS is evident, firstly, in the choice of its adoption and proclamation date. This date, crucial in Serbian historical consciousness, also resonated with other Yugoslav nations, emphasizing its importance and collective significance. Secondly, the historical narratives are manifest in several provisions that promoted and reinforced the ethnic unity (“narodno jedinstvo”) of the Serbs, Croats, and Slovenes, who were, at that time, the only three “recognized” Yugoslav “tribes.” This emphasis underscores the state’s aim to cultivate a collective identity from the top down and to take an active role in nation-building. As a result, the concept of ethnic oneness became a constitutional principle *stricto sensu*, evident in several provisions of the Constitution.

According to the 1921 Constitution, upon ascending the throne, the King would take an oath committing to uphold “ethnic oneness” of the Serbs, Croats and Slovenes.¹⁶² Furthermore, the Constitution, in its quest for unity, designated Serbo-Croat-Slovenian as one single language

¹⁶⁰ B. PETRANOVIĆ, *Nacionalni odnosi u Kraljevini Jugoslaviji i stvaranje banovine Hrvatske*, in *Vojno-istorijski glasnik*, 42(2), 1991, pp. 237-254.

¹⁶¹ M. STEFANOVSki, *Pitanje pravne valjanosti Uredbe o Banovini Hrvatskoj*, in *Pravna i politička misao Mihaila Ilića: saopštenja sa naučnog skupa održanog 10. XI 1994. godine*, 1994, pp. 306-318.

¹⁶² *Ustav Kraljevine Srba Hrvata i Slovenaca*, *Službene novine, Kraljevine Srba, Hrvata i Slovenaca*, 142a/21, 28. jun 1921.

and made it the official language of the state,¹⁶³ despite considerable linguistic variances between Serbo-Croat and Slovenian. The approach extended further to the recognition of a unified “Serbo-Croat-Slovenian ethnicity” (*narodnost*).¹⁶⁴ The 1921 Constitution also mandated educational policies aimed at nurturing a sense of “ethnic oneness and religious tolerance”¹⁶⁵ among the youth. Finally, later on, the 1931 Constitution, repeating many of the mentioned provisions from its’ predecessor, designated the King as the “custodian of ethnic oneness”¹⁶⁶, which was a novelty that further emphasized the narrative about the ethnic oneness.¹⁶⁷

First, I will discuss the date of the Constitution’s promulgation and its unofficial name that originates from that date. The 1921 Constitution is often termed the St. Vitus Day Constitution (*Vidovdanski ustav*) because it was adopted and promulgated on St. Vitus Day. The choice of this particular date holds significant historical symbolism and, by its very occurrence, links the Constitution with one of the most powerful Serbian historical narratives. Namely, on June 28 (St. Vitus Day known as *Vidovdan* in Serbian) 1389, the renowned Battle of Kosovo took place. The battle pitted the remnants of the Serbian medieval empire against the invading Ottomans. Soon after, it became widely associated with ending the independence of the Serbian medieval state and falling into “five hundred years of slavery under the Turks”, according to the prevalent and potent historical narrative ingrained in Serbian popular culture. Since the emergence of the modern Serbian state in the 19th century, this event has consistently remained one of the most frequently invoked historical topics in Serbian political discourse.¹⁶⁸

Among the multifaceted layers of the myth derived from this historical event, the narrative of disunity among Serbian medieval lords, which purportedly contributed to the downfall of the Serbian medieval empire, stands out as one of the most prominent. The St. Vitus Day Constitution of 1921 was anticipated to carry symbolic significance in rectifying the repercussions of the fourteenth-century catastrophe and opening a new era of progress and prosperity.

¹⁶³ *Ibid.*, Art. 3.

¹⁶⁴ *Ibid.* Art. 19.

¹⁶⁵ *Ibid.*, Art 16.

¹⁶⁶ *Ustav Kraljevine Jugoslavije*, in *Službene novine Kraljevine Jugoslavije*, 200/31.

¹⁶⁷ See: C. NIELSEN, *Making Yugoslavs*, *cit.*, pp. 137-207.

¹⁶⁸ See: I. ČOLOVIĆ, *Smrt na Kosovu polju*, Beograd, Biblioteka XX vek, 2017, pp. 9-32.

The association of the constitution with Vidovdan (St. Vitus Day) was indeed deliberate, albeit initially envisioned in a somewhat different and, arguably, more grandiose manner. Prime Minister Nikola Pašić urged the president of the Constituent Assembly to adopt the Constitution by June 25th.¹⁶⁹ He intended to proclaim the Constitution in Kosovo, where preparations were underway. The leading daily newspaper, *Politika*, commented on this, stating,

“If Mr. Pašić’s ingenious and beautiful idea is realized, the ceremony will attain its full state-political and historical significance. Thus, on St. Vitus Day in Kosovo, foundations will again be laid for what was so tragically destroyed there on St. Vitus Day in 1389.”¹⁷⁰

Just ten days before this date, there was still a belief that the Constitution would be proclaimed in Kosovo on June 28th, as reported by the pro-government newspaper *Zastava*, under the headline *The Constitution will be proclaimed in Kosovo*:

“It is expected that the constitution will be finally adopted by the assembly by the end of this month. If the constitution is adopted by then, the Prime Minister Mr. Nikola Pašić intends to organize grand festivities in the Kosovo Field, which will be attended by Regent Alexander with the entire government, deputies of the constituent assembly, and representatives of foreign states. On Vidovdan, 28th of this month, Regent Alexander will ceremoniously sign the constitution.”¹⁷¹

However, instead of a pompous gathering in Kosovo, the Constitution was only adopted on the day of the planned festivities and was proclaimed on the same day, albeit not in Kosovo as initially planned but in Belgrade. Yet, this way or another, the Constitution has a strong legitimizing appeal.

The promulgation date, coupled with the name of the Constitution created an unmistakable and profound connection with the most notorious historical narrative in Serbian popular and political culture. Therefore, the implicit association, achieved *ex silentio*, through the quiet selection of a specific day for promulgation and the title of the Constitution, resonates with exceptional significance. For example, the newspaper *Samouprava*, the Radical party publication (one of the most influential political organizations of that era that supported the government and

¹⁶⁹ *Politika*, No. 4719, 13 June 1921, p. 3

¹⁷⁰ *Politika*, No. 4723, 17 June 1921, p. 2.

¹⁷¹ *Zastava*, No. 136, 18 June 1921, p. 2

endorsed the new Constitution), featured the following slogan: “This year’s St. Vitus Day has restored our Empire.”¹⁷² But this *renovatio imperii* was supposed to be not only the Serbian but also the Yugoslav endeavor. The attempt was made to “yugoslavize” the date, by declaring *Vidovdan* as a national, state holiday. Worth mentioning is that this national holiday was one among three celebrated in the whole state, the other two were the Unification day, and King’s birthday.)

By choosing St. Vitus Day, a date rich with cultural and emotional weight, the government wanted to amplify its significance and enhance the somewhat fragile legitimacy of the 1921 Constitution. This strategy found resonance even among those who harbored dissenting opinions. Within the Constituent Assembly, one of the MPs highlighted that

“St. Vitus Day was a tragic day in our national history, and I now tell you that tomorrow’s day for our young state may be just as fateful and tragic as the one from five hundred or more years ago.”¹⁷³

However, the interplay between constitution-making and historical references extends beyond this point. Throughout the process of crafting and refining the Constitution, a diverse array of historical narratives was strategically invoked to lend credence to specific constitutional solutions, including the one related to the most challenging question – the territorial organization of the state, which will be addressed in Chapter III.

Another solution, rooted in historical arguments, also sheds light on the utilization of the Serbian historical heritage within the broader Yugoslav context. Important historical narrative of the time suggested that the South Slavs, despite their differences, were virtually one ethnic group. Their alleged long-sought political unity was frequently disrupted by historical challenges and foreign interference. Nevertheless, the significance of St. Vitus Day was also considered part of their national heritage. This idea was popularized by Ivan Meštrović, a highly respected Croatian

¹⁷² *Samouprava*, 29. June 1921, p. 3.

¹⁷³ *LXI redovni sastanak Ustavotvorne Skupštine Kraljevine Srba, Hrvata i Slovenaca držan držan 27. juna 1921 godine u Beogradu*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca*, Br. 54, p. 30.

sculptor. He planned to build the Vidovdan Temple, turning a Serbian historical narrative into a shared Yugoslav legacy.¹⁷⁴

The idea of the ethnic oneness of the South Slavs was the prevailing “grand (historical) narrative, and propagated the belief that the South Slavs constituted a fundamentally homogeneous group, yet tragically divided by historical circumstances into several “tribes” marked by cultural, religious, and other significant differences. This notion had been reiterated in diplomatic exchanges, scholarly contributions, and public discourse, including political debates encountered almost no opposition from either side and was repeatedly substantiated by an abundance of historical scholarly works, which allegedly proved it. The idea was also known as “unitarianism,” epitomized in the slogan “three tribes of a single nation.”¹⁷⁵ Intellectuals, most notably historians, played a significant role in shaping the narrative.¹⁷⁶ This principle also played a pivotal role within the context of the Wilsonian self-determination concept: it was clear that presenting a unified, singular identity would likely increase the chances of international support for, or acceptance of, the unification of the South Slavs.¹⁷⁷

Against that background, Svetozar Pribićević, a staunch advocate of the concept and a central figure in the Yugoslav unification of 1918, as the Minister of Education in the government that proposed the draft Constitution to the Constituent Assembly, was unwavering in his stance. He aligned with the prevailing and, by then, self-evident trend, affirming that

¹⁷⁴ Meštrović’s Vidovdan Temple, a monumental architectural project envisioned by the renowned sculptor, stood as a significant symbol of Yugoslav unification and the burgeoning state identity. Conceived originally in the early 1910s and further developed in the post-World War I era, this temple was dedicated to the heroes of the Battle of Kosovo and presented it as symbolically significant for all South Slavs. Meštrović’s design aimed to transcend ethnic and religious divides, promoting a shared heritage and collective identity among the diverse peoples of the newly formed Yugoslavia. The temple’s grandeur and its inspiration by this historical narrative were intended to foster a sense of unity and national pride across different ethnic groups, thus supporting the political ideals of Yugoslav unification. Nevertheless, this monumental architectural masterpiece was never fully realized. A. IGNJATOVIĆ, *Jugoslovenstvo u arhitekturi 1904-1941*, Građevinački knjiga, 2007, pp. 43-60.

¹⁷⁵ As previously explained, the notion of the “tribe”, implying the historical accomplishment of ethnic integration was limited to Serbs, Croats, and Slovenes, while the Macedonians, Montenegrins, and Bosniaks were not accorded the same recognition as distinct historical “tribes”. They were rather perceived as subsumed within the broader categories of Serbs and, to some extent, Croats (in the case of Bosniaks).

¹⁷⁶ N. RADOJIČIĆ, *Jugoslovenska ideja u srpskoj i hrvatskoj istoriografiji*, in *Njiva* 1(1-9), 1921, pp. 9-36; V. POPOVIĆ, *Istorija Jugoslovena*, Komisiona naklada J. Strudničke, 1920; A. MELIK, *Zgodovina Srbov, Hrvatov in Slovencev*, 1-2, 1919-1920.

¹⁷⁷ On Yugoslav idea and Yugoslavism and ideology see: D. ROKSANDIĆ, *Yugoslavism before Yugoslavia*, in L. PEROVIĆ et al. (Eds.), *Yugoslavia from a Historical Perspective*, Helsinki Committee for Human Rights in Serbia, 2017, pp. 29-64; D. ĐOKIĆ (Ed.), *Yugoslavism: Histories of a Failed Idea, 1918-1992*, The University of Wisconsin Press, 2003; B. JEZRNIK, *Yugoslavia Without Yugoslavs*, Berghahn Books, 2023.

“[i]t can be rightly said that history has granted legitimacy to those who have taken the standpoint that Serbs, Croats, and Slovenes are one people. *History has affirmed the correctness of this belief.*”¹⁷⁸

Pribićević’s statement encapsulated the spirit of Yugoslavism, which sought to transcend the distinct national identities of Serbs, Croats, and Slovenes in favor of a unified South Slavic nation. This belief was instrumental in the formation of the Kingdom of the Serbs, Croats, and Slovenes in 1918, later renamed Yugoslavia, and was a fundamental aspect of the narrative used to justify the creation of the new state. His statement underscores the prevailing sentiment that historical ties and shared cultural and linguistic heritage provide a legitimate basis for the unification of these groups. This perspective was not merely a political stance but was deeply rooted in the interpretation of history at that time, where the interconnected past of these peoples was seen as a testament to their inherent unity. The narrative of a shared history and common destiny was instrumental in crafting a collective identity that transcended regional and ethnic differences.

The drafting of the constitution for the nascent state necessitated a foundational principle to legitimize and maintain the unification of disparate regions and peoples into a singular national identity. Pribićević’s succinct and self-evident assertion that the South Slavic “tribes” formed one people was pivotal in the Yugoslav nation-building process. This concept, steeped in historical legitimacy, served as a keystone in crafting the constitution, striving to weave diverse national ambitions into a unified political and constitutional fabric. This narrative transcended mere political ideology, becoming a strategic instrument in the intricate journey of nation-building and constitution creation following the unification of 1918.

However, Pribićević’s stance and the broader ideology it represented were not without contention. The idea of a unified South Slavic people, while appealing in its simplicity and its promise of unity, often clashed with the realities on the ground, where distinct national identities and historical narratives persisted. The tensions between the overarching concept of a shared Yugoslav identity and the individual national identities of Serbs, Croats, and Slovenes, but also

¹⁷⁸ XXIX redovni sastanak Ustavotvorne Skupštine Kraljevine Srba, Hrvata i Slovenaca držan 12. maja 1921. godine u Beogradu., in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, Br. 22, p. 5.

other South Slavic peoples, were a recurring theme throughout the existence of Yugoslavia. These tensions underscored the complexity of nation-building in a region marked by diverse histories, cultures, and religions and would eventually contribute to the unraveling of the Yugoslav state in the late 20th century.

Pribićević's firm proclamation of a unified South Slavic identity stands as a significant reflection of the ambitions inherent in forging a cohesive national identity within the Balkans' diverse ethnic context. However, the official historical narrative of the time was more nuanced than a straightforward concept of ethnic oneness. The essence of the narrative is encapsulated by another then-leading politician and intellectual, Momčilo Ivanić. His words convey the sentiments and ideas that were widely shared among many of his contemporaries:

“Gentlemen, in its tumultuous history, our people have faced numerous fateful moments[...] It has been more than twelve centuries since *our people* settled in these regions, and *for over twelve centuries, influenced by invasions from the west and east, our people have fought for their survival and preservation*. Finally, after enormous sacrifices in blood and material goods, *our people have succeeded in creating their free and united national state*. And for that, when a new Constitution is to be adopted, we surely have no greater and more serious task than to secure such a great historical creation with a new Constitution. The *long centuries of our separate historical life and the various influences of foreign invasions have led to the result that our people, even though they are one and the same, of the same blood and language, being divided into three branches, with three different names, almost amounting to separate national consciousnesses, to which we must also add the division by religion*. [emphasis mine] This, gentlemen, shows us how serious our task is today, when such a burden of centuries has been placed upon us, and when we have, just as we have won in the long battles against our external enemies, now to achieve the greatest victory: to win over ourselves.¹⁷⁹

¹⁷⁹ XXIII redovni sastanak Ustavotvorne Skupštine Kraljevine Srba, Hrvata i Slovenaca držan držan 23. aprila 1921. godine u Beogradu, in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, Br. 16, p. 28.

When the moment for the adoption of the Constitution arrived, the minister for the Constituent Assembly, Marko Trifković could merge both narratives about Vidovdan and about national unity:

the great work of national liberation that began in Orašac in 1804, we conclude today on the great day, Vidovdan, a day of remembrance for our people of the terrible demise but also of the heroic struggle of 1389. Thanks to the enormous sacrifices and great efforts of our people, the work of our national liberation and unification is completed. This completed work of our national liberation and unification gets its successful political, cultural, and economic development in this Constitution, a permanent and reliable foundation.¹⁸⁰

During less than a decade of tumultuous political life, the trajectory of this country, until its eventual dissolution in 1941 due to the Axis attack, was primarily marked by the persistent debate surrounding its internal structure, i.e. over the “national question”.¹⁸¹ Obviously, the idea of ethnic oneness was all but universally accepted. The state’s political landscape bore the distinct imprint of ethno-national divisions, despite proclaimed unity and constitutional design that supported it. Notable roles were played by representatives of the Serbian, Croat, Slovene, and Bosniak communities. In contrast, Macedonians and Montenegrins lacked distinct political representation and were often subsumed under the umbrella of Serbs, engaging in political parties as members and voters. They all together constituted the officially recognized political entity referred to as the Serbo-Croat-Slovene (and from 1929 – the Yugoslav) nation. Even the language utilized within the Kingdom was identified as Serbo-Croat-Slovenian.¹⁸² National minorities, such as Albanians, Germans, Hungarians, and Italians, enjoyed certain political rights but were frequently deemed unreliable in terms of their loyalty to the state.¹⁸³

¹⁸⁰ *XLIX redovni sastanak Ustavotvorne Skupštine Kraljevine Srba, Hrvata i Slovenaca držan držan 28. juna. godine u Beogradu*, in Ibidem, Br. 55, p. 1.

¹⁸¹ D. DJOKIĆ, *Elusive Compromise: A History of Interwar Yugoslavia*, Columbia University Press, 2007; J. BAKIĆ, *Ideologije jugoslovenstva između srpskog i hrvatskog nacionalizma*, Gradska biblioteka Zrenjanin, 2004;

¹⁸² While Serbian and Croatian exhibit a remarkable degree of similarity, often regarded as either a single language or the two most closely related languages in Europe, Slovenian stands apart from both, displaying notable linguistic distinctions.

¹⁸³ Z. JANJETOVIĆ, *Deca careva, pastorčad kraljeva: nacionalne manjine u Jugoslaviji: 1918-1941*, Institut za noviju istoriju Srbije, 2005.

The 1931 Constitution emphasized a centralized approach to national identity, focusing on broad South Slavic unity but failing to acknowledge the nuanced cultural and ethnic diversities within the South Slavic groups. This approach mirrored the dominant ideological trends of the time. The constitution-making process and the historical narrative it fostered were notably reflected in the King's address at the first session of the new National Assembly in January 1932, which provided insights into his perspective and intentions as the architect of the constitution:

“Over the course of twelve centuries, our history has unfolded amidst struggles and supra-human endeavors to preserve our tribal individualities. Powerful nations and attractive civilizations have clashed with our fragmented tribes, who were longing to shape themselves into states. However, throughout these past centuries—something we can take pride in—the notion of our inter-tribal fraternity within the Yugoslav community was never extinguished. It perpetually resided in the ethical components of Yugoslav unity and the visionary spirit of our nation's bravest sons. Even in times when each of our tribes was compelled to fight individually for its survival! Ultimately, the ethnic truth of Yugoslav thought surmounted all barriers raised over centuries, and in the concluding period of our martyrdom, in the bloody national revolution and world war, it culminated in the creation of an indivisible Yugoslav Kingdom, with a single nation within a single state.”¹⁸⁴

During the constitutional debates, the historical narrative clearly highlighted ethnic oneness as a fundamental value, articulated through the new Constitution, portraying it as a historically long-sought-after goal. It romanticized a pan-Yugoslav history to reinforce a unified, centralized state. This narrative idealized an “inter-tribal fraternity” that seemed more of an aspiration than a reflection of actual history, as was argued. It often overlooked deep-seated divisions, ethnic tensions, and conflicts that were well-recorded in the region. Initially a nation-building tool, this narrative of ethnic unity greatly simplified the complex history and culture. This simplification contributed to nationalistic frustrations, especially evident during World War II and subsequent occupations.

¹⁸⁴ *I redovni sastanak Narodnog predstavništva Kraljevine Jugoslavije (Senata i Skupštine) držan 18 januara 1932 godine*, in *Stenografske beleške Narodnog predstavništva Kraljevine Jugoslavije*, Beograd, 1932, 2.

3. Socialist Constitutional Developments

3.1. From the Rebirth of Yugoslavia to Its Final Demise

In the course of World War II, Yugoslavia went down a difficult path of partitioning among the Axis powers and their allies, the establishment of collaborationist puppet regimes, internal armed conflict, a war of liberation, and a socialist revolution. The country found itself divided among Germany, Italy, Albania, and Bulgaria, subject to retribution by the occupying forces.¹⁸⁵

Simultaneously, Yugoslavia faced internal discord characterized by ethnic, religious, and ideological divisions, creating an atmosphere akin to *bellum omnium contra omnes*. On the eve of WWII, nationalist organizations emerged in all Yugoslav ethnic groups. Characterized by their exclusivist and chauvinistic ideologies, they not only collaborated with the occupying forces but also engaged in interethnic conflicts, identified the entire ethnic groups as adversaries to their nationalistic objectives. Especially nefarious were the crimes of the Croat nationalists called *ustāše* against Serbs and of the Serbian nationalists called *četnici* against Bosniaks.¹⁸⁶

In stark contrast, the reconciliation process among the Yugoslav peoples post-World War II was rooted in a fundamentally different experience: the united struggle under the auspices of the Yugoslav communists. This movement successfully mobilized members from all Yugoslav ethnic groups to join the ranks of the People's Liberation Movement (the partisans) to resist both foreign occupation and domestic quislings. The People's Liberation Struggle, as it was argued, was of paramount importance in "forging the brotherhood and unity" of the Yugoslav peoples, a unification that stood in sharp relief to the divisive and destructive actions of the aforementioned nationalist groups.¹⁸⁷

Amidst the war turmoil, the Communist-led Partisans ultimately secured victory in the war. Their resolute efforts in organizing and leading a successful resistance movement positioned them

¹⁸⁵ F. ČULINOVIĆ, *Okupatorska podjela Jugoslavije*, Vojnoizdavački zavod, 1970; S. PAVLOWITCH, *Hitler's New Disorder: The Second World War in Yugoslavia*, Oxford University Press, 2020.

¹⁸⁶ J. TOMASEVICH, *War and Revolution in Yugoslavia, 1941-1945: Occupation and Collaboration*, Stanford University Press, 2002.

¹⁸⁷ D. ROKSANDIĆ, *Bratstvo i jedinstvo u političkom govoru jugoslovenskih komunista 1919-1945. godine*, in O. MANOJLOVIĆ-PINTAR (Ed.), *Tito - viđenja i tumačenja: zbornik radova*, Institut za noviju istoriju Srbije: Arhiv Jugoslavije, 2011, pp. 28-42.

as the driving force behind the country's liberation struggle. The culmination of their efforts not only thwarted the occupiers but also set the stage for the socialist revolution that would reshape the country's political and social landscape. As a matter of fact, even during the war, Yugoslavia also underwent an internal transformation under the control of Communist-led political forces: despite the fact that the exiled government represented Yugoslavia abroad, the Communists effectively took over the country. The Communist Party, led by Marshal Josip Broz Tito, the Party secretary and commander in chief of the Partisans, successfully organized the struggle for national liberation and political and social revolution. This eventually resulted in the establishment of the one-party system and the socialist organization of the economy and society in post-war Yugoslavia.¹⁸⁸

Beginning with the initial days of the anti-fascist uprising in Yugoslavia in 1941, the Communists effectively established their authority through the mechanism of "people's liberation committees" (*narodnooslobodilački odbori*) in the liberated regions of the country. These committees constituted the foundational units of the power structure devised by the Communists that entirely replaced the organs of the former state. While the committees included representatives from various political factions willing to partake, they remained under the control of the Communist Party.¹⁸⁹

Emerging directly from this framework, the provisional representative body known as the Anti-fascist Council of the People's Liberation of Yugoslavia (*Antifašističko veće narodnog oslobođenja Jugoslavije* – hereinafter AVNOJ) was convened in 1942 for its inaugural session, and later again in November 1945 for its second gathering. The final, third session was held after the war, in a liberated country in 1945, with the inclusion of "uncompromised elements" elected in the last pre-war National Assembly of the Kingdom of Yugoslavia in 1938. At its 1942 initial session, AVNOJ elected an Executive Committee, which was later renamed and became the National Committee of the People's Liberation during the second session in November 1943. These committees functioned, successively, as provisional governments. As a result, the

¹⁸⁸ B. PETRANOVIĆ, *AVNOJ - revolucionarna smena vlasti: 1942-1945*, Nolit, 1976; ID, *AVNOJ: il cambio rivoluzionario del potere*, in *Questioni attuali del socialismo*, 1981, pp. 47-67.

¹⁸⁹ B. PETRANOVIĆ, V. SIMOVIĆ, *Istorija narodne vlasti u Jugoslaviji: (194-1945)*, Savremena administracija, 1979.

fundamental frameworks of the revolutionary state organization were put in place as early as 1942/43.¹⁹⁰

Following the liberation, these provisional representations continued to persist and evolve, especially the people's liberation committees, as local organs.¹⁹¹ The monarchy was definitively abolished in November 1945,¹⁹² and a new constitution was adopted in January 1946.¹⁹³ While Soviet-style socialism was firmly established, the Yugoslav communists' self-confidence sought more innovative approaches, leading to conflicts between Yugoslavia and the USSR. A pivotal turning point occurred in 1948 with the well-known Tito-Stalin split, which severed Yugoslavia's ties with the Soviet bloc.¹⁹⁴ This split posed a significant challenge, compelling the regime to not only seek new Western alliances but also to showcase the viability of its own socialist ideology. (This distinct concept of "Yugoslavia's own way to socialism" directly contributed to the aforementioned rupture between Yugoslavia and the USSR.)

Hence, the initial phase of the Communist regime in Yugoslavia, characterized by an almost "experimental" nature, spanned from 1941 to 1953. Between 1945 and 1953, Yugoslav socialism underwent a series of profound transformations. Policies such as centralized planning, nationalization and etatization, administrative control over the economy, agricultural collectivization, mandatory collection of agricultural products, and other communist-style measures were both introduced and subsequently (in many instances) discarded.¹⁹⁵ These policy shifts constituted significant upheavals within the system. At the same time, from 1949, the concept of self-management or self-government, characterized as Yugoslavia's unique expression of socialism, solidified its position as the definitive orientation and a guiding beacon for the nation's future, but was yet to be extensively designed. However, self-management, as a distinctive

¹⁹⁰ B. PETRANOVIĆ, *Nacionalni komitet oslobođenja Jugoslavije (NKOJ) u oslobođenom Beogradu*, in *Zbornik za istoriju*, 12, 1975, pp. 73-84; ID., *Zapisnici NKOJ-a i Privremene vlade DFJ: 1943-1945*, Memorijalni centar "Josip Broz Tito", 1991.

¹⁹¹ J. ĐORĐEVIĆ, *Naši narodni odbori - lokalni organi državne vlasti socijalističke države*, Udruženje pravnikar Narodne Republike Srbije, 1949.

¹⁹² *Deklaracija o proglašenju Federativne Narodne Republike Jugoslavije*, in *Službeni list FNRJ* 93/25.

¹⁹³ *Ustav Federativne Narodne republike Jugoslavije*, in *Službeni list* 10/46.

¹⁹⁴ The split was caused by more independent course adopted by the CPY towards USSR and resulted in departure of Yugoslavia from the Soviet model, including the constitutional development. See: I. BANAC, *With Stalin Against Tito*, Cornell University Press, 2018; T. JAKOVINA, M. PREVIŠIĆ, *The Tito-Stalin Split: 70 Years After*, University of Zagreb, Faculty of Humanities and Social Sciences, FF press & Ljubljana University Press, Faculty of Arts, 2020.

¹⁹⁵ A. R. JOHNSON, *The Transformation of Communist Ideology: The Yugoslav Case, 1945-1953*, MIT Press, 1972.

feature of socialist Yugoslavia, occupies the most important position in Yugoslav Communist ideology. It was common practice to refer to various phenomena of Yugoslav society as “Yugoslav socialist self-managing.”¹⁹⁶

After the first constitution adopted by the Constituent Assembly in 1946, despite intermittent political disruptions and frequent major constitutional changes (1953 Constitutional law, 1963 Constitution, amendments from 1968, 1969, and 1971, 1974 Constitution and amendments in 1981 and 1988), the self-managing socialist system entered a dynamic yet relatively stable phase. During this period, self-managing socialism underwent a process of continuous improvement, adjustment, and refinement. While the constitutional act of 1953 did not fully introduce self-management, it unequivocally set the country on that path. The Constitution of 1963 was the first to encompass all the principles of self-management and earned the unofficial title of the “charter of self-management.”¹⁹⁷ Finally, the Constitution of 1974 was seen as a faithful reflection of the experience gained up to that point and heightening of the system.

The fundamental conceptual shift brought about by self-management in Yugoslavia revolved around the ownership and managing of the means of production. Instead of the state being the primary owner of the means of production, after the nationalization following WW II, in the new system the “ownership” was vested in society as a whole.¹⁹⁸

The political dimension of the system was managed by “socio-political organizations,” (*društveno-političke organizacije*) including entities such as the League of Communists (former Communist party), Socialist League of the Working People (former Popular Front), and the League of Trade Unions.¹⁹⁹ These organizations played a crucial role in shaping and articulating the political aspects of the self-management system.

¹⁹⁶ For the main outlines see: M. FOLLIS, *Autogestione*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica, cit.*, pp. 74-74; E. KARDELJ, *Self-management and the political system*, *Socialist Thought and Practice*, 1981; M. PEŠAKOVIĆ, *Twenty Years of Self-Management in Yugoslavia*, *Međunarodna politika*, 1970; S. ESTRIN, *Self-Management: Economic Theory and Yugoslav Practice*, Cambridge University Press, 2010; Y. KOYAMA, *Self-managing Socialism: Regime of the 1974 Constitution in Former Yugoslavia*, Faculty of Economics, Niigata University, 1995; G. D. GARSON, *On Democratic Administration and Socialist Self-Management*, Sage Publications, 1974.

¹⁹⁷ B. PETRANOVIĆ, *Istorija Jugoslavije*, Knj, 3, Nolit, 1988, p. 23.

¹⁹⁸ G. ILIĆ-POPOV, *Društvena svojina i njena pravna priroda*, in *Anali Pravnog fakulteta u Beogradu*, 39(5-6), 1991, pp. 793-806; *Društvena svojina* in *Enciklopedija samoupravljanja*, *Savremena administracija*, 1979, pp. 91-92.

¹⁹⁹ All these organizations were enshrined and their tasks more or less clearly articulated in the Constitution of 1963 and 1974.

Expanding beyond labor relations, self-management aimed to infuse elements of direct democracy into governance. This goal was achieved through a delegation system that had an important outcome: virtually every level of government had (at least partially) directly elected representatives known as delegates.²⁰⁰ This commitment to direct democracy resulted in the commune (*opština*) assuming the pivotal role of the foundational unit in political decision-making. Therefore, the system of self-management is often referred to as the “communal system.”²⁰¹

The commune represented the basic “socio-political community”, while higher levels of this structure included provinces (i.e. socialist self-managing democratic socio-political communities), and federal units, and the federal state (i.e. socialist self-managing democratic communities). The “basic organization of associated labor” (*osnovna organizacija udruženog rada*, eg. factory, bookshop, school) was the basic organization in the economy. All these organizations and communities were constitutional categories set in motion on the basis of mutual interrelationships within the constitutional structure.

Late 1980s brought the breakdown of global socialism and Yugoslavia did not remain unaffected. Internal issues accompanied the global crisis of socialism. Amendments adopted in 1988 had hardly even a palliative effect. The answer to the ever growing crisis was sought in drafting a new Yugoslav constitution. Several proposals of the new constitution were in circulation,²⁰² but the collapse of the country in the 1991 put an end to this new, fifth major constitution making endeavor.

Throughout this entire period, power in Yugoslavia was centralized in the hands of the Yugoslav communists, gathered within the Communist Party of Yugoslavia, which in 1952 changed its name to the League of Communists of Yugoslavia. Despite their relatively brief history of hardly 20 years prior to World War II, the Yugoslav Communists immediately after the war took immense pride in their achievements. Functioning as a banned organization from 1921 onwards, the Party followed what the Communists deemed a “righteous path” in addressing the

²⁰⁰ B. SIMENDIĆ, *Samoupravljanje i delegatski sistem*, in D. MILJKOVIĆ, R. BELA, B. SIMENDIĆ, *Delegatsko odlučivanje*, “Veljko Vlahović”, 1979; J. ĐORĐEVIĆ, *Ustavno pravo*, Savremena administracija, 1989, 717-757; I. LOVRIĆ, *Delegatski sistem: od ideje do ostvarenja*, Svjetost, 1977.

²⁰¹ A. ĐURĐEV, *Komunalni sistem i komunalna politika*, Forum, 1987.

²⁰² L. R. BASTA FLAJNER et al., *Ustavna rešenja za Srbiju i Jugoslaviju: predlozi nezavisne grupe eksperata*, Beogradski centar za ljudska prava, 2001.

challenging issue of national equality – a dominant concern during interwar Yugoslavia. Since the 1920s, the Communist Party has held the view that the Yugoslavs were not a single ethnic group but rather historically established distinct nations that could not be artificially reduced to one through any constitutional act or decree. It was on this platform that the Communists effectively fought a war of liberation under the slogan of “fraternity and unity among the Yugoslav peoples.” The use of the plural form – peoples – was crucial, as it ensured the recognition and inclusion of all distinct groups.

The war of liberation against the fascists and the revolutionary struggle ultimately led to the Communist Party gaining full control over the state. Thanks to their undeniable great success, the Yugoslav Communists embraced the practice of endowing their recent past and present actions with profound historical importance.

3. 2. The Role of Historical Narratives in Designing Socialist Constitutions

The historical narratives devised by the Communists predominantly directed attention towards the preceding monarchical epoch, thereby attributing responsibility to the interwar monarchy and its regime for the collapse of Yugoslavia under the blow of the Axis powers, for the occupation, partition of the country, and for the subsequent internal war. These historical narratives, widely spread by the Communist authorities, with revolutionary zeal, served as a means to rationalize and legitimize the communist takeover of power in Yugoslavia. On the other hand, the legitimacy of the Communist regime was substantiated by its efficacious organization of a liberation movement from 1941 to 1945. This fact operated as one of the foundational ideologemes of the regime, conceptualized as a corresponding historical narrative, that persisted throughout the entire socialist period of Yugoslav history. Another overarching ideological tenet propagated during this era was that of “fraternity and unity of the Yugoslav peoples,” which stood behind federation instead of unitary state building.²⁰³ The constitutional historical narratives crafted by

²⁰³ Odluka o Vrhovnom zakonodavnom i izvršnom narodnom predstavničkom telu Jugoslavije i Nacionalnom komitetu oslobođenja Jugoslavije kao privremenim organima vrhovne narodne vlasti u Jugoslaviji za vreme Narodnooslobodilačkog rata [The decision on the Supreme Legislative and Executive People's Representative Body of Yugoslavia and the National Committee for the Liberation of Yugoslavia as temporary organs of supreme people's authority in Yugoslavia during the People's Liberation War], in Službeni list DFJ 1/45, p. 1.

the Yugoslav Communists, which epitomized the key values they sought to propagate, are encapsulated in the last two constitutions. Therefore, this discourse will begin with an analysis centered on the final phase of constitutional development in Yugoslavia. Subsequently, the discussion will transition to an examination tracing the development that culminated in the integration of these narratives into the constitutional framework.

The constitutions of 1963 and 1974 both evoke the historical backdrop of the formation of socialist Yugoslavia. In the case of the 1963 Constitution, for instance, the section “Founding Principles,” includes a historical narrative affirming, in an elaborated, solemn diction, that the new Constitution is adopted

“[c]ommencing from the historical fact that the working people of Yugoslavia, led by the Communist Party, through their struggle in the People’s Liberation War and socialist revolution, overthrew the old class order based on exploitation, political oppression, and national inequality, in order to create a society in which human labor and humanity would be liberated from exploitation and arbitrariness, and where every nation of Yugoslavia and all of them together would find conditions for free and comprehensive development.”

It continues by stating that

“[t]he peoples of Yugoslavia, recognizing the right of each people to self-determination, including the right to secession, *based on their common struggle and freely expressed will in the People’s Liberation War and the socialist revolution, and in accordance with their historical aspirations, aware that the further consolidation of their fraternity and unity is in their common interest*, have united in a federal republic of free and equal peoples and nationalities and have created a socialist federative community of working people - the Socialist Federative Republic of Yugoslavia.²⁰⁴

Finally, the Constitution recognizes the role of the Yugoslav Communists in the liberation, revolution, and creation of New Yugoslavia by emphasizing the mission of the leading Communist organization:

[t]he League of Communists of Yugoslavia, the driving force and organizer of the People’s Liberation Struggle and the socialist revolution, *by the necessity of historical development*, has

²⁰⁴ *Ustav Socijalističke Federativne Republike Jugoslavije*, in Službeni list 14/63.

become the organized guiding force of the working class and the working people in the construction of socialism and in the realization of the solidarity of working people and the *fraternity and unity* of the nations.

These passages, albeit with modifications not crucial for this analysis, were virtually reiterated verbatim in the 1974 Constitution. The *historical* narratives that were formally codified as the official *constitutional* narrative contain specific references to the People's Liberation Struggle, fraternity, and unity. In the following pages, I will address the dominant historical narrative surrounding the People's Liberation Struggle, which will be followed by a discussion on another core value – fraternity and unity – in the subsequent section.

It's important to note that this narrative, upheld by the central authorities, was consistently present in the textbooks of Constitutional Law over several decades.²⁰⁵ This prevalence underscores the deep-rooted and enduring influence of the official state ideology in shaping legal education in and understanding of Yugoslavia as a state. In that vein, it is paradigmatic that during the discussions over the new constitution in the late 1980s Ciril Ribičič, who was among the leading Communist Party figures from Slovenia and also Constitutional Law professor who authored textbooks on that subject, unequivocally opted for the preservation of the principles contained in the then present Constitution which embodied

“the traditions of AVNOJ, their reactivation and building-upon (...) That Constitution, similar to the Second AVNOJ session, balances class and national component of the PLS [People's Liberation Struggle] and the revolution, that is, besides the class-social aims does not disregard national equality and federal order.”²⁰⁶

The narratives contained in the 1963 and 1974 Constitutions of Yugoslavia were actually formulated during the period of the People's Liberation Struggle and clearly articulated during the last phase of WWII and during the debate on the first post-war Constitution of Yugoslavia in 1946. This discussion laid the groundwork for the constitutional provisions that followed, reflecting the

²⁰⁵ See for instance: J. ĐORĐEVIĆ, *Ustavno pravo*, Savremena administracija, 1975, pp. 135-142; V. MARTINOVIĆ, N. FILIPOVIĆ, S. SOKOL, *Ustavno pravo*, 1979, pp. 152-182; M. STROBL, I. KRISTAN, C. RIBIČIĆ, *Ustavno pravo SFR Jugoslavije*, Pravna fakulteta, 1976.

²⁰⁶ C. RIBIČIĆ, *Društveno-istorijski smisao Ustava iz 1974. godine*, in J. MARJANOVIĆ, A. FIRA, LJ. KOVAČEVIĆ, M. TATIĆ, *Ustavni razvoj socijalističke Jugoslavije*, Ekspres, 1988, p. 103.

political and social ethos of the era and shaping the legal framework of Yugoslavia in subsequent decades.

a) People's Liberation Struggle

As the war operations were still unfolding, the Communists embarked on crafting a historical narrative centered around their ongoing struggle. This narrative found its way into various official documents, most notably the Declaration of the AVNOJ from November 29, 1945, which stands out as a pivotal document. Due to its immense significance, the document is extensively quoted:

“For two and a half years, our People's Liberation Struggle has demonstrated to the entire world that the masses of Yugoslavia have resolutely and steadfastly embarked on the path of armed resistance against the occupiers. This path, which *the Communist Party of Yugoslavia revealed* to our people, was joined by all true patriotic forces and political groups from *our nations*. The vast majority of Yugoslavia's population rallied into the ranks of the People's Liberation Movement and actively supported their People's Liberation Army. Together with these masses, dedicated and honest functionaries *from all political parties, groups, and patriotic organizations* actively participated in the national liberation movement and its organs. All of this holds true for *all the nations of Yugoslavia*. Through their engagement in the national liberation movement, the people of Yugoslavia have openly and vocally expressed their protest *against traitors, reactionaries, and conspirators both within the country and abroad, who resorted to violence and deceit to maintain power in old Yugoslavia and are now attempting once again, relying on more reactionary circles, to grasp power through betrayal, deception, and manipulation*. However, all these attempts cannot hide the fact that a *completely new balance of political forces has emerged during the national liberation struggle in our country*, and thus this new balance of forces *must be adequately expressed in its governance and state leadership*. *One of the most significant sources of strength for our national liberation struggle is the fact that the unified national liberation movement of the people of Yugoslavia and its People's Liberation Army arose from the liberation movements of all our nations. The nations of Yugoslavia did not need*

prior agreements on equality, etc., to start their struggle against the occupiers. They took up arms, and began liberating their country, and by doing so, they not only acquired but also secured the right to self-determination, including the right to secession or unification with other nations. All the forces participating in the national liberation movement have recognized all these rights for our nations from the very beginning. And precisely because of this, the nations of Yugoslavia have further cemented their unity in the common struggle. [...] This has created not only the factual and general political but also all the moral prerequisites for creating a future fraternal, democratic, federative community of our nations, a new Yugoslavia built on the equality of its nations. Therefore, precisely today, as they stand on the brink of finally expelling the occupiers from their country, the nations of Yugoslavia justifiably demand the establishment of a state leadership that, both in its composition and its program, guarantees the genuine equality of all Yugoslav nations in the federative Yugoslavia. ²⁰⁷

This Declaration was later referred to by Tito as “first people’s constitutional endeavor”²⁰⁸, and by Edvard Kardelj, a prominent communist figure, as “the first Constitution”.²⁰⁹ The Declaration unmistakably reveals that the People’s Liberation Struggle held a central significance for the subsequent and, actually, ongoing constitutional design at the time. It encapsulated the foundational principles upon which the future constitutional order would rest. These principles included the recognition of Yugoslavia as a multiethnic entity, the imperative of national equality, the cultivation of fraternity among Yugoslav peoples, the embrace of federalism, a critical stance towards the pre-war political establishment, including monarchy and King himself, and its involvement in present conflict, the assertion of popular sovereignty, and the pivotal role of the People’s Liberation Struggle organized into People’s Liberation Movement as an assurance of realizing and safeguarding these principles.

²⁰⁷ *Deklaracija Drugog zasedanja Antifašističkog veća narodnog oslobođenja Jugoslavije 29. novembra 1943* [Declaration of the Second Session of the Anti-fascist Council of the People’s Liberation of Yugoslavia on November 29, 1943], in *Službeni list DFJ* 1/45, p. 1.

²⁰⁸ J. B. TITO, *Sabrana dela*, vol. XXX, *Komunist*, 1989, p. 77.

²⁰⁹ E. KARDELJ, *Referat o Ustavnim promenama na sednici Predsedništva SKJ*, in S. MARTINOVIĆ, *Ustavne promene*, *Komunist*, 1971, p. 10.

The exaltation of the People's Liberation Movement in AVNOJ's documents comes as no surprise, considering that it was precisely the leadership of the Movement that convened AVNOJ and exerted a decisive impact on its activity. This is the reason why the discourse concerning the People's Liberation Struggle was historicized even while this struggle was an ongoing process, and why immediately after the war, it functioned as an essential historical narrative for the emerging Communist regime in Yugoslavia. In this context, it is worth highlighting that even before the end of WWII, the Communist Party had already formulated initial guidelines for teaching history lessons about People's Liberation Struggle that pertained to the still ongoing conflict.²¹⁰

After World War II, elections for a Constituent Assembly were held in November 1946. The Assembly's Constitutional committee had prepared a Draft constitution in early 1946. This Constitution was then adopted by the Constituent Assembly in January 1946,²¹¹ marking a significant step in establishing the legal and political framework of post-war Yugoslavia. The narrative of People's Liberation Struggle found its place in the constitutional debates from the very beginning. Moša Pijade, a prominent Party ideologue and President of the Constitutional Committee, underlined the link between the historicized People's Liberation Struggle and the Constitution:

I believe that this Constitution, due to democratization and genuine national character, will hold a distinct and honorable place, a leading position among the constitutions being prepared in many European countries [...] *This is primarily because our development has advanced beyond other states that were under fascist occupation. We have moved ahead of them by conducting a liberation struggle of such nature that others could not engage in [...] and during the war, with such a fight and organization, we approached the resolution of a series of issues that other nations are only now facing [...] During the course of the struggle itself, we provided a solid foundation for the resolution of many of these problems and actually solved many of them.* Consequently, these solutions are no longer problems for us at the time

²¹⁰ S. KOREN, *Politike povijesti*, Srednja Europa, 2012, pp. 309-376; M. ZANINOVIĆ, *Rad osnovnih škola u Dalmaciji na kraju NOB-a (školska 1944/45. godina)*, in *Radovi*, 28(5), 1988/1989, pp. 229-246.

²¹¹ *Ustav Federativne Narodne Republike Jugoslavije*, in *Službeni list FNRJ*, 10/46. For a scholarly analysis of the first constitution see: K. ČAVOŠKI, *Ustav kao sredstvo agitacije i propagande*, Institut za savremenu istoriju, Službeni glasnik, 2011.

of creating the new Constitution; they are not questions anymore, but rather, *we have before us solutions that already have their history and have been tested in practice* [...] ²¹²

President of the National Assembly of Serbia, Siniša Stanković, during the same debate, further underscored the explicit connection between the Constitution and the recent past in a manner that unmistakably implies historicization. He specifically highlighted the foundational role of the Constitution by emphasizing its alignment with the historical trajectory that had transpired over the preceding four years, which were the pinnacle of a broader and longer historical endeavor. Stanković's assertion resonates with the notion that the Constitution not only encapsulated the recent achievements but also represented the culmination of a continuous and evolving journey towards this particular form of state organization:

The constitution has successfully provided a legal framework and *faithfully reflected the political and societal reality that emerged during a historical process – a process deeply rooted in the past and rapidly unfolding with the onset of the popular uprising*. I believe that nobody can deny that our young state community, arising from a revolutionary process upon the ruins of the former Yugoslav state, has been a legal and constitutional entity even before any written constitution. It has its institutions, its state apparatus, and its manifested identity. *Through the course of our development by virtue of the People's Liberation Struggle, clear lines of a legal order have emerged, a living constitution that is applied daily and upon which the foundations of our state community are based*. Indeed, the provisions of this unwritten but existing constitution are now formulated in the present draft that lies before us. Within it, *all the significant historical changes of the past four years are truly encapsulated*, changes that have genuinely brought about the birth of the new Yugoslavia. ²¹³

Similar opinion was expressed by the leader of the Serbian communist movement, Blagoje Nešković, who underlined that the draft of the 1946 Constitution, which has been presented to the Assembly, was “the culmination of the legal embodiment” of the achievements of the People's Liberation Struggle and that the Constitution is

²¹² *Treća redovna sednica Savezne skupštine, 17. januar 1946*, in *Stenografske beleške Ustavotvorne skupštine Federativne narodne Republike Jugoslavije*, pp. 172-173

²¹³ *Četvrta redovna sednice (18. Januara 1946)*, *Ibid.*, pp. 548-549.

“of historical importance also because it satisfies the aspirations arising from the struggle of our peoples, not only during this four-year fight but also throughout the existence of the former Yugoslavia.”²¹⁴

The process of historicizing the 1946 Constitution, by integrating the narrative of the People’s Liberation Struggle, became an intrinsic and unquestioned element of its doctrinal foundation. The bond between this struggle and the constitution was so intimately forged that it was reflected in the emphatic words of Marko Vujačić, a prominent Montenegrin communist, who declared: “My dear comrades, *the struggle that this constitution endured* was arduous and bloodstained”, implying that the war strains were in fact the growing pains of the new constitution.²¹⁵

Finally, Tito himself, underlined that the Constitution contains “guidelines” that “were created during the course of the great liberation struggle and continued in the post-war period, and eventually have been established in the Constitutional Assembly, in the new Constitution.”²¹⁶ In reference to the adoption of the 1946 Constitution, Tito described this event as an “outcome of our arduous struggle” and went one step further, emphasizing that the 1946 Constitution embodies “everything our nations have long desired, even before this war [...] and for what they gave their lives.”²¹⁷

By glorifying recent history, the Communist Party wanted to justify the revolutionary change that was taking place:

“Our new state, the Federal People’s Republic of Yugoslavia, is the first in the world, after the liberation war and the triumphant annihilation of fascism, to enact its Constitution. The value of this Constitution primarily lies in its expression and affirmation of new, genuine democratic principles of social, national, and state organization, which our peoples and the masses achieved *through their struggles in the great liberation fight against fascism and reaction*. Our Constitution encompasses novel and original legal norms that reflect and confirm a new and higher form of state organization. Consequently, the constitutional law of

²¹⁴ *Treća redovne sednica (17. Januara 1946)*, Ibidem, p. 189.

²¹⁵ *Četvrta redovna sednica (18. Januara 1946)*, Ibidem, p. 579.

²¹⁶ J. B. TITO, *Sabrana dela, cit.*, p. 41.

²¹⁷ J. B. TITO, *Govori i članci*, II, Naprijed, 1959, p. 225.

the new Yugoslavia attains a distinct historical significance within our country and in the world.²¹⁸

b) Fraternity and Unity

Apart from this overarching ideological narrative about People's Liberation Struggle another important narrative, also historically articulated, played an important role in drafting socialist constitutions. As previously discussed, the constitutional framework of the Kingdom of Serbs, Croats, and Slovenes, later Kingdom of Yugoslavia, initially approached the issue of ethnic differences through the lens of "ethnic oneness," or unity of the one and single Yugoslav people. In contrast, the socialist constitutional regime was established on the premises of "fraternity and unity among the Yugoslav peoples," marking a pivotal ideological shift from a singular "Yugoslav people" to plural "Yugoslav peoples" and reflecting a deep transformation in the state's foundational ideology.²¹⁹ The notion of fraternity and unity eventually became a central ideological pillar for the collective resistance during World War II and a foundational principle of the socialist era, influencing significant constitutional developments, such as the adoption of federalism.

In interwar period, communist factions actively contested the notion of ethnic oneness that was advocated by the regime. By the late 1920s, the Yugoslav communists had even proposed the disbandment of Yugoslavia in favor of creating independent nation-states, recognizing the distinct national identities of the Serbs, Croats, Slovenes, as well as Macedonians and Montenegrins.²²⁰ The ethnic categorization of the Bosnian Muslim population remained more ambiguous, but they were eventually acknowledged (in the 1960s) as a distinct group.²²¹

Among the plethora of sources underscoring the theme of "fraternity and unity" during World War II, the seminal article by J. B. Tito, penned in December 1942, stands out. This piece

²¹⁸ J. ĐORĐEVIĆ, *Uputstvo za studiranje i spremanje Ustavnog (državnog) prava na Pravnom Fakultetu školske 1945/46. g* [Guide for Studying and Preparing Constitutional (State) Law at the Faculty of Law, Academic Year 1945/46], Beograd, Odbor za izdavanje predavanja na Pravnom fakultetu, p. 1.

²¹⁹ ROKSANDIĆ, *Fraternity and Unity*, cit., pp. 38-41; S. MALEŠEVIĆ, *Ideology, Legitimacy and the New State: Yugoslavia, Serbia and Croatia*, Routledge, 2003, pp. 141, 143-45.

²²⁰ L. PEROVIĆ, *Od centralizma do federalizma. KPJ o nacionalnom pitanju*, Globus, 1984, pp. 253-329.

²²¹ H. KAMBEROVIĆ, *Bošnjaci 1968: Politički kontekst priznanja nacionalnog identiteta* [Bosniaks 1968: The Political Context of Recognizing National Identity], in *Rasprave o nacionalnom identitetu Bošnjaka. Zbornik radova*, 2009, pp. 59-81.

serves as a quintessential illustration of the dichotomy between the experiences of the erstwhile unitary Yugoslavia and the nascent federal Yugoslavia, born from the crucible of the liberation struggle. It encapsulates the prevailing historical narrative utilized by Yugoslav communists to critique monarchist Yugoslavia, characterizing it as a “prison of the peoples”:

“Fraternity and combative unity, forged in this difficult liberation struggle from the blood of the finest sons of our peoples, provides a clear perspective - freedom and independence of our nations will indeed be won; in Yugoslavia, *there must no longer be national oppression.*”²²²

In the 1946 debates within the Constituent Assembly, the notion of “fraternity and unity,” significantly shaped during the People’s Liberation Struggle, was a recurring point of emphasis. Communists argued, however, that this concept was not entirely new, having firm historical foundations, although it had been stifled under the monarchist regime in Yugoslavia. The interwar period’s unitarian approach, a hallmark of the monarchy, was seen by the Communists as an impediment to the organic evolution of this idea, enforcing a superficial homogeneity at the expense of genuine unity. The discussions in the Constituent Assembly in 1946 highlighted the contrast between this period and the war years, underscoring the war’s role in not only reviving but also in reinforcing the historically rooted concept of “fraternity and unity.” This revived concept, emerging strongly during the People’s Liberation Struggle, was posited as a more authentic expression of unity, one that had been previously hindered, but still found its full expression in the diverse fabric of post-war Yugoslav society. As marshal Tito claimed in 1946, “the fraternity and unity of the people have been realized, something that was impossible in the old Yugoslavia.”²²³

One of the first constitutional acts adopted by the Constituent Assembly in 1945 was the Declaration on the Proclamation of the Republic, which notably included a reference to fraternity and unity as a historic achievement:

“In the four-year struggle, the peoples of Yugoslavia achieved their firm unity and fraternity. They, with the blood and lives of their finest sons, not only defeated the occupiers and their domestic collaborators but also removed all that had divided them in the past. They firmly resolved to create

²²² J. B. TITO, *Borba za oslobođenje Jugoslavije I, 1941–1945*, Kultura, 1947, pp. 130–148.

²²³ J. B. TITO, *Sabrana dela, cit*, 57.

an internal order that would enable them peaceful development and the realization of a better and happier future.²²⁴

This idea was expressed multiple times and in various forms during the debate in the Constituent Assembly in 1946. It was most eloquently expressed by the words of Milan Smiljanić, a Serbian Minister of agriculture, who asserted that

“the great struggle that has been waged through ancient, modern, and contemporary history for freedom, *for the ideas of brotherhood and unity*, has come to full expression through the People’s Liberation Struggle.”²²⁵

Despite the pervasive references to the historical People’s Liberation Struggle in constitutional debates, recognized as a crucial precondition and context for the structuring of the new state, it is important to note that the constitutional documents from 1946 and 1953 did not incorporate explicit formulations that would connect the emerging constitutional framework with the People’s Liberation Struggle. The 1946 Constitution made only a single explicit reference to this struggle, and the 1953 Constitution omitted it altogether. The same holds true for the notions of fraternity and unity. However, it was during the constitutional debate of 1946 that the foundational elements for embedding the historical narrative of the Yugoslav constitution were extensively developed.

In a nutshell, the entire Yugoslav socialist constitutional development indicated that the constitution was a direct consequence of a prolonged historical endeavor that reached its zenith during the People’s Liberation Struggle orchestrated by the Communists. This struggle, which was portrayed as a paramount chapter in Yugoslavia’s history, served as the crucible in which the nation’s identity and aspirations were forged. The narrative implying the deep connection between this historicized and glorified wartime experience and post-war socialist constitutionality played a pivotal role in endowing the constitution of the country with a certain aura or charisma that historicization provides. The People’s Liberation Struggle was not merely a military conflict: it was a collective effort that united diverse ethnic and social groups in a shared quest for liberation

²²⁴ *Deklaracija o proglašenju Federativne Narodne Republike Jugoslavije*, in Službeni list FNRJ 93/25.

²²⁵ *Osma redovna sednica skupštine naroda (26 januara 1946)*, Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije, *cit.*, p. 727.

and self-determination. This narrative emphasized the heroic sacrifices made by individuals and communities, the resilience displayed in the face of adversity, and the overarching goal of achieving independence from external oppressors.

By connecting the new constitutional order and the changes that followed – from 1946 to 1974 – to the People’s Liberation Struggle, Yugoslav leaders were able to use the emotional and symbolic power of the struggle for freedom. The constitution was seen as the tangible manifestation of the ideals and principles that had emerged from the wartime narrative. It represented the nation’s commitment to upholding the values for which they had fought so valiantly during the war. In this way, the constitution not only served as a legal and political framework but also carried (or was meant to carry) the weight of a collective memory and aspiration. It was more than just a set of rules; it was meant to be a symbol of the nation’s new identity and its commitment to the principles forged during a transformative period in its history.

4. Transitional Constitutional Design

4.1. The Collapse of Yugoslavia

The dissolution of Yugoslavia²²⁶ transpired amidst the broader backdrop of the global retreat of the socialist paradigm. This fragmentation was further expedited by particular local deficiencies, along with intrinsic systemic and structural shortcomings inherent to the Yugoslav model of socialism. However, there are multiple political, geo-political, economic, sociological, historical and probably many other aspects of the Yugoslav crisis of the 1990s that need to be addressed in order to reach an encompassing understanding of the epic catastrophe the nation fell into. However, although the in-depth analysis of the reasons leading to the breakdown of Yugoslavia is out of my discussion, some major outlines are required.

Until the late 1980s and early 1990s, socialist Yugoslavia preserved its foundational historical narratives, enshrined in its constitution, thereby mirroring a profound ideological ethos that was integral to the nation’s identity. Over time, however, the resonance and influence of these

²²⁶ S. P. RAMET, *Balkan Babel: The Disintegration Of Yugoslavia From The Death Of Tito To The Fall Of Milosevic*, Routledge, 2002; A. PAVKOVIC, *The Fragmentation of Yugoslavia: Nationalism and War in the Balkans*, Palgrave Macmillan, 2000;

narratives gradually faded away. The constituent federal units exhibited increasingly diminished solidarity towards one another and towards the common Yugoslav state.²²⁷ The state not only disintegrated following the declarations of independence²²⁸ by its federal units but also plunged into the devastating series of wars.²²⁹

A resurgence of animosities among the Yugoslav peoples, particularly those stemming from World War II events, significantly catalyzed the crisis that engulfed the Yugoslav state project in the 1980s. Mutually inflicted atrocities from the past (especially from WWII) were used to fuel new disputes. The protracted conflicts among the diverse Yugoslav populations became central to reshaping their distinct identities, particularly as the disintegration of Yugoslavia became imminent. Narratives emerged, consistently ascribing the commission of crimes and injustices against “us” to various Yugoslav nations that became perceived as inimical “others.” These narratives painted a picture of a situation in which nearly all ethnic groups in the former Yugoslav federation suffered at the hands of each other, which led to the perpetuation of an ongoing cycle of accusations and victimizations. This only intensified ideological strains that eventually incited wars in the 1990s.

In the disintegration of the SFRY, sequential declaration of independence by its constituent republics occurred. On June 25, 1991, Slovenia²³⁰ and Croatia²³¹ simultaneously proclaimed their independence, marking a significant shift in the Balkan’s political landscape. This move was followed by Macedonia,²³² which declared its sovereignty on September 8, 1991. The sequence

²²⁷ H. KAMBEROVIĆ, M. BEŠLIN, A. R. MILETIĆ, A. PREKIĆ, *Relations Between the Yugoslav Republics and Provinces: Yugoslavia: Chapter 1980-1991*, in LATINKA PEROVIĆ (Ed.), Helsinki Committee for Human Rights in Serbia, 2021, pp. 321-392.

²²⁸ It should be noted that the 1974 SFRY Constitution contained a provision stating that “the peoples of Yugoslavia, based on the right of every nation to self-determination, including the right to secession, have united into a federal republic of free and equal nations and nationalities... the Socialist Federal Republic of Yugoslavia.” During the Yugoslav crisis in the 1980s, two viewpoints crystallized. According to one, the right to self-determination was “consumed” by the act of unification, while the other argued it was an inalienable right. There were also differing interpretations on whether this right was guaranteed to the nations or their federal units. Debates on this issue continue in the literature to this day. For an overview of the discussions, see: M. JOVANOVIĆ, *Constitutionalizing Secession in Federalized States: A Procedural Approach*, Eleven International Publishing, 2007; A. S. TRBOVICH, *A Legal Geography of Yugoslavia’s Disintegration*, Oxford University Press, 2008.

²²⁹ Still most comprehensive scholarly analysis can be found in: S. P. RAMET, *Balkan Babel: The Disintegration Of Yugoslavia From The Death Of Tito To The Fall Of Milosevic*, Routledge, 2002.

²³⁰ Declaration of Independence (available at <http://www.slovenija2001.gov.si/10years/path/documents/declaration/>)

²³¹ Deklaracija o proglašenju suverene i samostalne Republike Hrvatske, (available at: <https://www.sabor.hr/hr/deklaracija-o-proglasenju-suverene-i-samostalne-republike-hrvatske-25-lipnja-1991>)

²³² Декларација за сувереност на Социјалистичка Република Македонија (Skopje, 25.01.1991), (available at: <http://www.sobranie.mk/WBStorage/Files/suverenost.pdf>)

culminated with Bosnia and Herzegovina's declaration of independence on April 6, 1992. Concurrently, Serbia and Montenegro formed a new state, the Federal Republic of Yugoslavia (FRY), which on April 27, 1992, got its Constitution.²³³ FRY asserted the claim as the legal successor to the former SFRY. In this milieu of burgeoning national self-determination, the Kosovo Albanians also conducted a referendum for independence. However, this referendum was widely regarded as illegal under the then-prevailing international and domestic legal frameworks, casting a shadow on its legitimacy.²³⁴ This series of events marked a pivotal period in the Balkans, fundamentally altering the political, territorial, and, consequently, constitutional dynamics of the region.

The dissolution of Yugoslavia culminated in the most arduous conflict Europe had witnessed since World War II, spanning from 1991-1995, with an additional conflict erupting in Kosovo between 1998 and 1999. This latter conflict concluded with NATO's bombing of the Federal Republic of Yugoslavia (FRY). The interpretations of the 1990s wars and dissolution of Yugoslavia vary greatly among the population of now-independent former Yugoslav republics, scholars, politicians reflecting the multifaceted nature of these conflicts.²³⁵

Coming back to the subject of my discussion, Serbia and Croatia adopted the new constitutions while still being the parts of the Yugoslav federation, in September 1990²³⁶ and in December 1990,²³⁷ respectively. Macedonia, declaring independence in September 1991, instituted its constitution on November 17, 1991.²³⁸ Slovenia, which declared independence in June 1991, adopted the new constitution in December 1991.²³⁹ Finally, Montenegro promulgated

²³³ *Ustav Savezne Republike Jugoslavije*, in Službeni list SRJ, 1/92.

²³⁴ J. VIDMAR, *International Legal Responses to Kosovo's Declaration of Independence*, in *Vanderbilt Journal of Transnational Law*, 42, pp. 789-790.

²³⁵ See: D. JOVIĆ, *Razlozi za raspad socijalističke Jugoslavije: kritička analiza postojećih interpretacija*, in *Reč*, 62(8), 2001, pp. 91-157; ID., *Rat i mit*, Fraktura, 2017; J. ĐUREINOVIĆ, *Politika sećanja na ratove devedesetih u Srbiji: istorijski revizionizam i izazovi memorijalizacije* [The Politics of Remembrance of the Wars of the Nineties in Serbia: Historical Revisionism and the Challenges of Memorialization], Fond za humanitarno pravo, 2021.

²³⁶ *Ustav Republike Srbije*, Službeni glasnik RS, 1/90.

²³⁷ *Ustav Republike Hrvatske*, Narodne novine 56/90, (available at: https://narodne-novine.nn.hr/clanci/sluzbeni/1990_12_56_1092.html)

²³⁸ *Устав на Република Македонија*, (available at: <https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf>)

²³⁹ *Ustava Republike Slovenie*, (available at: https://fotogalerija.dz-rs.si/datoteke/Publikacije/Nastajanje_slovenske_ustave/2011-1slo_Ustava_RS.pdf)

its constitution on October 12, 1992,²⁴⁰ but, together with Serbia, was the only remaining republic that decided not to secede from Yugoslavia. Serbia and Montenegro forged a vestigial entity, the Federal Republic of Yugoslavia (FRY), and adopted its constitution in April 1992.²⁴¹ In 2003, the FRY underwent a constitutional metamorphosis, transitioning into the State Union of Serbia and Montenegro, resembling a confederation.²⁴² This Union dissolved in 2006, following the Montenegro's declaration of independence. Subsequently, Serbia and Montenegro adopted new constitutions in November 2006²⁴³ and October 2007,²⁴⁴ respectively.

In the context of constitution-making, Bosnia and Herzegovina and Kosovo are specific cases. Both are marked by significant international influence. The Constitution of Bosnia and Herzegovina was incorporated as an annex to the Dayton Peace Agreement, which concluded the conflict in that country, in 1995.²⁴⁵ Kosovo, an autonomous province within Serbia since 1945, declared its independence in February 2008. The drafting of Kosovo's Constitution involved a commission comprising both international and local experts and was later adopted by Kosovo's Assembly in 2008.²⁴⁶ Consequently, historical narratives did not play a substantial role in these processes.

In the modern historical context, prior to Yugoslavia's formation, only Serbia and, conditionally, Montenegro and Croatia, had experienced national independence and parliamentary system,²⁴⁷ while the other states attained this status for the first time in the 1990s. The

²⁴⁰ *Ustav Republike Crne Gore*, in *Službeni list RCG*, 48/92.

²⁴¹ *Ustav Savezne Republike Jugoslavije*, in *Službeni list*, 1/92.

(available at: <https://data.globalcit.eu/NationalDB/docs/MON%20FRY%20ustav%20srj%201992.pdf>)

²⁴² *Ustavna povelja Državne Zajednice Srbija i Crna Gora*, in *Službeni list Srbije i Crne Gore*, 1/1.

²⁴³ *Ustav Republike Srbije*

(available at: <https://www.rik.parlament.gov.rs/extfile/sr/27/Ustav%20RS-lat.pdf>)

²⁴⁴ *Ustav Republike Crne Gore*, (available at: <https://api.skupstina.me/media/files/1605826428-ustav-crne-gore.pdf>)

²⁴⁵ *Ustav Bosne i Hercegovine*, (available at:

https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf). On the complicated context of Bosnian constitution-making see the recent article: A. BEGICEVIC, J. BALINT, *Constricted Rights and Imagined Identities: Peace and Accountability Processes and Constitution-Making in Bosnia and Herzegovina*, in *International Journal of Constitutional Law*, doi: <https://doi.org/10.1093/icon/moad097>

²⁴⁶ *Constitution of Kosovo*,

([http://old.kuvendikosoves.org/common/docs/Constitution of the Republic of Kosovo with amend.I-XXV 2017.pdf](http://old.kuvendikosoves.org/common/docs/Constitution%20of%20the%20Republic%20of%20Kosovo%20with%20amend.I-XXV%202017.pdf))

The complex constitution making in Kosovo is well explained in: J. MARKO, *The New Kosovo Constitution in a Regional Comparative Perspective*, in: *Review of Central and East European Law*, 33, 2008, 437-450.

²⁴⁷ O. POPOVIĆ-OBRAĐOVIĆ, *Parliamentary System in Serbia (1903-1914)*, Helsinki Committee for Human Rights, 2017; O. POPOVIĆ-OBRAĐOVIĆ, M. ŠUKOVIĆ, V. PAVIĆEVIĆ, *Parlamentarizam u Crnoj Gori*, CID, 2002.

constitutional transformations following the disintegration of Yugoslavia exemplify the complexities of the post-Yugoslav landscape, reflecting a dynamic interplay between national ambitions and historical grievances.

4. 2. Historical Narratives and Nation as a Supreme Value

Historical narratives in constitutional design during and after the dissolution of Yugoslavia address several key topics. As the most overarching there emerges the narrative of the historical struggle for independence and statehood. Additionally, specific references were made to Yugoslav experience, the People's Liberation Struggle, and the European context of national histories. While it was not always possible to fully separate these narratives, I have attempted to focus the presentation around each of them, but some overlaps were inevitable.

a) National Pride

As previously mentioned, in the early 1990s, the dissolution of the SFRY marked a momentous geopolitical transformation in the Balkans. The global crisis of socialism led to the collapse of the system in Yugoslavia and, ultimately, new constitutional arrangements. During that time, all the constituent peoples within Yugoslavia shared a common sentiment that, under socialism, they had endured oppression and denial of their national identities. Consequently, the new constitutions adopted in after 1990 emphasized in the preambles national motives that were either devoid of socialist content or not necessarily tied to it. For instance, the 1990 Constitution of Serbia was adopted “mindful of the centuries-long struggle of the Serbian people for freedom, their freedom-loving, democratic, and state-building traditions.” A similar sentiment would be reiterated in Serbia's 2006 constitution, which drew on “the state traditions of the Serbian nation.” Croatia's constitution speaks of “the millennial national identity of the Croatian nation and the continuity of its statehood.” In the Slovenian constitution it is highlighted that after a “centuries-long struggle for national liberation [...] Slovenes had established their national identity and asserted [...] their statehood.” Similarly, in the case of North Macedonia, its Constitution takes into account “the historical, cultural, spiritual, and statehood heritage of the Macedonian people and their

centuries-long struggle for national and social freedom.” Finally, Montenegro’s constitution also echoes these ideals, acknowledging the “historical right of the Montenegrin people to have its own state, acquired through their centuries-long struggle for freedom.”

All cited constitutions in their preambles invoke the distant past and traditions, which is a common practice in constitutional design,²⁴⁸ along with the struggle to attain or preserve independence. Nothing less than “centuries-long endurance”. As the then President of the Assembly and of the Constitutional Commission, France Bučar, pointed out that on the occasion of the adopting the new Constitution,

“It concerns not only the most significant legal act ever adopted by any highest representative body of Slovenia or its parts, which have at various points in history also belonged to other social or state entities. It also represents *one of the most important socio-political documents in its entire history*. With it, *for the first time in history, we are laying the foundations of our own statehood*. No words of grandiosity and enthusiasm are too much in the face of this significant historical milestone in our national life. We are *constantly presented with reasons for euphoria*, for celebration, even as we boldly and riskily tread on the edge of societal cataclysms. It is impossible to reliably say when, in traversing this temporal mountain range, we stood at the highest peak. Nonetheless, we can undoubtedly identify some. *The spring 1990 elections represent a more significant event than may initially appear. They marked a decisive and final exit from the real socialist system, even before its collapse in Eastern Europe and worldwide. An achievement we can be immensely proud of before all of Europe. Exactly one year ago, through a plebiscite, we chose an independent state, followed by a tough, slow, and determined process of breaking free from the normative framework of Yugoslavia. This culminated in the fundamental constitutional document declaring the independence and sovereignty of the Republic of Slovenia, which we had to subsequently fill with the victorious defense against the remnants of Yugoslavia’s Bolshevik forces. Victory in this war*

²⁴⁸ S. LEVINSON, *Do Constitutions Have a Point? Reflections on “Parchment Barriers” and Preambles*, in *Social Philosophy and Policy*, 2011, 28(1), pp. 150–178; J. O. FROSINI, V. LAPA, *The Historical and Legal Significance of Constitutional Preambles: A Case Study on the Ukrainian Constitution of 1996*, in F. BIAGI, J. O. FROSINI, J. MAZZONE (eds.), *Comparative Constitutional History. Principles, Developments, Challenges*, Brill, 2020, pp. 60–88.

*represents the psychological zenith of our national self-confidence and affirmation. [All emphasis mine]”*²⁴⁹

In this paradigmatic Bučar’s speech one can recognize two critical aspects of constitutional design which are of interest of this thesis: emotionalism and historicization of the recent past at their best, brought together into an elaborated and rich historical narrative.

Pioneering the constitutional transition during the late 1980s was Serbia, where, following the enactment of Yugoslavia’s 1974 Constitution, a progressively pronounced dissatisfaction concerning Serbia’s constitutional position within Yugoslav Federation emerged.²⁵⁰ This discontent kept opened the question of possible change of the Federal Constitution,²⁵¹ and was not confined to the adversaries of the communist regime. It actually became prevalent also among the upper echelons of Serbia’s Party structure, particularly following the ascendancy of Slobodan Milošević and his associates to the Party’s leadership.²⁵² The new communist leadership in Serbia adeptly positioned itself as the champion of Serbian national interests amid the disintegration of socialism. This role capitalized on the growing discourse about perceived threats to these interests. Several factors contributed to this perception. Firstly, the Communist Party in Serbia highlighted that the communist critique of the Yugoslav Kingdom era and the perceived predominance of Serbian political influence during that time had increasingly been construed as anti-Serbian sentiment.²⁵³ Secondly, given that a significant portion of the Serbian populace, ranging from one-fourth to one-third, resided outside Serbia in other federal units, the vast autonomy²⁵⁴ of these units

²⁴⁹ *Skupna Seja vseh zborov Skupščine Republike Slovenije*, 28. seja (23. decembra 1991).

²⁵⁰ S. SELINIĆ, *Srbija 1980-1986. Politička istorija od Tita do Miloševića*, Institut za noviju istoriju Srbije, 2021, pp. 281-383.

²⁵¹ In the late 1980s this change was officially initiated and several proposals were circulating. The federal Constitution was amended twice, in 1981 (amendments I-VIII) and 1988 (amendments IX-XLVIII) but these amendments were not of concern in this research, since the debate about them did not incite the debate that would engage historical narratives. The only exception is the amendment IX, which for the first time introduced the national anthem in the Yugoslav Constitution.

²⁵² V. PETROVIĆ, *Ekstremizacija jugoslovenskog političkog diskursa od smrti Josipa Broza Tita do Osme sednice*, [Extremisation of Yugoslav political discourse from death of Tito until Eighth Session], M. PAVLOVIĆ, D. JOVIĆ, V. PETROVIĆ, *Slobodan Milošević – put ka vlasti*, Institut za savremenu istoriju; Centar za proučavanje evropskog susedstva, 2008, pp. 80-97; K. NIKOLIĆ, *Politički portret Slobodana Miloševića 1988-1991*, in *Tokovi istorije*, 1, 2013, pp. 259-286.

²⁵³ D. ROKSANDIĆ, *Velikosrpski hegemonizam i drugi nacionalizmi u protivrečnostima jugoslovenskog društva 1918-1941*, Centar CK SKH, 1985.

²⁵⁴ The autonomous status of Vojvodina and Kosovo “included the *de facto* status of the republic and the power of veto in the Serbian Assembly.” See: V. BEŠIREVIĆ, *Transitional Constitutionalism in Serbia: Is the Glass Half-Full or Half-Empty?*, in V. BEŠIREVIĆ (Ed.), *Public Law in Serbia*, Experia Publications Ltd, 2012, p. 36.

was viewed as a potential menace to interests of the Serbs. Ultimately, the presence of autonomous provinces within Serbian territory came to be viewed by many in Serbia as a deliberate tactic to weaken Serbia's unity and coherence.²⁵⁵ These factors collectively resonated with and amplified the prevailing public sentiment within Serbian society.²⁵⁶

The intensification of the aforementioned issues commenced with the emergence of the Serbian Academy of Sciences and Arts Memorandum in 1986. This controversial document became emblematic of rising nationalist sentiment in Serbia.²⁵⁷ It explicitly articulated the frustrations, extensively referencing historical experiences and constructing a historical narrative that eventually gained prominence. The Memorandum asserts that

“for more than half a century stigmatized as an oppressor of the other Yugoslav peoples, the Serbian nation was not allowed to return to its own historical roots. In many of its aspects, this history itself was brought into question. The democratic tradition of a civil society, which Serbia strove for and achieved in the 19th century, has until just recently been completely overshadowed by the Serbian socialist and workers' movement...”²⁵⁸

Two years later, similar sentiments, although not necessarily attributable to the Memorandum's influence, were articulated by Slobodan Milošević, the Communist Party leader and, at that time, the President of Serbia. He was among the first communist leaders in Serbia to step outside the legitimizing framework of invoking solely the history of communist movement and the People's Liberation Struggle in his historical discourse. Instead, he emphasized more

²⁵⁵ S. BJELICA, *Sporovi oko autonomije Vojvodine od nastanka do raspada Jugoslavije*, in *Istorija 20. veka*, 1, 2020, pp. 147-162; M. BEŠLIN, *Vojvodina in Yugoslavia: The Struggle for the Autonomy*, in L. PEROVIĆ et al. (eds.), *Yugoslavia from a Historical Perspective*, Helsinki Committee for Human Rights in Serbia, 2017, pp. 295-348.

²⁵⁶ This sentiment outlived the dissolution of Yugoslavia and the constitutional position of the autonomous provinces continued to challenge the political elites in Serbia: “Such an atypical constitutional situation, which made the provinces autonomous beyond the level traditionally reserved for regional or provincial entities, still represents the major source of frustration of the Serbian political elite with regard to the issue of decentralization.” V. BEŠIREVIĆ, *The Rocky Waters of Decentralization in Serbia: The Case of Vojvodina*, in *European Review of Public Law / Revue Européenne de Droit Public*, 20(4), p. 1496.1489-1513. The constitutional arrangement of the autonomous provinces periodically triggers the heated debates within Serbian society and political and intellectual elites, part of which does not accept the idea of decentralization that grants autonomous provinces, what they perceived, as “too vast” autonomy. See: V. BEŠIREVIĆ, *Muke po statutu: da li će jezička dogmatizacija Ustava ukinuti političku autonomiju Vojvodine?*, in *Pravni zapisi*, 4(2), 2013, pp. 476-510.

²⁵⁷ For more detailed information on this topic: J. DRAGOVIC-SOSO, *Saviours of the Nation: Serbia's Intellectual Opposition and the Revival of Nationalism*, Hurst and McGill-Queen's University Press, 2002.

²⁵⁸ According to official explanations, the Memorandum was leaked to the public. Originally, it was intended to leadership of the Serbian communists. After leaking, it was first published as a booklet in Toronto, Canada: *Nacrt Memoranduma Srpske akademije nauka i umetnosti*, Srpska narodna odbrana, 1987.

broadly that the Serbs are a people with a “heroic and honorable history” who “never oppressed or conquered anyone.”²⁵⁹ This was a clear reference to the thesis of the oppressive nature of the Serbian bourgeoisie towards other nations in the first, monarchist Yugoslavia, usually invoked during the socialist period. By moving away from the practice of negatively referencing Greater Serbian hegemony in the First Yugoslavia as the primary paradigm for assessing the pre-socialist history, President Milošević asserted that the “citizens of Serbia have for a long time and, indeed, unjustifiably carried as a burden the actual greatness of history of their Republic.”²⁶⁰

The first act of concretizing Serbia’s dissatisfaction was the adoption of constitutional amendments to the 1974 Constitution of Serbia. The amendments reduced the broad competencies of the provinces within its territory. Speaking in the National Assembly on the occasion of the adoption of amendments to the Constitution, the president of the Constitutional Commission, Borisav Jović, also engaged in a very developed historical narrative:

“The 1974 Constitution fragmented Serbia into three separate parts, directly fostering their mutual opposition and destructively affecting the harmonious development of the Republic, as well as the stability and integrity of the entire country.”²⁶¹

This type of speech, perhaps for the first time in the highest state institution, came from a high-ranking party official. Moreover, Jović in his speech more openly accused the post-war communist policy towards Serbia than he wished to restrain from such an assessment:

“Why did a constitution with so many harmful effects remain in force so stubbornly and for so long, longer than any other in the post-war period, why did our Republic have to endure such an unjustifiably prolonged developmental lag, humiliation, and the endangerment of the life and material well-being of its population, divisions, discord, and national disgrace will be clarified by history...”²⁶²

Having thus pronounced a clear condemnation of the communists’ policy towards Serbia, Jović emphasized that the Serbian people were no longer willing to endure such injustices:

²⁵⁹ S. MILOŠEVIĆ, *Godine raspleta*, BIGZ, 1988, p. 310.

²⁶⁰ *Ibidem*, p. 338.

²⁶¹ B. JOVIĆ, *Datum za istoriju*. 28. Mart 1989, BIGZ, 1989, pp. 10.

²⁶² *Ibid.*, p. 11.

“And what could be more natural, humane, and democratic than to, in accordance with its freedom-loving traditions, step back onto the historical stage and demand justice and equality in the simplest and most noble formula... I believe that neither our peoples nor history will overlook the fact that such grave insults were thrown in the face of the very people who, in the modern history of the Balkans, have made the greatest sacrifices and highest proof of their love of freedom and democracy.”²⁶³

This speech was a textbook example of how historical narratives are used to emotionally color reality in the function of significant constitutional change, which is also notably completed with another important detail: the day the amendments to the Serbian Constitution were adopted, March 28, was declared a national holiday.²⁶⁴

The next step of exercising newly gained freedom and proud of the Serbian people was the adoption of the 1990 Constitution. The new fundamental law was adopted by a one-party assembly during the era when communists still held power in Serbia.²⁶⁵ During the inaugural session of the National Assembly the president of the Constitutional Commission Zoran Sokolović proudly announced that “in accordance with its century-long constitutional tradition, it has ushered in an era of democratic constitutionalism.”²⁶⁶

This set of circumstances – a communist-dominated assembly enacting the Constitution with the preamble mainly referring to pre-socialist, non-communist traditions, and allows for a democratic multi-party system – appears paradoxical. Yet, if the social and political context of that era in Serbia is taken into account, this convergence of factors becomes more comprehensible. Namely, the than authorities in Serbia firmly rejected the possibility of convening a Constituent Assembly.²⁶⁷ This tendency might have stemmed from an ambition among the former communists to establish themselves as legitimate historical figures, advocating for democracy and restoration

²⁶³ *Ibid.*

²⁶⁴ *Ibid.* Borisav Jović, aware of the importance of the changes he was part of, collected his speeches during the process of fighting for constitutional change into a book titled *Dan za istoriju* [A Day for History]. The book was reviewed by a renowned professor of Constitutional Law, Miodrag Jovičić.

²⁶⁵ D. POPOVIĆ, *Constitutional History of Serbia, cit.*, p.225

²⁶⁶ *Stenographic notes of the National Assembly of Serbia*, 28 September 1989. However, the political system under this constitution during 1990s turned to be autocratic, “façade democracy”, not qualifying to be considered as a transitional constitutionalism. See: V. BEŠIREVIĆ, *Transitional Constitutionalism in Serbia: Is the Glass Half-Full or Half-Empty?*, in V. BEŠIREVIĆ (Ed.), *Public Law in Serbia*, Experia Publications Ltd, p. 29.

²⁶⁷ D. POPOVIĆ, *Constitutional History of Serbia, cit.*, p. 226.

of the valuable political tradition in Serbia, the move likely seen as an achievement they did not want to share with others.

Discontent with their nation's status within Yugoslavia was also evident in Croatia, but this sentiment was neither articulated nor as emphatically highlighted by Croatian communists as it was in Serbia. They were unable to rival the nationalist appeal of the opposition, which triumphed in the country's first multi-party elections.²⁶⁸ One of the key objectives of the new Croatian government was to render a new constitution for the Republic of Croatia. Since the Middle Ages, Croatia had not existed as an independent state, yet had managed to preserve, through various constitutional arrangements, a degree of distinctiveness and autonomy, if not outright statehood. This was known as the state right of Croatia. As observed in other constitutions mentioned above, the December 1990 Constitution underscored the Croatian state tradition, but the already quoted excerpt from its preamble was but the beginning of an elaborated historical narrative. According to that narrative, Croatia's statehood tradition manifested itself in the series of events from the Middle Ages, such as "the formation of the Croatian principalities in the seventh century". It was followed by the two "independent and sovereign" decisions of the Croatian Parliament from the 16th and 18th centuries, and agreements reached with Budapest and Vienna (the two centers of the states Croatia was part of). Finally, the list of "historical foundations" included the events of constitutional significance from the 20th century within Yugoslav context, closing with adopting

"the new Constitution of the Republic of Croatia (1990) and the victory of the Croatian nation and Croatia's defenders in the just, legitimate and defensive war of liberation, the Homeland War (1991-1995), wherein the Croatian nation demonstrated its resolve and readiness to establish and preserve the Republic of Croatia as an independent and autonomous, sovereign and democratic state."²⁶⁹

The case of the Croatian constitution is particularly interesting due to the fact that president of Croatia from 1990 to 1999, Franjo Tuđman, was a historian, obsessed by the concept of nation,

²⁶⁸ I. GOLDSTEIN, *Hrvatska povijest*, Novi Liber, 2003, pp. 371-378.

²⁶⁹ The last part of the Founding Principles of the Croatian Constitution were introduced only in 1997. See: *Ustavni zakon o izmjenama i dopunama Ustava Republike Hrvatske*, in *Narodne novine*, 135/1997, (available online: https://narodne-novine.nn.hr/clanci/sluzbeni/1997_12_135_1944.html)

national history and nation-state, and he personally articulated the historical narrative of the preamble.²⁷⁰ In his speech on the occasion of the adoption of the Constitution in December 1990, Croatian President, among many other historical references, pointed out that the constitutional legacy of Croatian longlasting statehood:

“In the union of Croatia and Hungary under the crown of Saint Stephen, during the developed and late Middle Ages, Croatian state right was founded upon a series of resolutions and legal articles of the Croatian Parliament. The Croatian Parliament asserted and defended Croatia’s statehood, invoking the liberties, rights, and privileges of the Kingdom of Croatia. Moreover, starting as early as the beginning of the 18th century, it also drew upon the principles of natural rights of the people.”²⁷¹

In a parallel vein, slightly earlier, at the juncture of Slovenia’s declaration of independence, President Milan Kučan addressed the momentous occasion. He pronounced, “Slovenia steps into the international community with pride and *historical justification* as a democratic state.”²⁷²

b) Reassessing People’s Liberation Struggle

The Constitution of Croatia unambiguously exhibits a positive stance towards the People’s Liberation Struggle. In the preamble to the Constitution it is praised as a significant milestone in the development of Croatia as a federal unit of Yugoslavia. Furthermore, the Constitution explicitly acknowledges the development of the Croatian statehood within socialist Yugoslavia, emphasizing

“the establishment of the foundations of state sovereignty during the course of the Second World War, as expressed in the decision of the Antifascist Council of the National Liberation of Croatia (1943) in opposition to proclamation of the Independent State of Croatia (1941), and then in the

²⁷⁰ D. ŠARIN, *Nastanak hrvatskog Ustava*, Narodne novine, 1997.

²⁷¹ (Speech of the President Franjo Tuđman), *Zapisnik 10. skupne sjednice svih vijeća Sabora Republike Hrvatske održane 21 prosinca 1990. godine*, Also in: F. TUĐMAN, *S vjerom u samostalnu Hrvatsku*, Narodne novine, 1995, p. 123.

²⁷² *Skupna seja vseh zborov Skupščine Republike Slovenije*, 21. Seja (24. in 25. Junija 1991).

Constitution of the People's Republic of Croatia (1947) and in all subsequent constitutions of the Socialist Republic of Croatia (1963-1990)".²⁷³

The most explicit acknowledgement of this legacy was extended by Croatian president Franjo Tuđman, himself a former partisan officer in World War II. Tuđman particularly highlighted the constructive role of Communist leader Josip Broz Tito in establishing the Croatian federal unit within Yugoslavia. This was officially recognized in 1943 with the inaugural session of the Antifascist Council of the People's Liberation of Croatia (*Zemaljsko Antifašističko Vijeće Narodnog Oslobođenja Hrvatske, ZAVNOH*), led by Croatian communists. ZAVNOH emerged as the supreme revolutionary representative body of Croatia during WWII.²⁷⁴ Acknowledging its significance, president Tuđman stated:

“With the establishment of the Federal State of Croatia by ZAVNOH at the end of World War II, the Croatian people found themselves on the side of the victorious democratic forces. This was of far-reaching historical importance. While there can be no doubt that the establishment of Tito's Yugoslav federation was costly for the Croatian people, it is even more indisputable that without the Socialist Republic of Croatia, their fate would have been incomparably harsher. Had they not been on the side of the victors, after the collapse of the Independent State of Croatia along with the Axis powers, the Croatian people could not have avoided the plan of Chetnik genocide, the consequences of which could have been catastrophic. Furthermore, the historical merits of ZAVNOH's Croatia (that is, of the Croatian communists and partisans) must never be forgotten, as it was they who finally included Istria in the Constitution of Croatia, and reclaimed Rijeka, Zadar, Cres, Lošinj, and Lastovo.”²⁷⁵

Therefore, the Croatian constitution explicitly references the legacy of the socialist era, too. This aspect remains firmly embedded within the constitutional historical narrative, illustrating a recognition of the socialist era's role in shaping modern Croatian statehood.

²⁷³ *The Constitution of the Republic of Croatia* (consolidated text),

(available online: <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>)

²⁷⁴ F. ČULINOVIĆ, *Državnopravno značenje akata Trećeg zasjedanja ZAVNOH-a* [The Constitutional Significance of the Acts of the Third Session of ZAVNOH], *Jugoslavenska akademija znanosti i umjetnosti*, 1972.

²⁷⁵ F. TUĐMAN, *S vjerom u samostalnu Hrvatsku*, *Narodne novine*, 1995, p. 86.

The same logic is recognizable in the Constitution of Macedonia, which contains an almost identical historical narrative. Thus, the Constitution emphasizes

“the historic decisions of the Anti-Fascist Assembly of the People’s Liberation of Macedonia, together with the constitutional and legal continuity of the Macedonian state as a sovereign republic within Federal Yugoslavia”²⁷⁶

The official Proposal from the Presidency of the Republic of Slovenia to draft a new constitution already contained historical references. The proposal invoked the national awakening of 1848, aspirations expressed in 1917 to form a state “free from any foreign national domination and built on democratic foundations,” but it primarily relied on the legacy of the People’s Liberation Struggle and the construction of Slovenian statehood in that process.²⁷⁷

From this initial proposal, the constitutional text evolved during discussions to ultimately reference the “centuries-long struggle” mentioned in the preamble. This change primarily reflected an ambition to avoid mentioning of the People’s Liberation Struggle, which strongly referenced the socialist framework Slovenia actually sought to move beyond. Thus, France Bučar, the president of the Constitutional Commission, explained that the inclusion of the NOB in the preamble was “somewhat controversial,” leading to the decision to emphasize the “centuries-long struggle” as it encompasses “the entire history of the Slovenes.”²⁷⁸ In essence, this approach adeptly merged the effort to avoid a formulation too reminiscent of socialist Yugoslavia with the necessity to root the constitution in deeper historical foundations, even if through such a vague expression.

The constitutions of the other former federal units of Yugoslavia do not include references to the People’s Liberation Struggle. Notably, when references to that struggle are found in the constitutions or have been the subject of specific debates, this tends to be the case with states that can attribute a significant portion of their statehood tradition to this historical process.

²⁷⁶ *Constitution of the Republic of North Macedonia*

²⁷⁷ M. CERAR, G. PERENI, *Nastajanje slovenske ustave, Izbor gradiv Komisije za ustavna vprašanja (1990–1991)*, I. zvezek, Državni zbor Republike Slovenije, pp. 63–64.

²⁷⁸ *Ibidem*, p. 236.

c) To Europe We Belong

Adherence to the European “civilizational context” was also among the crucial elements in the historical narratives of that era. During the session of the National Assembly that ratified the Croatian constitution in 1990, following an emphasis on the “exceptionally historical” nature of the occasion, President Franjo Tuđman contextualized extensively the history of Croatian statehood within the broader framework of European history and the envisioned future of Croatia: “With the adoption of the new Croatian Constitution, the Republic of Croatia establishes full constitutional and legal alignment with the community of sovereign European democratic states, to which it has historically and culturally belonged. The Croatian people have always developed and confirmed their national identity and statehood, from the first medieval independent state, in the same ways and in similar forms as the others among the oldest European nations. Croatian statehood has been maintained continuously and firmly, albeit in limited frameworks, dependent on the European political reality and state-legal thought. Despite all the well-known historical limitations, Croatian state right and forms of the Croatian state organization – both in the period of feudal society and in modern times, from the beginning of the 9th century to 1918 – were based on the same civilizational values and principles as in the states of central and western Europe of that era. Croatian state right never lagged behind European solutions; it did not just adopt already formed constitutional-legal institutions but, as one of the fundamental factors in the struggle to preserve the viability of Croatian sovereignty and statehood, contributed to the development of common European state-legal and constitutional thought with its own solutions.”²⁷⁹

Yet, it was not merely a solitary influence. President Tuđman pointed out the Croatian contributions to European constitutional history and thought by significant developments in state law, governmental structures, and constitutional arrangements. Tuđman finds the parallels in Switzerland’s with Croatia’s struggle for independence, alluding that those parallels concerned the issues that inspired Jean Jacques Rousseau and his idea of popular sovereignty. In the mid-19th century, parallel to Europe’s evolution of the representative bodies, Croatian Ban Josip Jelačić formed the Ban’s Council, responsible to both him and the Croatian Assembly (Sabor) (assembly). This system mirrored continental developments in government structuring post-French July

²⁷⁹ (Speech of the President Franjo Tuđman), *Zapisnik 10. skupne sjednice svih vijeća Sabora Republike Hrvatske održane 21 prosinca 1990. godine*, Also in: F. TUĐMAN, *S vjerom u samostalnu Hrvatsku*, cit., p. 124.

Revolution, so called *Orleanist parliamentarism*. Croatia's relations within the Habsburg Monarchy, particularly its ties with Hungary, became important topics in European constitutional and state theory. Eminent theorists like Jellinek, Seydel, and Le Fur extensively analyzed these relations, affirming Croatia's maintained status as an independent kingdom and state.²⁸⁰ These contributions, as Tuđman emphasized, highlight Croatia's presence in shaping the constitutional landscape of Europe, particularly in areas of state sovereignty, government structure, and state-legal dynamics within larger political frameworks. Therefore, the new Constitution of the Republic of Croatia from 1990 expressed this European constant of Croatian political thought and constitutional practice.

Next year, on the occasion of declaration of independence of Croatia, the well-known concept of *antemurale Christianitatis* (the “bulwark of Christianity”), also containing strong historical background, came to prominence. This is the belief that was clearly expressed in the *Declaration of Independence* of June 25, 1991, which, after asserting the Croatian “thirteen-century-old ancient legal tradition”, continues:

Through historical circumstances, situated at the crossroads of Eastern and Western Christianity, between often opposing civilizations and cultures, and amidst diverse political, economic, and other interests, the Croatian people have for centuries defended their national state, thereby protecting the peoples to the West in their national borders.²⁸¹

Being for centuries on the border of the Ottoman Empire and western Christian worlds, Croatia represented the first line of defense towards the East. However, under the new circumstances, the East was represented not only by the Ottomans and Muslims, but rather by the Orthodox Christians, as the Declaration clearly articulated.

The architects of the Slovenian Constitution also sought to portray this centuries-long struggle in the context of belonging to European nations. In his solemn speech during the proclamation of Slovenian independence, Bučar emphasized:

“Since settling in this area in the sixth century, we have lived within the circle of Central European nations, enjoying and co-creating Western Central European culture, managing to maintain creative

²⁸⁰ *Ibid.*

²⁸¹ *Deklaracija o proglašenju suverene i samostalne Republike Hrvatske* (25. lipnja 1991), available at: <https://www.sabor.hr/hr/deklaracija-o-proglasenju-suverene-i-samostalne-republike-hrvatske-25-lipnja-1991>

coexistence with others and our identity, until ideologies of nationalism in the past century exposed us to the dangers of Germanization and extinction. In striving for our survival, we relied, among other things, on Wilson's principle of the right of nations to self-determination".²⁸²

Slovenian President Kučan's historical narrative displayed a degree of nuance. As a supporter of reformed communists, he maintained a deep connection to the People's Liberation Struggle. This affinity influenced his assertion that Slovenia's recent historical development was anchored in "principles and criteria of that European democracy that emerged from the very core and bedrock of the global democratic nations' victorious antifascist struggle." This part of his speech situates Slovenia's democratic journey towards independence within the context of both Slovenian and pan-European resistance against fascism, highlighting its role in the broader historical struggle for democracy, rather than for the socialist revolution, which, historically, Yugoslav anti-fascism was about. The new era required a new readings of history.²⁸³

d) Contempt towards Yugoslavia

Regarding Croatia, the Constitution harbors the notion that the very inception of the Yugoslav state was illegitimate and unlawful. This is underscored explicitly in the preamble, which emphasizes

"the decision of the Croatian Parliament of 29 October 1918 to break all constitutional ties between Croatia and Austria-Hungary, and the simultaneous accession of independent Croatia, invoking its historical and natural national rights, to the State of Slovenes, Croats and Serbs."²⁸⁴

However, distancing from this decision, the preamble explicitly asserts

"the fact that the *Croatian Parliament never ratified the decision made by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro* [emphasis mine] in

²⁸² *Skupna seja vseh zborov Skupščine Republike Slovenije*, 21. Seja (24. in 25. Junija 1991).

²⁸³ M. REŽEK, *Obmejni fašizem in antifašizem v slovenskih zgodovinskih učbenikih od konca druge svetovne vojne do danes* [Fascism and Anti-Fascism in Slovenian History Textbooks from the End of World War II to the Present], in *Acta Histriae*, 24(4), 2016.

²⁸⁴ *The Constitution of the Republic of Croatia* (consolidated text), (available online: <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>)

the Kingdom of Serbs, Croats and Slovenes (1 December 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 October 1929)”²⁸⁵

Concerning the experience from the first Yugoslav state, the Croatian constitution recognizes only

“the establishment of the Banate of Croatia in 1939, which restored Croatian state autonomy within the Kingdom of Yugoslavia.”²⁸⁶

According to Croatian President Tuđman, as he asserted in the speech on the occasion of the promulgation of the Constitution, Croatia has been constantly threatened by “Yugoslav unitarianism”. Although Tuđman did not exclude the possibility of transforming the SFRY into some new form of integration, he nevertheless asserted: “we are against maintaining Yugoslavia in its current or some other third form, based on our overall experience”. According to his view, Croatia was

“threatened from the first day to today, by dogmatic-communist, Yugoslav-unitarist, and Greater Serbian-hegemonic forces that unite in their irreconcilability towards any Croatian national and state-building idea. Not only those from Starčević and Radić to Stepinac and Hebrang but also those from Strossmayer to Tito, and especially any of their syntheses.”²⁸⁷

It is noteworthy that Tuđman did not dismiss Josip Broz Tito as a historical figure who contributed positively to the Croatian nation. On this solemn occasion, President Franjo Tuđman underscored the imperative for “national reconciliation,” bridging distinctly divergent ideological streams in consonance with a comprehensive Croatian historical narrative against what he perceived as a Yugoslav threat to Croatian identity.

A distinctly negative attitude towards Yugoslavia is also evident in the normative section of the Croatian Constitution. In 1998, the President of Croatia advocated for an amendment to the Constitution, suggesting the incorporation of a peculiar provision, referred to as “Tuđman’s fortress,” into the state’s fundamental law:

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ (Speech of the President Franjo Tuđman), *Zapisnik 10. skupne sjednice svih vijeća Sabora Republike Hrvatske održane 21 prosinca 1990. godine*, Also in: F. TUĐMAN, *S vjerom u samostalnu Hrvatsku, cit.*, p. 124.

“Any procedure for the association of the Republic of Croatia into alliances with other states, if such association leads, or may lead, to a renewal of a South Slavic state union or to any form of consolidated Balkan state is hereby prohibited.”²⁸⁸

The process of drafting the Slovenian constitution was accompanied by an exceedingly negative sentiment towards the Yugoslav idea. This was particularly sharply articulated by the President of the Constitutional Commission and the National Assembly, France Bučar:

“[A]fter World War I we sought refuge in the newly formed state of the South Slavs - Yugoslavia. The attempt proved to be an illusion. It created a discontinuity in our national life. It meant a transition to an environment of entirely different cultural and civilizational traditions, which halted our development based on inclusion in the Western European cultural circle. The state we joined, as a latecomer in the European process of forming national states, continued its aspirations of unification based on Serbdom as the integrator of artificially created Yugoslavism. We fell again under the pressure of denationalization. Even after World War II, and despite the National Liberation Struggle, the pressure for unification based on Yugoslavism continued. The role of unification based on a unitary Yugoslavism was taken over by the ideology of unity of the Yugoslav working class. Due to the state structure based on the ideology of real socialism, with the centralization of state power, nationalization of production means, and systemic transfer of national income, the danger of national erosion, although unintended and not necessarily deliberate, not only continued but even intensified.”²⁸⁹

e) Constitutionalizing Ethnic Exclusiveness: From “Titular Peoples” to “Titular People”

The historical narratives that gained prominence in the late 1980s and early 1990s, tinged with nationalism and anti-Yugoslav sentiment, profoundly influenced inter-ethnic relations among the Yugoslav peoples. This is also reflected in certain constitutional solutions. Specifically, the constitutions of Yugoslav federal units, enacted in 1974, contained provisions that guaranteed full equality of the Yugoslav peoples within each federal unit. This was in line with the venerated value

²⁸⁸ *The Constitution of the Republic of Croatia* (consolidated text), (available online: <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>)

²⁸⁹ *Skupna seja vseh zborov Skupščine Republike Slovenije*, 21. Seja (24. in 25. Junija 1991).

of fraternity and unity. In the new constitutional arrangements, though, this was significantly altered. The examples of Serbia and Croatia are quite telling, although by no means unique. According to 1974 Serbian Constitution, Serbia was constituted as

“the state of the Serbian people and parts of other [Yugoslav - S. M.] peoples and nationalities [national minorities - S. M.] who live and exercise their sovereign rights in it.”²⁹⁰

This acknowledgment placed all ethnic groups living in Serbia on an equal footing with the Serbs as a majority ethnic group. However, the preamble of the Serbian Constitution from 1990 changes this provision and states the citizens of Serbia are

“determined to create a *democratic State of the Serbian people in which members of other nations and national minorities* [emphasis mine] will exercise their national rights, based upon observance of the freedoms and rights of man and citizen, sovereignty vested in all citizens, the rule of law, social justice and equal opportunities for the advancement of the individual and society...”²⁹¹

Croatia, similarly, according to 1974 Constitution was a “national state of the Croatian people, state of the Serbian people in Croatia, and state of the nationalities that live within it.”²⁹² Echoing a similar trajectory initiated by Serbia, Croatian constitution underwent a profound transformation so in 1990 Constitution stated that

“the Republic of Croatia is hereby established as the *nation state of the Croatian people and the state of the members of its national minorities* [emphasis mine]: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and others who are its citizens and who are guaranteed equality with citizens of Croatian nationality and the exercise of their national rights in compliance with the democratic norms of the United Nations and the countries of the free world.”²⁹³

²⁹⁰ *Ustav socijalističke Republike Srbije*, in *Službeni glasnik*, 8/74, (Art. 1).

²⁹¹ *Ustav Republike Srbije*, in *Službeni glasnik*, 1/90, (The Preamble).

²⁹² *Ustav socijalističke Republike Hrvatske*, *cit.*, (Art. 1).

²⁹³ *Ustav Republike Hrvatske*, in *Narodne novine*, 56/90. (See the translated text: *The Constitution of the Republic of Croatia* (consolidated text), available online: <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>).

In the new constitutional frameworks Serbia and Croatia repeated that they were “national states” of the Serbs and Croats, respectively. However, “other peoples and nationalities” (as collectives) experienced a redefined constitutional status. In this new constitutional arrangement, “other” peoples and nationalities are acknowledged solely in terms of individual *members*, with rights and freedoms assured, yet without full national equality with the majority population in each respective state. While the revised constitutions certainly ensured civil rights and equality for all citizens, the re-envisioned constitutional status of Croats in Serbia and Serbs in Croatia, as national *collectives*, deviated from complete equality with the majority ethnic group. Instead, their status was aligned with the standards typically applied to national minorities. Although it is relatively difficult to envision the practical significance of this change within a democratic society, its symbolic resonance was profound.²⁹⁴

²⁹⁴ On this issue see a brief analysis in: Z. OKLOPČIĆ, *Beyond People, cit.*, p. 159, (fn. 8).

Chapter III

Historical Narratives and Constitutional Territorial Organization:

1. Introduction: On the Types of State Territorial Organizations

In the realm of constitutional theory, concerning territorial organization, a fundamental distinction arises delineating states as either simple or composite.²⁹⁵ The simple state, also known as a unitary state, may adopt either a centralized or decentralized structure, whereas the composite state is characterized by the higher level of independence of its units – regions (in the regional state) or state members (in the federation and, conditionally – confederation).

Needless to say, the distinction between a simple state and a composite state extends beyond mere considerations related to the number of units. Within a unitary state, there is not much controversy about the issue of who holds the ultimate power among diverse horizontal institutions. The answer to this question follows a relatively uncomplicated path, facilitated by a hierarchical structure and a centralized decision-making framework. In a composite state, however, the distribution of powers takes on a vertical orientation, spanning different tiers of governance. Thereby it requires a plethora of inquiries that delve into the interplay between these levels of authority.²⁹⁶

In addition, it is also critical to emphasize that not all the units, even on the same level within the overall structure necessarily exercise the same set of competencies.²⁹⁷ An asymmetrical model of organization allows units within the same administrative level (be it municipalities, regions, or federal entities) to possess distinct competencies to accommodate historical, cultural, or regional differences.²⁹⁸

²⁹⁵ This division could be traced back to Samuel Pufendorf who wrote: “*respublicas in universum dividamus in simplices et compositas*” See: S. F. VON PUFENDORF, *Samuelis Pufendorfii Disquisitio de republica irregulari, ad Severini Mombanzano cap. IV. de forma Imperii Germanici*, 1665, p. 19. (Available online: https://archive.org/details/bub_gb_weSb-ViuBGMC). The same division applies J. C. BLUNTSCHLI, *Lehre vom modernen Staat*, Stuttgart, Cotta, 1876, pp. 299-318. This division seems to be the highest level of abstraction although not frequently applied. The account on the state organization usually starts with the unitary and federal states.

²⁹⁶ R. MASTERMAN, R. SCHÜTZE, *Comparative Methodologies*, in R. MASTERMAN, R. SCHÜTZE (Eds.), *The Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, 2019, p. 5.

²⁹⁷ This is an insight already made by Puffendorf. See: M. WIGHT, *De Systematibus Civitatum*, in P. SCHRÖDER (Ed.), *Pufendorf's International Political and Legal Thought*, Oxford University Press, 2024, pp. 49-50.

²⁹⁸ J. MCGARRY, *Asymmetry in Federations, Federacies and Unitary States*, in *Ethnopolitics*, Vol. 6, No. 1, pp. 105-116, DOI: 10.1080/17449050701232983

The evolution of constitutional systems from simple (unitary) to composite (federal) states has defied a linear, predetermined trajectory throughout history. Rather than conforming to a clear and teleological progression, the shift between these models has been multifaceted and context-dependent. It seems plausible that unitary systems were the initial form of territorial organization. This claim finds support in the early stages of civilization, where the earliest organized states emerged as compact entities centered around cities and their immediate environs. However, even in antiquity, we encounter well-organized and institutionalized composite entities. Notably, the ancient Greek alliances, which include examples like the Delian League, Dorian League, and Arcadian League, exemplify these early forms of federations (or confederations, the terminology used to describe these alliances varies).²⁹⁹ Consider also Rome which, during the initial stages of its expansion, established federations within Italy.³⁰⁰ The very term employed to describe the association between Romans and their allies, “foedus” (meaning a treaty, or pact) became the namesake of the later unions.³⁰¹

Both simple and composite states have evolved diversely over time, giving rise to a discernible continuum between their respective “extreme” points. Within this continuum, certain models of simple, albeit decentralized states, exhibit traits reminiscent of composite states, and conversely, certain composite systems manifest features akin to those found in the simple structures. On the other side, certain composite states show a tendency towards an even higher level of independence of the member states, leaning towards other forms of association and loosening mutual liaisons.³⁰² Undoubtedly, a clearly manifested trend is observable within contemporary constitutional frameworks, wherein a heightened inclination towards greater degrees of decentralization, autonomy, or even independence is evident.³⁰³ What we see as a pattern, if any, “a decentralized state is generally a former unitary state”³⁰⁴.

²⁹⁹ H. BECK, P. FUNKE, *An Introduction to Federalism in Greek Antiquity*, in H. BECK, P. FUNKE (Eds.), *Federalism in Greek Antiquity*, Cambridge University Press, 2015.

³⁰⁰ H. H. SCULLARD, *A History of the Roman World 753-146 BC*, Taylor&Francis, 2014, p. 113.

³⁰¹ B. GLADHILL, *Rethinking Roman Alliance*, Cambridge University Press, 2016, p. 48.

³⁰² F. ROVERSI-MONACO, *Decentramento*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica, cit.*, pp. 300-301.

³⁰³ M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, 2012, p. 507; S. PAQUIN, *Autonomy, Subnational*, in B. BADIE, D. BERG-SCHLOSSER, L. MORLINO (eds.), *International Encyclopedia of Political Science*, SAGE Publications, p. 125.

³⁰⁴ S. PAQUIN, *Autonomy*, in B. BADIE, D. BERG-SCHLOSSER, L. MORLINO (eds.), *International Encyclopedia of Political Science*, SAGE Publications, p. 124; R. L. WATTS, *Comparing Federal Systems*, School of Policy Studies, Queen's University, 2008, p. 10.

In the ensuing sections, all these tendencies will be briefly examined. Namely, over the span of approximately a century, a period encompassed by this thesis, Yugoslavia and its successor states underwent multiple shifts in territorial organizational principles. The first Yugoslav state began its journey as a unitary-centralized entity, as defined by the 1921 constitution. It underwent a transformation into a regional state through the royal intervention in 1929 and preserved that configuration in the granted (imposed) constitution of 1931. In 1939 it was again recomposed into a federation-like state. Subsequently, the tumultuous events of World War II resulted in dissolution, internal conflict among its own populations, socialist revolution, and eventual liberation, resulting in the reestablishment of the state in a federal framework (1943-1946), consisting of six federal units. The process conveniently labeled the “federalization of the federation” further bolstered the autonomy of member states (as seen in the constitutions of 1963 and 1974), prompting discussions that the ultimate constitutional arrangement introduced elements akin to the confederal paradigm. Following the disintegration of Yugoslavia in 1991, successor states emerged as unitary entities, each adopting diverse forms of decentralization. Notably, Bosnia and Herzegovina stands out as an exception, being established in 1995 as a federal state after a protracted conflict within this former Yugoslav republic. Thus, prior to delving into these constitutional dynamics from the perspective of the role played by historical narratives, it is convenient to first outline key features inherent to the aforementioned models of territorial organization.

2. Kingdom of SCS/Yugoslavia: The Triumph of Unitarianism and Centralism

2.1. The Simple State

The simple (unitary) state exemplifies a singular and cohesive political entity wherein an encompassing ultimate authority is vested in a central government. The ultimate authority to make and enforce laws, as well as manage public affairs, resides at the center and the central government exercises full control over the entire territory. The legal and administrative systems in unitary states are typically uniform across the entire country, as laws and regulations emanate from the central authority. Such organization has long been associated with the very concept of the state, given that

“tropism of sovereignty leads to the state to be perceived of principally as a unitary state.”³⁰⁵ This understanding may very well be the consequence of the medieval feudal atomism, in which any “unitary image of political sovereignty was precluded ... by the legal assumptions underpinning the feudal organisation of society, and by the Church’s claims to act as a law-making power.”³⁰⁶ It’s not surprising that the modern unitary state has its origins in the most revolutionary European tradition – the French.³⁰⁷

Unitary states usually opt for a unicameral legislature, but there also notable exceptions (Great Britain, France).³⁰⁸ Indeed, in the structure of a unitary state, there are not many compelling reasons for bicameralism. If it is not just a matter of tradition, the upper house often serves to “counteract the inclination of the legislature to self-aggrandizement and may contribute to prudence in parliamentary debate.”³⁰⁹

Some opinions suggest that unitarism is not suitable for complex (divided) societies, while a contrasting view argues that complex states themselves pose a potential danger to such societies by leading to increasing demands for autonomy.³¹⁰ In any case, unitary state was a preferred model for the realization of the self-government of the people whose identity based on cultural bonds pre-existed the formation of “their” nation-states.³¹¹

The consistency in the legal framework of the unitary state, ideally, ensures a standardized application of laws and policies throughout the unitary state: With power concentrated at the center, decisions can be made swiftly and executed with a single point of coordination. This can be particularly advantageous in times of crisis or when quick responses are needed. On the other side, the simplicity of a unitary state can also be its disadvantage. The centralized nature of authority might overlook the specific needs, cultural variations, regional identities, and other distinctive characteristics of the various entities within the country. This can lead to challenges in

³⁰⁵ O. BEAUD, *Conceptions of the State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, p. 274.

³⁰⁶ Q. SKINNER, *The foundations of modern political Thought*, 2, Cambridge University Press, 2004, p. 351; S. BARTOLE, *Internal ordering in the Unitary State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, p. 621.

³⁰⁷ A. BURATTI, *Western Constitutionalism*, *cit.*, p. 125.

³⁰⁸ J. MARTINEZ, *Horizontal structuring*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, p. 561.

³⁰⁹ A. SAJÓ, R. UITZ, *Constitution of Freedom*, *cit.*, p. 255.

³¹⁰ A. LIJPHART, *The Wave of Power-Sharing Authority*, in A. REYNOLDS, *The Architecture of Democracy*, Oxford University Press, 2002, p. 41.

³¹¹ S. BARTOLE, *Internal ordering in the Unitary State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, p. 611.

addressing local issues appropriately, potentially causing neglect or marginalization of certain communities, or at least raising doubts about unequal treatment. The balance between centralized control and regional autonomy, if the latter is granted at all, shapes the dynamics and effectiveness of governance within a unitary state.

While some unitary states might adopt a more centralized approach, where decisions are made solely by the central government without much input from local entities, others might grant certain degrees of autonomy to local entities (administrative units, such as municipalities, districts, regions) to address specific needs. This is to say that a unitary state may alternatively opt for a decentralized arrangement, wherein certain powers are delegated to lower-tier administrative units while preserving the central government's overall supremacy.³¹² However, decentralization, as a multifaceted concept, comes in a variety of forms, each reflecting distinct ways of redistributing authority and power within a governing structure. The two main forms are administrative and political decentralization.³¹³ Political decentralization embodies the idea of autonomous rights, whereas in true administrative decentralization, there is a derivation of administrative powers mainly from the political-administrative apparatus of the state.³¹⁴

2. 2. *Kingdom of SCS/Yugoslavia as a Unitary State*

As expounded in the preceding chapter, the doctrine of unitarianism that proclaimed ethnic uniformity among the Southern Slavs played a pivotal role in the political life of the nascent nation. This notion, supported by historical narratives that allegedly corroborated the ethnic oneness of the Yugoslavs, was envisioned to transcend the intricate mosaic of diverse ethnic identities. It became the guiding ideological paradigm that was not only meant to foster a sense of collective identity but also to justify the unitary-centralist constitutional framework adopted by the emerging country. The paradigm's allure lay in its promise of strength through unity—a promise that was leveraged to centralize governance and administration. This consolidation of power, while intended to stabilize and homogenize the nation's political fabric, also laid down a constitutional arrangement that might, in time, find itself at odds with the very ethnic diversity it aimed to unite under a single national banner.

³¹² J. MARTINEZ, *Horizontal structuring*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, cit., p. 561.

³¹³ V. LEMIEUX, *La décentralisation*, Éditions de l'IQRC, 1997, p. 17.

³¹⁴ F. ROVERSI-MONACO, *Decentramento*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica*, cit., p. 301.

The Constitution of the Kingdom SCS firmly established a unitary-centralist framework by exclusively vesting legislative authority within the King and the Parliament and administrative authority within the King and the Council of Ministers. Judicial power was also centralized, but, interestingly, the seat of the highest judicial authority, the Supreme Court, was not in the states' capital, Belgrade, but in Zagreb.³¹⁵ No entity, other than the central authorities, was vested with legislative authority.

The final point mentioned is of utmost significance for the discourse in this chapter. Specifically, as summarized by Slobodan Jovanović, the paramount consideration among the architects of the constitution, prominent leaders of the two strongest political factions (Democratic and Radical Party), rested on the conviction that the overall cohesion of the state was contingent upon the dynamics between the central government and the provinces³¹⁶. The Constitution not only cemented a unitary system but also reinforced unswerving centralization. Despite granting a degree of home rule to local administrative units, a noteworthy aspect was the imposition of unmitigated central control. The highest-ranking local official, the “provincial governor”, chief of the highest local administrative tier (the province), was directly appointed by the King. This governor was the ultimate governing authority at the local level. The most conspicuous indicator of this centralist disposition can be gleaned from Article 101, which states:

The state administrative authorities supervise the activities of the home rule authorities through the provincial governor and other special organs. The provincial governor has the power to suspend the enforcement of any decision of the home rule officers that is not based upon the constitution, the law, or the provincial regulations.³¹⁷

2. 3. Crafting Historical Narratives to Uphold Unitarianism

At the commencement of the Constituent Assembly's inaugural session in December 1921, Nikola Pašić, an experienced statesman renowned for his decades-long active engagement in Serbian party politics and for his role as the President of the Council of Ministers of the Kingdom of Serbia during WWI, assumed the role of President *pro tempore* of the Assembly and delivered an opening speech. In his concise address, “history” found its place three times:

³¹⁵ *Ustav Kraljevine Srba Hrvata i Slovenaca*, Art. 101.

³¹⁶ S. JOVANOVIĆ, *Ustavno pravo*, cit., p. 59.

³¹⁷ *Ustav Kraljevine Srba Hrvata i Slovenaca*, cit., A 101. (See: H. LEE, L. R. McBAIN, *New Constitutions of Europe*, New York, Doubleday, 1922, p. 366.) However, the state's centralized nature is unmistakably recognizable from the entire section of the Constitution that pertains to local home rule.

“[T]hroughout the history of our three-named people, there has been no more significant and momentous occasion than the one we find ourselves in now. Our people are called upon, through their representatives, to lay the foundations of our future state and secure their political and civic rights in our three-named nation, equally for all citizens regardless of nationality, residing in our fatherland. *Our people lived long divided under foreign states, served foreign masters, and toiled for the sake of other nations. But now, thanks to the grace of God, our bloodshed, and the strength of our allies, we have been liberated and united (Emphatic applauding!)...* If we are wise and guided by experience and history, we will be able to find the true path of our progress and development”.³¹⁸

Pašić once again emphasized the importance of history, advocating for the imperative of heeding the “lessons of history” to ensure the successful achievement of the task of constitutional design.

In Pašić’s discourse, two significant elements become apparent. Firstly, there is the historicization of the current moment within a broader historical framework, highlighting its pivotal role as the greatest one, compared to the entire previous developments in the history of the South Slavs. Secondly, he offers a somber reflection on the unfortunate historical fate of the South Slavic peoples, which should serve as a cautionary guide, *ex negativo*, for shaping the future path. These aspects align with some of the key facets of the role of historical narratives outlined in Chapter I. Pašić’s underlying and clearly implied message is that, given the prolonged history of subjugation and division of the South Slavs under foreign rule, the foundation of their own state should be rooted in precisely contrasting principles: specifically, “equality for all citizens regardless of nationality.” In Pašić’s interpretation, this equated to the establishment of a unitary, centralized state, a stance that, by that time, had become abundantly clear as being his position.³¹⁹

What, then, did the architects of the Yugoslav state learn from history? Some of them believed that they could draw upon insights from universal history that, albeit distantly, bore semblance to the Yugoslav situation. In this regard, a commonly employed point of reference, drawn from broader historical experiences, here articulated by eminent Serbian jurist of the time Lazar Marković, reads that

³¹⁸ *I redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, in *Stenografska beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], No. 1, Beograd p. 1.

³¹⁹ Đ. STANKOVIĆ, *Nikola Pašić i jugoslovensko pitanje*, BIGZ, 1985.

“historical development of individual states (...) characterized by weak or non-existent central government demonstrated the gradual movement towards state models with stronger central government”.³²⁰

More specifically, the historical experience of unity and disunity in the founding moment of the United States of America was occasionally invoked. Interestingly, a reference to the American experience was raised by a representative during the Constituent Assembly discussions, drawing parallels to the vigorous debates over the constitution in Philadelphia Convention. This representative highlighted that even members of the American Constitutional Convention engaged in fierce internal conflicts for four months, to the extent that “eminent figures like Franklin and others worried that they might dissolve without reaching a consensus on adopting the Constitution. This perspective underscored that the “heated debates” and disagreements surrounding constitutional matters should be seen as an “inherent and natural state of affairs during the process of state formation.”³²¹

More to the point, those advocating for the composite organization or significant decentralization of the new Yugoslav state pointed to the example of the 18th-century American case and emphasized as a “historical lesson” that pre-existing distinct identities cannot be seamlessly merged into a singular unitary state structure. They believed that the Yugoslav case fit into that model.

Conversely, advocates of centralization drew exactly the opposite conclusion from the same historical example. They highlighted not the parallels but rather the significant disparities between the Yugoslav and American historical experiences. They noted that the creation of the USA entailed the unification of pre-existing states, a situation markedly distinct from the process of Yugoslav unification.³²²

Besides, the pan-American sentiment of the Founding Fathers, allegedly, was not as potent as the pan-Yugoslav sentiment of the creators of the Yugoslav state. In line with this reasoning, Bogumil Vošnjak, a distinguished Slovenian jurist of the time, posited that

“[h]ad the sense of unity among Americans been stronger during that time, they would undoubtedly have formed a unitary state instead of a federal one. In general terms, a federation is established

³²⁰ *XVII redovni sastanak Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Br. 10, p. 15.

³²¹ *Ibidem*, p. 5.

³²² S. JOVANOVIĆ, *Je li federalizam kod nas moguć*, in *Srpski književni glasnik*, 1920, p. 439-440.

only when a unitary state is not feasible: the latter holds a clear advantage over federation due to its inherent simplicity”.³²³

Within this framework, the employment of two distinct sets of arguments becomes evident: the first revolves around the internal cohesion of the components uniting to create a common state; the second focuses on the sentimental factor, the “sense of unity,” existing among the constituent elements of the emerging state.

Regarding the matter relevant for constitutional design, the idea of “ethnic unity/oneness” idea had a crucial significance. Radical advocates of the concept of “ethnic unity/oneness” believed that once the South Slavs were united into their own state, centralism would not impede anyone’s ethnic or national rights within the state (since they all belonged to the same “ethnic body”). Instead, centralism was seen as a means to dismantle the vestiges of foreign rule that had fostered distinct identities. Therefore, the idea of ethnic unity legitimized the centralist constitutional arrangement: despite multifaceted complexity of the society, which, theoretically, might be considered as a role model for a composite state arrangement, the new state was established as a centralized and unitary parliamentary monarchy devoid of any sort of provincial autonomy. Notably, considering the notion of “ethnic unity,” it’s worth highlighting that out of the 223 representatives who voted in favor of the Constitution, only eleven were Croats and three were Slovenes,³²⁴ which decorated the idea with a touch of cynicism.

Conversely, the adversaries of a unitary and centralized state framework consistently underscored the historical distinctiveness of various Yugoslav regions, contending that such diversity inherently resists centralization. As the new state took shape from these distinct constituents, commonly denoted as the “historical provinces,” debates arose regarding the legitimacy of preserving this provincial distinctiveness. Nevertheless, those opposing the centralized state structure, while recognizing the “ethnic oneness,” also employed historical narratives to substantiate the distinct identities of the historical provinces within the emerging state and affirm their right to coexist.

The proponents of a decentralized or even composite state emphasized historical justifications in their stance, framing their historical narrative as follows: while acknowledging the

³²³ B. VOŠNJAK, *Federalizam ili decentralizacija*, in *Arhiv za pravne i društvene nauke*, Vol. 1, No. 6, 1921, pp. 402-403.

³²⁴ I. BANAC, *National Question in Yugoslavia*, *cit.*, p. 403-404.

ethnic unity/oneness of the Serbs, Croats, and Slovenes (which is often seen as a concession to appease unitarists rather than a genuine belief), they contended that the Constitution should acknowledge the undeniable divergence in historical experiences among the distinct components of the “three-named people.” They argued for the preservation a constitutional recognition of “historical provinces” as autonomous units. This viewpoint resonated especially with Croatian politicians, who drew upon a wealth of historical documents and arrangements, some tracing back to the twelfth century, to uphold Croatia's tradition of autonomy. Naturally, each historical province had its distinct narrative, validating its unique existence. The ultimate objective was consistent: to retain the vitality of the “historical provinces” within the constitutional framework. Moreover, the renowned and highly regarded authority on Slavic matters, Tomáš Masaryk, explicitly asserted that the territorial readjustment of Eastern Europe “in each case due regard must also be paid to present economic conditions, and to historical peculiarities”, asserting that, following these considerations, the Yugoslavs will establish “an independent federation, led by Serbia.”³²⁵

As noted earlier, historical argumentation was extensively elaborated and employed in the context of Croatia. Ante Trumbić, a significant figure in Croatian politics and a key participant in the unification process, encapsulated the Croatian perspective while advocating for its historical rights to persist as a distinct entity:

“Croatia has been a significant and important factor in the history of our entire people, Serbs, Croats, and Slovenes. It has played an important role. Throughout the centuries, it knew how to defend its rights according to the circumstances and never voluntarily yielded to a stronger will. Croatia became an independent state as early as the 9th century. It maintained complete state independence for two centuries. Even after that, until modern times, throughout a span of 800 years, Croatia managed to preserve its political individuality, which never wavered. Croatia has been a factor. It should continue to be a factor for the sake of our national cause in the present day as well.”³²⁶

The proponents of the centralist agenda sometimes vehemently criticized these ideas, often invoking their own understandings of history while simultaneously downplaying its significance.

³²⁵ T. MASARYK, *The New Europe. The Slav Standpoint*, London, 1917, pp. 70, 71.

³²⁶ *XXIII redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 23. Aprila 1921*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Br. 16, p. 10.

An illustrative example of this perspective is evident in the discourse of Ljuba Jovanović, one of the most prominent members of the Radical Party, who staunchly advocated against “historicism.” Paradoxically, despite his position, Jovanović inevitably employed historical counter-narratives to challenge the prevailing historical accounts of his adversaries. In a notable twist, he deconstructed in his speech in the Constituent Assembly the common wisdom surrounding the narrative of “historical provinces,” used, as indicated, with an aim to enforce decentralization. Jovanović asserted that these provinces were, in fact, relatively modern constructs, lacking true historical legitimacy. Furthermore, Jovanović contended that the boundaries of these provinces had emerged from conflicts between various South Slavic groups themselves, rendering them symbols not of unity but of discord. To prove that claim, Jovanović meticulously dismantled the notion of provincial continuity, methodically scrutinizing each province. To illustrate this approach, consider his exploration of the history of medieval and early modern Bosnia:

“Bosnia began as a small region, which hardly encompass the Bosna River valley, and from there it expanded to the west, to the detriment of the Croats, and to the east, to the Drina River, to the detriment of the Serbs. Within those borders between Croatia and the Drina, it remained [...] until under the pressures of external and internal turmoil, Dušan’s [Serbian - S. M.] empire began to waver after his death. And then, when fragmentation and dissolution occurred in that part of our people, Bosnia expanded, moving southeast and south, mainly capturing the borders it had until its own downfall [...] It also expanded towards the west during that time, towards Croatia. Its borders were flexible in that direction, too. The Ottomans to some extent established this situation, and it did not change much. Just so we understand, gentlemen, that Bosnia during the time of the Sultan is nothing more but a vilayet, like many other vilayets. There is nothing state-like there; it is purely and solely an administrative entity.”³²⁷

In this perspective, which formed the basis for advocating a unitary, centralized state, another argument against preserving historical provinces comes from the rear: historical provinces were viewed as outdated vestiges of foreign domination, lacking intrinsic historical significance once the South Slavs had liberated themselves and united. The interpretation stood as another crucial historical counter-narrative against the proposition of preserving these regions within a

³²⁷ *XIX redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Knj. 1, cit., p. 10.

constitutional framework. This perspective was encapsulated in a discourse by Velizar Janković, a Minister in the Government:

“Why, gentlemen, can we not embrace these historical provinces, and regions? We cannot accept them because they are a continuity of foreign political life; they are a continuity of that kind of state organization that we have witnessed under various emperors, sultans, and all foreign rulers. We cannot accept these historical provinces also because they are such a burdensome legacy for us, a legacy that we cannot and will not bear on our shoulders... We categorically reject these kinds of recommendations because they are formulas that strongly resemble Austrian and Bulgarian formulas, which experimented on the body of our nation. We have fought against such theses with our heads and our land, and therefore we can never accept them [...] We oppose Austrian theories and concepts that suggest the existence of a Bosnian nation and a Bosnian language; we oppose Bulgarian autonomous concepts that aimed at Macedonia...”³²⁸

This line of reasoning held considerable strength, to the extent that even certain supporters of substantial decentralization, such as the Croatian jurist Josip Smodlaka, dismissed “administrative borders that are merely a legacy of Austria [...] inaccurately labeled as historical.”³²⁹

Bogumil Vošnjak, another critic of historical arguments, raised concerns about using a document from the very recent past as a basis for argumentation—specifically, the Corfu Declaration of 1917. This declaration originally required a qualified majority for the adoption of the Constitution. However, when it became evident that this majority could not be attained, the government opted for a simple majority instead.³³⁰ However, the representatives of the pro-government faction in the Constituent Assembly, unequivocally expressed the lack of approval for referring even to the Corfu declaration: according to Bogumil Vošnjak’s viewpoint, while it undoubtedly was a significant historical document, treating its provisions as if they were legally binding was merely an “erroneous form of historicism.”³³¹

³²⁸ *XXI redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 22. Aprila 1921. godine*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], cit., p. 6.

³²⁹ J. SMODLAKA, *Nacrt Jugoslovenskog ustava*, Zagreb, 1920, p. 6.

³³⁰ I. BANAC, *National Question in Yugoslavia*, cit., 376.

³³¹ *XX redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 21. Aprila 1921. godine*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Br. 13, cit., p. 10.

As per the Minister of Education, Svetozar Pribićević, decentralization anchored on historical entities as its units, drawing from the experiences of states that “permitted” the presence of autonomous entities within their territories, proves to be utterly perilous::

“You are aware from the past, from experience, that every autonomy carries within itself a dynamic that propels it towards independence, of course, when that autonomy is political, and especially if such political autonomies were granted to historical provinces, which have already exhibited a tendency in the past to be centers of an independent state.”³³²

This idea was also expressed by Juraj Demetrović, a prominent member of the Democratic Party and one of the rare Croats who supported centralism against decentralization based on historical provinces. From historical experience, he supposedly learned a lesson about “Slavic character” and mentality:

If we look, gentlemen, into our history, if we consider our national character, our Slavic character, then we will see that there is a strong likelihood that things would have developed in such a way as to endanger our national unity, to endanger our state, which has been so dearly paid for and redeemed through so many sacrifices.³³³

Supporters of the centralized model also had their own array of historical narratives, which they employed to rebut the arguments of their adversaries but, at the same time, to provide backing for their perspective. For instance, one can examine the discourse of another prominent figure in the political landscape of that era, Ljuba Davidović, who led the largest political organization, the Democratic Party. In his address, he specifically referenced the peril (and therefore the fear) of disunity, drawing on a historical allusion from Serbian medieval history, referring obviously to intentions towards affirmation of the “historical provinces”:

When were we strong and progressive? Back when we had a strong state capable of uniting a significant portion of our people. [Serbian emperor from XIV century] Dušan had a powerful state, but he wasn't just renowned for his battles [...] he entered the history of other nations as a good legislator. The code he enacted during that time was a prominent sign of our progress. But as soon as Dušan was gone, as soon as separatism started emerging, Vukašin took us to Maritsa, only to send us from Maritsa [battle against Ottomans in 1371] to Kosovo [battle against Ottomans in

³³² *XXIX redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 19. Maja 1921*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], , *cit.*, 22, p. 7.

³³³ *LIV redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], *Br.* , *cit.*, *Br.* 47, p. 6.

1389]. And, gentlemen, if we had been all at Kosovo, I am convinced that our people could have repelled the strong Ottoman onslaught... And having such an experiences we still avoid, even today, lessons from history; we would prefer to be divided, we would prefer to be weak...”³³⁴

Unitarism has been defended, in some cases, by analogous processes in cultural history. For instance, according to Miloše Moskovljević, a Serbian philologist,

“[h]istory demonstrates, and all past experiences teach us, that we are heading towards unification, and in this regard, all provincial dialects that were once present in literature are fading away. Once we had a distinct Serbian-Slavic language, if it can be called so, in the old Serbian state, while a different language was evolving in Dubrovnik and Dalmatia... But thankfully, we see that both Serbs and Croats have agreed upon a single language that has emerged from the common vernacular speech.”³³⁵

Finally, a notable Serbian jurist, Laza Marković, upheld centralism by complaining about the absence of political and legal traditions among the South Slavs that would uphold the decentralized model. He drew a comparison between the historical evolution of local self-governance in Great Britain and the situation in the Balkans:

Throughout history, the English self-governing bodies acquired complete state administration, so that the execution of laws was typically entrusted to these self-governing units [...] This system emerged in Great Britain through historical evolution, and it functions very effectively there. The English termed this system the “devolution” [...] The assumptions under which the Upper House believed that it could introduce this principle of devolution or delegation into the system of Great Britain are two: firstly, the idea of state unity is so strong that there is no longer any fear that this idea may be endangered [...] and secondly, the assumption that the self-governing system, developed from municipalities and implemented through counties over a full century, has fostered a self-governing mentality and a tradition capable of taking state administration into its hands. Gentlemen, I would now be free to ask whether we can assert, quite objectively, regardless of our political perspectives, that today, as we are just united, we possess these assumptions, under which Great Britain, with its cultivated population, is cautiously just beginning to consider the devolution

³³⁴ *XV redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 15. Aprila 1021*, Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Knj. 1, cit., XV p. 4.

³³⁵ *XV redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], 8, cit., p. 13.

system. Can we, under current circumstances, implement this system in our Constitution without any fear? I believe we cannot, and this conviction is shared by the parliamentary majority.³³⁶

The examples provided offer a comprehensive insight into a variety of historical narratives and counter-narratives, deployed to diminish the credibility of advocating for the recognition of historical provinces and their acceptance as units of the decentralized state. These narratives drew from alleged and consciously invoked historical experiences, strategically arguing that the proclaimed “historical provinces” did not possess the seamless historical continuity they asserted. Instead, they were framed as remnants of past foreign dominions. Furthermore, a distinct argument emerged when the concept of “national character,” developed over history and prone to conflict and disunity, was invoked to underscore the unsuitability of historical provinces as appropriate units for decentralization efforts. All this underlines the multifaceted nature of the discourse, where historical authenticity, political implications, and the evolution of national identities intertwine to shape perceptions of regional governance and state cohesion, as they should be defined by the Constitution.

Yet, an intriguing compromise was extended by the government to Bosnian autonomists, who defended the narrative about the historical continuity of the Bosnian unit: due to the inability of the government to secure even a simple majority in the Constituent Assembly, the representatives of Bosnian Muslims were swayed to align with the government through a pledge (made by the government) to implement the administrative division of Bosnia and Herzegovina while respecting its historical boundaries. This commitment was enshrined in the Constitution:

“By the Law on Territorial Division, Bosnia and Herzegovina will be divided into districts within their current boundaries. Until this is regulated by law, the circuits in Bosnia and Herzegovina will be treated as districts. The merging of these circuits is carried out by the decision of their assemblies of those respective territories. Individual municipalities can separate from their districts and join another one only within the current boundaries of Bosnia and Herzegovina or outside of them, if their self-governing bodies agree to it by a decision of 3/5 of the votes and this decision is approved by the National Assembly.”³³⁷

It was evident at the time that government representatives strategically used and disregarded historical arguments based on whether those narratives aligned with or contradicted

³³⁶ *LXI redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 27. Juna 1921*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca* [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], Br. 54, p. 5.

³³⁷ *Ustav Kraljevine Srba, Hrvata i Slovenaca, cit.*, Art. 135.

their objectives. As noted by the opposition representative Ivo Pavičić, government supporters employed historical narratives to rationalize the proposed Constitution Draft, yet vehemently rejected the same type of arguments when utilized by their opponents.³³⁸

Within the echelons of the Yugoslav government, there prevailed a singular historical narrative that was deemed worthy of recognition and dissemination—the persistent quest for national unity among the Yugoslavs. This narrative was enshrined as the centerpiece of collective memory, overshadowing the distinctive traditions of the various Yugoslav “tribes,” which were relegated to the margins of the nation’s storied past. These particularistic traditions were cast as remnants of a divisive legacy left by foreign oppressors—an unwanted inheritance that was perceived to undermine the overarching narrative of unity. Consequently, the government’s historical discourse strategically emphasized the unification process, positioning it as the ultimate expression of the Yugoslav spirit, while individual tribal histories were minimized or dismissed as obstacles to the creation of a cohesive national identity.

In the Yugoslav context, where diverse ethnic, cultural, and historical elements converged, historical narratives played a dual role. On one hand, these narratives were used to legitimize certain territorial arrangements, drawing upon the resonance of past struggles and achievements. On the other hand, they also acted as catalysts for emotionally charged debates, eliciting a range of sentiments from different factions within the Constituent Assembly and the broader population. These narratives often carry different connotations for various groups; they can serve as powerful tools for legitimacy and identity, and the emotional responses they evoke can either foster unity or exacerbate divisions.

3. Turn of the Table: Yugoslavia as a Socialist Federation

3. 1. The Composite State

In contrast to the simple, unitary state, the composite territorial organization is characterized by a more robust and profound power-sharing between the central organs, on the one hand, and unit-level entities, on the other, thereby decisively shaping this constitutional arrangement. The composite constitutional configuration presupposes a substantial degree of autonomy vested in

³³⁸ XXVII redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca 10. Maja 1921, in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca [Stenographic Notes of the Constituent Assembly of the Kingdom of the Serbs, Croats and Slovenes], 20, p. 23.

constituent units, primarily manifested through the exercise of entrusted and/or original legislative powers that are constitutionally delineated. As previously indicated, the three archetypal configurations of this arrangement encompass: regional, federal, and confederal. Notably, while, ideally, all three configurations may arise from decentralization processes, they can also emerge through agreements and mergers of previously distinct (independent) entities.

The regional state, as a type of composite state,³³⁹ maintains a certain level of autonomy within the regions, entitling them to wield distinct political, legislative, and administrative prerogatives within their sphere of competence. This regional autonomy represents an endeavor to preserve cultural, linguistic, or historical particularities amidst the broader national framework in contexts marked by cultural diversity, regional identities and relevant distinctive characteristics. This model is usually exemplified by Italy and Spain. Regions within one and the same state may have different levels of autonomy. This is the case with Italy, which is also described as a “asymmetric regional state”. Almost all regional states, however, evolved from unitary states.³⁴⁰

The federal constitutional model, federation being recognized as a preeminent form of composite state, entails (at least) a dual-tiered governmental system comprising both a central authority and constituent states. Each tier is allocated specific spheres of competence, typically codified within a constitution, thereby demarcating their distinct domains of influence. Central to the essence of the federal arrangement is the vertical (as opposed to horizontal, among different branches of government) separation of powers, between the federal government at the central level and the governmental entities at the unit levels.³⁴¹

³³⁹ Some scholars would consider a regional state as the most decentralized simple state, others – as a *sui generis* type, but it seems that the most plausible solution is to avoid the proliferation of the categories and to classify it as a type of the composite state. As De Bruycker pregnantly articulated, “it is indeed a new type of State. Rather than situating it at an intermediate stage between the most unitary of the federal States or the most federal of the unitary States, which would be to avoid the problem by sinking into the convenient category of so-called *sui generis* notions, we prefer to consider the regional State as an independent notion, one of two possible forms of composite States, the other being of course the federal State.” De BRUYCKER, *Introductory Report*, in *Regionalisation in Europe Evaluation and Perspectives*, Geneva, Council of Europe, p. 24/19-63/ For an opposite view see: S. BARTOLE, *Internal ordering in the Unitary State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, 621–623.

³⁴⁰ On regional state see: R. BIFULCO, *Federalism*, in R. MASTERMAN, R. SCHUTZE, *Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, 2019, pp. 315, 329; G. De VERGOTTINI, *Diritto costituzionale comparato*, *cit.*, 475-477; O. BEAUD, *Conceptions of the State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, 275.

³⁴¹ On general characteristics of federalism see: L. LEVI, *Federalismo*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica*, *cit.*, pp. 403-414; D. HALBERSTAM, *Federalism: Theory, Policy, Law*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, *cit.*, 576-577; R. BIFULCO, *Federalism*, in R. MASTERMAN, R. SCHUTZE, *Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, 2019, pp. 315, 329; G. De VERGOTTINI, *Diritto costituzionale comparato*, *cit.*,

While it does have antecedents, this system crystallized from the apprehensions of influential federalists in forging the system of the United States. These federalists were resolute in their endeavor to institute constitutional safeguards that would effectively constrain the prospective encroachment of the central government upon the domain of individual liberties. The most prominent among them, James Madison, Alexander Hamilton, and John Jay wrote a series of articles, the well-known *Federalist papers*, articulating zealously, among other concepts, the idea of separation of powers. Their strategic focus on balancing authority was rooted in their apprehension over the concentration of power and its potential infringement upon personal freedoms.³⁴²

However, within the European continental intellectual tradition, the genesis of federalist ideas is more commonly attributed to the earlier works of Althusius, a 17th-century scholar.³⁴³ Althusius conceived federalism in a more extensive manner, encompassing not merely a dual-tiered and rigid constitutional structure, but rather a multi-layered and all-encompassing political arrangement in its broadest sense. This tradition of the so called “polyvalent federalism” is still influential in Europe, especially through the advocates of the multilevel governance, seen as a tool for surpassing what they see as the shortcomings of the dual-tier model.

For decades, the most influential was the definition of federalism coined by William Riker, which reads that

“[a] constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though only a statement in the constitution) of the autonomy of each government in its own sphere.”³⁴⁴

How are these spheres defined? The demarcation of authority between the central government and unit-level governments remains a pivotal concern in federal governance. While the various theories of these domains exist, it is the normative theory of federalism that elucidates this division through the concept of subsidiarity. According to this theory, federal arrangements

456-477; O. BEAUD, *Conceptions of the State*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, 275; A. SAJÓ, R. UITZ, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, Oxford University Press, 2017, p. 170.

³⁴² K. C. WHEARE, *Federal Government*, Oxford, Oxford University Press, 1964, pp. 1-2; Federalist 51, (D. J. BODENHAMER, *The Revolutionary Constitution*, pp. 67-91.

³⁴³ I. BACHE, V. FLINDERS (Eds.), *Multi-level Governance*, 2004.

³⁴⁴ W. RIKER, *Federalism*, in F. I. GREENSTEIN, *Handbook of Political Science*, Addison Wesley Publishing Company, 1975.

hinge upon the enumeration of competences, whereby certain powers are vested in either the federal or unit-level government, while the remaining authority is entrusted to the remaining level.³⁴⁵ However, the subsidiarity principle requires “that all issues shall be decided at the lowest possible level.”³⁴⁶ If not enshrined within the constitution, this principle might be developed by the constitutional courts.³⁴⁷

The trajectory of federalism often involved the voluntary association of distinct, preexisting entities, each contributing to a composite whole while retaining a considerable level of autonomy. Such is the case in the United States. However, contemporary periods have witnessed a discernible shift in the evolution of federalism, marked by a notable trend toward the transition from unitary state frameworks to federal structures. This transition underscores the adaptability and responsiveness of federalism as a governance model to the evolving needs and complexities of modern societies. The contemporary inclination towards this transformative path underscores the capacity of federalism to accommodate diversity, balance competing interests, and ensure more inclusive and effective governance arrangements amidst the demands of an interconnected world. This capacity, however, is not limitless, as witnessed, among other cases, by the violent dissolution of the Yugoslav Federation.

The federal model has sparked a plethora of scholarly investigations. Comprehending the full spectrum of federalism’s interpretations has evolved into a formidable undertaking. Notably, K. C. Wheare’s classical perspective, which posits that the federal government and the governments of constituent units are “co-equally supreme within their sphere,” has encountered limited resonance within a contemporary theory that cautiously recognizes the supremacy of the federal government. As the discourse evolved, diverse scholars accentuated varying facets of this complex phenomenon. William Livingston, for instance, underscored sociological dimensions encompassing economic, social, political, and cultural forces; Carl Friedrich discerned a conceptual nexus between federalism and constitutionalism; and Daniel Elazar introduced a comprehensive conception of federalism spanning an array of arrangements, including unions, federations, confederations, federacies, condominiums, and leagues.

³⁴⁵ D. HALBERSTAM, *Federalism: Theory, Policy, Law*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, pp. 585-586; 592-595;

³⁴⁶ A. SAJÓ, R. UITZ, *The Constitution Of Freedom. An Introduction To Legal Constitutionalism*, Oxford University Press, pp. 173-174.

³⁴⁷ L. BASTA FLEINER, J. F. GAUDREAU-DESBIENS, *Federalism and autonomy*, in M. TUSHNET, T. FLEINER, C. SAUNDERS (eds.), *Routledge Handbook of Constitutional Law*, Routledge, 2013, pp. 281-282.

Federalism is a complex, multifaceted political and constitutional concept that often defies precise categorization. Consequently, it is important to exercise caution when asserting that a particular arrangement labeled as federal is, in fact, confederal, which is another notion that needs to be addressed. The Italian scholar Pellegrino Rossi epitomized back in 1833 that between federation and confederation, he saw no bright lines but only ‘degrees and nuances’.³⁴⁸

Traditionally, it is considered that while a confederal arrangement implies a somewhat looser association of sovereign entities, a federal system typically involves a balance between central authority and the autonomy of the units i.e. a shared sovereignty. Consensus in decision-making is also a well-established characteristic of the confederal arrangement, alongside *veto* power.³⁴⁹ All the power of the confederations’ central bodies is virtually delegated by the member states, which are also allowed to leave the confederal arrangement whenever they consider such action appropriate.³⁵⁰ Finally, in terms of their formation, the federal models are constitutional arrangements, while confederation comes into being by an international agreement. Yet, such an agreement can certainly hold constitutional significance.

Due to the inherently flexible nature of federalism and the potential for variations in its practical implementation, the delineation between federal and confederal structures can sometimes be objectively blurred. Therefore, instead of rigidly denying the federal characterization of an arrangement that exhibits confederal attributes, it is essential to acknowledge the complexity of federalism and the potential for hybrid models that do not neatly fit into either category.

“In practice, federalism is hardly a technical matter. It cuts close to the heart of state sovereignty, and as such, raises strong emotions”.³⁵¹ Although federalism is usually seen as a model for acknowledging and constitutional articulation of the existing differences, the notion “federal” also rests on a foundation stone of organizational and willingly exercised unity among its member states. Within this framework, essential facets of a cohesive identity are deliberately supported, although affiliation towards particular identities might prevail. Contrasting this, a confederation places a paramount emphasis on the efficient coordination (not unity) among its

³⁴⁸ Cited in: D. HALBERSTAM, *Federalism: Theory, Policy, Law*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, 582.

³⁴⁹ A. SAJÓ, R. UITZ, *The Constitution Of Freedom. An Introduction To Legal Constitutionalism*, Oxford University Press, 173.

³⁵⁰ R. BIFULCO, *Federalism*, in R. MASTERMAN, R. SCHÜTZE (eds.), *The Cambridge Companion to Comparative Constitutional Law*, Cambridge, p. 323.

³⁵¹ A. SAJÓ, R. UITZ, *Constitution of Freedom, cit.*, p. 170.

constituent entities, with cohesive identity either entirely absent or notably diminished compared to the presence of the same features in a federation.

Nonetheless, the differentiation between federal and confederal arrangements fundamentally hinges on the exercise of sovereignty. In a federal framework, the mantle of sovereignty is extended across both the national (federation) and sub-national (units) strata, embodying the essence of dual federalism. This distinction primarily applies to internal sovereignty. Regarding internal sovereignty within a federal constitutional arrangement, two predominant approaches surface: the first posits a co-equal status among the central (national), and subnational structures, while the second contends for the primacy of the central government. In terms of the federal state's external sovereignty, the theory unequivocally asserts that it is vested primarily at the central, national level. According to some scholars, international relations are at the heart of federal regimes.

Conversely, within a confederation, sovereignty finds confinement exclusively within the member states, thereby rendering the confederation bereft of any remnants of sovereign authority. In a nutshell, viewed from an external standpoint, a federation embodies a singular sovereign nation, while a confederation only entails the harmonization of multiple sovereign entities.

However, it appears that the concept of popular sovereignty, when earnestly embraced, offers a resolution to the longstanding debate concerning the locus of sovereignty within a composite state. By attributing sovereignty to the people themselves, its exercise can be distributed between the tiers in a variety of conceivable proportions, as seen in federal states, or can be entirely "exhausted" within the constituent units, as exemplified in a confederation.

With that said, it is noteworthy to highlight that the dual federal model, emphasizing the partition of sovereign powers and thereby implying potential conflicts between these distinct levels, has faced extended scrutiny in contemporary scholarly discourse:

Dual federalism is based on the idea of dual 'sovereignty'. The Constitution divides sovereignty into blocks of exclusive powers. The federal government and the State governments are co-equals and operate independently in their separate spheres. (Again: this will not tell us anything about the respective size of these spheres; and, depending on the substantive balance struck, one could envisage a 'nationalist' as much as a 'State-rightist' dual federalism.) Cooperative federalism, on the other hand, stands for a philosophy in which sovereignty is shared: 'the national and state governments work together in the same areas, sharing functions and therefore power'.¹⁶ '[T]he National Government and the States are mutually complementary parts ... whose powers are

intended to realize the current purposes of government according to their applicability to the problem at hand.³⁵²

While external sovereignty remains less susceptible to challenges by the federal units, it encounters a distinct set of limitations from an external perspective. The exercise of external sovereignty, as undertaken by a federal state, rests upon the presumption of its recognition and legitimacy within the global community of nations. However, as a multitude of factors converge within the dynamics of international relations, external sovereignty operates within a complex web of mutual interdependencies. In this context, constraints can be imposed upon a state's autonomous actions and decisions due to its adherence to international norms, treaties, and agreements that shape state conduct on the international stage. What remains within the realm of a state's sovereign capacity is the decision to adhere to arrangements that impose the aforementioned constraints or not.

In conclusion, amidst the discernible trend towards the diversification of constitutional forms and the increasing constitutionalization of internal orders within various entities, a return to the fundamental classification of constitutional arrangements into the categories of simple and composite seems advisable. While the simple constitutional arrangement, typified by the unitary state, engenders relatively straightforward interpretations, the realm of the composite constitutional arrangement is rife with complexities and incites debates.

However, it is pertinent to assert that within the domain of the composite constitutional arrangement resides a multitude of configurations that satisfy the following key criteria: Firstly, the constitutionalization of mutual relations among constituents, thereby substantiating their status within the composite whole. Secondly, the presence of common institutions that wield at least a coordinational (if not a superior) role is required by the constitutional provisions. (This institutional dynamic embodies the essence of cooperation and coordination necessary to sustain the integrity of the composite structure.) Thirdly, the existence of individual units that enjoy an indisputable and secure status, immune from unilateral dissolution.

If this holds true, federalism might be defined as “the coexistence within a compound polity of multiple levels of government each with constitutionally grounded claims to some degree of

³⁵² R. SCHÜTZE, *From Dual to Cooperative Federalism. The Changing Structure of European Law*, Oxford, Oxford University Press, 2009, p. 5.

organizational autonomy and jurisdictional authority”.³⁵³ This conceptual framework covers the whole variety of composite constitutional arrangements, acknowledging their diverse manifestations while grounding their categorization in well-defined principles of mutual relations between the units and the central government.

In the 20th century, several countries adopted socialist systems, and in some multiethnic socialist countries, federalism was introduced as a governing framework. Socialist federal systems are marked by specific dynamics in the relationship between central and regional governments, featuring several key elements that constitute socialist federalism.

Firstly, there is a significant role for the central government in economic planning and control. This centralized economic authority may extend to regional or state levels, with both central and regional governments participating in economic decision-making. This dynamic is an integral part of socialist federalism, as it ensures that economic planning aligns with the federal framework, where power is shared between central and regional entities.

Resource redistribution is another hallmark of socialist federalism, accomplished through fiscal and financial mechanisms established within the federal structure. More affluent regions often contribute a larger portion of their resources to the central government, which then redistributes these funds to less prosperous areas. This process necessitates collaboration and coordination between central and regional governments, highlighting a fundamental aspect of federalism: the cooperation between different levels of government.

Comprehensive social welfare programs are among the key components of socialist federalism. While the central government may set overarching standards and policies, the actual administration and provision of social services frequently occur at the regional or state level. This division of responsibilities showcases the federalist principle of shared powers, where central and regional governments work together to deliver essential services to the populace.

State ownership and control of vital industries or resources are often established at both central and regional levels in socialist federal systems. This arrangement means that both tiers of government play a role in regulating and overseeing state-owned enterprises, with the central government typically responsible for setting broader policies.

³⁵³ D. HALBERSTAM, *Federalism: Theory, Policy, Law*, in M. ROSENFELD, A. SAJÓ (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, *cit.*, 580.

Finally, the distribution of political authority can be highly centralized in socialist federalism, impacting the allocation of powers and responsibilities between central and regional governments. The balance between central and regional authority varies between federal systems, and this equilibrium between levels of government is a defining characteristic of federalism itself.

3. 2. *Yugoslav Socialist Self-Managing Federalism*

Even before the World War II, Communists vehemently criticized unitarianism and the dominance of Serbian political and military elites in pre-war Yugoslavia, which was labeled as the “greater-Serbian hegemony.”³⁵⁴ To address this issue, the Yugoslav Communists conceived a new federal structure for the country,³⁵⁵ which gradually began to take shape during the war. Namely, back in 1943, even before its effective reestablishment, AVNOJ announced the federal structure of the country.³⁵⁶ From 1945, before any formal change of the constitution, the country’s provisional name, Democratic Federal Yugoslavia, replaced its previous official designation as the Kingdom of Yugoslavia and underlined the significance of the federal structure. The Constitution of 1946 once again changed the country’s name to the Federal People’s Republic of Yugoslavia, retaining the term “federal” from its previous designation. This formalized and emphasized the already established federal structure that had been put in place during and immediately after the war. The term “federal” had remained in the state name until the end of its existence, although in 1963 the state changed the name once again into Socialist Federal Republic of Yugoslavia.

Over decades, the federal structure of the country experienced successive changes, deepening its substance and securing increasing independence for the federal units. This phenomenon, sometimes termed the “federalization of the federation,”³⁵⁷ was driven by recurring constitutional revisions. As previously mentioned, following the Constitution from 1946, subsequent constitutions were adopted in 1953, 1963, and 1974. All these changes affected also

³⁵⁴ D. ROKSANDIĆ, *Velikosrpski hegemonizam i drugoi nacionalizmi u protivrečnostima jugoslovenskog društva 1918-1941*, Centar CK SKH, 1985

³⁵⁵ L. PEROVIĆ, *Od centralizma do federalizma. KPJ o nacionalnom pitanju*, cit., pp. 253-329.

³⁵⁶ *Deklaracija Drugog zasedanja Antifašističkog veća narodnog oslobođenja Jugoslavije 29. novembra 1943* [Declaration of the Second Session of the Anti-fascist Council of the People’s Liberation of Yugoslavia on November 29, 1943], in *Službeni list DFJ 1/45*, p. 1.

³⁵⁷ F. BIEBER, *Federalizing the Federation: The Failure of the Yugoslav Experiment*, in *Routledge Handbook of Regionalism & Federalism*, Routledge, 1st ed., 2013.

Yugoslav federalism as well. Yet, the foundational principle – the independence of the federal units (republics) – remained its constant content.

Federalism was a consequence of an even more profound shift in understanding of the “national question” in Yugoslavia. The vague notion of “three tribes of one single people” – Serbs, Croats, and Slovenes – was not only rejected by the Communists; they asserted that these tribes constituted separate peoples, in essence, distinct nations. Moreover, it was recognized that the Macedonians, Montenegrins, and, from the 1960s onwards, the Muslims also constituted distinct peoples, equivalent to Serbs, Croats, or Slovenes. This realization gave rise to the federation comprising six units – republics: Serbia (including the autonomous provinces of Vojvodina and Kosovo), Croatia, Slovenia, Macedonia, Montenegro, and Bosnia-Herzegovina. Unlike the other republics, which were regarded as “nation states” of the major ethnicity within each particular republic, Bosnia was not a “nation state.” Instead, the three nations – Muslims (Bosniaks), Serbs, and Croats – enjoyed the status of “constituent peoples” within this federal unit.

Therefore, the 1946 Constitution, in its first article, defined Yugoslavia as a “union of equal peoples (nations – S. M.)” who had “expressed their intent to live together within a federal state.” Article 10 of the same Constitution also emphasized the “equality and national freedom of the peoples” within Yugoslavia. The 1953 Constitution characterized the Federal People’s Republic of Yugoslavia as a “socialist democratic federal state of sovereign and equal peoples (nations).” The constitutions of 1963 and 1974 introduced comprehensive sections on fundamental principles, restating this fundamental concept, which will be discussed below.

Another important aspect of Yugoslav federalism was the constitutional treatment of the national minorities – nationalities. In the provinces of Kosovo and Vojvodina, they had a significant level of representation, particularly the Albanians in Kosovo, where they constituted the majority. At one point, for instance, an Albanian representative even held the office of the president of Yugoslavia.

It is crucial to underscore that the Communists recognized that the form of federalism they were constructing necessarily differed from the federalism found throughout the liberal-democratic world. As already asserted, the difference between socialist and liberal constitutionalism revolved around the issue of the relevance of the political system or economic system (socialized vs. privately owned means of production; controlled vs. free market, etc.) for the functioning of federalism in practice.

However, the federalism designed in Yugoslavia extended beyond conventional boundaries of the socialist constitutionalism. A significant aspect of Yugoslav federalism was closely linked to Yugoslavia's historical legacy (particularly the recent one, from interwar and war period) and "independent path" to socialism, known as self-management. Consequently, this phenomenon was often referred to as "Yugoslav socialist self-managing federalism."³⁵⁸ Among numerous other aspects, three major distinct features of this model of federalism stand out, justifying such a complex designation. Those three features refer to what was specifically Yugoslav (in terms of national question), what was socialist and what was self-managing, with respect to federal arrangement.

The first feature of Yugoslav socialism centers on the origin and position of the federal units (republics), as nation-states of the Yugoslav peoples, within the federal structure. These federal units did not exist prior to 1941-1945, especially not within the borders established in that period; some of these units had never functioned as independent states; the territories within which they were established during 1941-1945 were integral parts of the centralized, unitary Yugoslavia from 1918 until the constitutional change during and after WWII.

On the other hand, the Yugoslav republics established themselves as independent states through their own decisions. Therefore, their independence did not result from decentralization or devolution. Consequently, even though federal units like Macedonia or Slovenia, for instance, had never before existed as independent nations, their status within the federal structure and, for that matter, within the context of Yugoslav federalist doctrine, evolved over time so that, eventually, they were treated as if they were entities that existed prior to unification.³⁵⁹ The transformation of the first article of the 1946 Constitution unmistakably demonstrates a noteworthy shift in its content. Initially, Article 1 of the Draft Constitution stated that the Yugoslav peoples "expressed their will to remain united in Yugoslavia."³⁶⁰ However, in the final adopted version, Article 1 of the Constitution articulates that the Yugoslav peoples, "on the basis of their right to self-determination, including the right to secede, expressed their will to live together in the federal state."³⁶¹ Evidently, the initial rendition of Article 1 suggested a connection to the former Yugoslav

³⁵⁸ With occasional variation, this was the official term for the state organization. See: I. VUKOVIĆ, R. MARKOVIĆ, J. MARJANOVIĆ, *Socijalistički samoupravni sistem SFRJ*, Privredni pregled, 1978, p. 442.

³⁵⁹ V. MRATOVIĆ, N. FILIPOVIĆ, S. SOKOL, *Ustavno pravo*, Sveučilišna naklada Liber, 1977, pp. 351-357.

³⁶⁰ *Ustavotvorni odbori Savezne skupštine i Skupštine naroda*, Izdanje Narodne skupštine FNRJ, 1946, p. 111 et passim.

³⁶¹ *Ustav Federativne Narodne Republike Jugoslavije*, in *Službeni list FNRJ*, 10/46, Art. 1.

state, allowing for a sense of continuity. In contrast, the adopted formulation deliberately accentuates the novelty of the constitutional arrangement and underscores the fundamental dependence of the Yugoslav state on the will of its constituent peoples. This shift in language reflects a significant departure from the past and underscores the importance of self-determination as a foundational principle of the new federal state.

The previous assertions, however, necessitate highlighting certain contradictory developments in Yugoslavia. While all Yugoslav constitutions treated the creation of Yugoslavia as a result of the unification of the Yugoslav peoples, the precise position of “their republics” as national states was not consistently articulated. Although the 1946 Constitution carefully safeguarded the position of federal units and, in line with traditional federal doctrine, guaranteed their representation in a separate house of the National Assembly, practical realities weakened this stance due to the dominant and omnipresent influence of the Communist Party. Besides, centralized economic and political decision-making held paramount importance for the functioning of the entire system, especially given the fact that it was a post-war period with specific conditions and requirements that encouraged centralism.

In response to the centralization that fostered bureaucratic tendencies, significant steps were taken towards decentralization in the early 1950s. However, it is noteworthy that the focal point of this endeavor was not the federal units (republics) but rather the municipalities (communes). Consequently, the Constitutional Law of 1953 (which virtually was a new constitution) and the subsequent Constitution from 1963 effectively “bypassed” the federal units and established more direct relationships between the communes and the federal government. This shift aligned with the predominant trend of self-management in Yugoslavia, as the municipality (commune) occupied a central position within this system, which will be addressed shortly below. Even the separate house of the National Assembly, which represented federal units, was abolished in 1953, while their representation was ensured through complicated mechanisms that diminished their influence on decision-making. Namely, in the Federal Assembly, there were just two houses or councils: the Federal Council and the Council of Producers. The Council of Peoples/Nations (Veće naroda) was formed solely as an *ad hoc* division of the Federal Council.

During this period in socialist Yugoslavia, there was a notable shift towards emphasizing the socio-economic aspects of Yugoslav federalism over the national dimension. This shift was

particularly evident in the discourse of Edvard Kardelj, a prominent Communist leader and Party ideologue, during the Assembly session that deliberated on the 1953 Constitutional Law:

The need for a federation of equal republics in our country arises not only from the national composition of our state. *It also stems from our societal system, our understanding of popular sovereignty, and social self-management. Our country would be a “federation” in this new sense, as a system based on social self-management, even if it were not multi-national.* Nevertheless, the Constitutional Law introduces provisions for the formal assurance of this equality. These provisions, in my opinion, have mostly a formal significance, considering that within our system, there are so many other instruments for harmonizing mutual societal interests that the mechanism of the Council of Peoples, as envisaged by the Constitutional Law, probably will not come into play. However, it is still necessary, firstly, as the ultimate legal consequence of our system of national equality, and secondly, as a reaffirmation of Yugoslavia’s commitment to the political principle of the equality of its all peoples.”³⁶²

It was only through amendments from 1967-1971 that the status of the republics was decisively solidified. The XX Amendment defined Yugoslavia as a state that came into existence through the will of the “voluntarily united peoples *and their socialist republics.*” This formulation signified the new, considerably stronger positioning of the federal units within the federal structure and the final triumph of national federalism. The very same definition was reiterated in the 1974 Constitution and marked the conclusive phase in the evolution of Yugoslav federalism concerning the status of the federal units, which, as we shall see, were not its sole elements.

The second feature, the socialist character of the Yugoslav state, was distinctly evident throughout its entire constitutional framework. For example, the internal organization of the federal units was either predefined or substantially influenced by the presence of “popular committees,” local organs that emerged as a unique legacy of the wartime and socialist revolution. Consequently, what sets Yugoslavia apart as an example of socialist federalism is its notable inclination towards the weakening of the federal government and towards decentralization. While many socialist federations tended to become predominantly nominal federations due to centralized economic planning models, Yugoslavia did not follow suit. The strong emphasis on the national character of federalism, treating federal units as nation-states, and the concurrent doctrine of self-management, which continually curtailed central authorities’ power, positioned Yugoslavia as a

³⁶² *Stenografske beleške Narodne Skupštine Federativne Narodne Republike Jugoslavije [Stenographic Notes of the National Assembly of the Federal Republic of Yugoslavia]*, cit., 1953, p. 103.

state model situated between a federation and a confederation. This is to say that the Yugoslav form of socialism – self-management – also contributed to the specifically socialist character of federalism. Further, the socialist essence of Yugoslav federalism became particularly pronounced in addressing stark disparities in economic development among Yugoslav republics. The socialist nature of the federal structure was thus highlighted in the federal units’ obligation to demonstrate solidarity, especially between more developed republics and those that were less developed. This principle was operationalized through federal institutions. The constitutions of 1953, 1963, and 1974 formalized the state’s responsibility to offer support and assistance to underdeveloped “regions of the state” (Article 17, 1953) or to underdeveloped “republics and provinces.”³⁶³

Finally, the third characteristic, self-management, though previously mentioned as a distinct form of Yugoslav socialism, deserves special attention. It stands apart in the discussion of this chapter due to its critical impact on federalism. While its primary application pertained to production, its ramifications extended deeply into the realms of politics and society. From the pivotal constitutional shift of 1953 through 1974, self-management transcended the boundaries of economic matters, permeating political and legal dimensions, all of which were integral considerations in the framework of constitutional design. In the context of federalism, self-management assumed significance by ushering in innovative elements within governance. Foremost among these was the pivotal role accorded to the municipality (commune) in the processes of decision-making and governance.

The Communists were continuously striving to involve as many people as possible in the political process. In the context of wartime conditions, their primary sphere of influence was within small local communities. Specifically, after liberating smaller towns or even villages, they consistently established provisional local authorities known as “people's committees.” These committees marked the initial steps on the Communists’ path to gaining power, and their commitment to this structure remained steadfast as the system evolved, particularly following the implementation of the self-management, the essence of which were the local levels of the government. In the 1953 Constitutional Law, the Communists, for the first time, codified the concept that local government is the foundational level of governance. This principle was explicitly expressed in Article 3, which states that “[p]eople’s committees are the fundamental organs of authority of the working people and the highest organs of authority for municipalities,

³⁶³ *Ustav Federativne Narodne Republike Jugoslavije*, in *Službeni list* 14/63.

towns, and districts.” Additionally, it was stipulated that “the Federation possesses only the rights established by the federal constitution, while the people’s republics possess only the rights established by the republic’s constitution.”³⁶⁴

The diction of the last provision is particularly noteworthy. The practice of explicitly enumerating the powers of the level or entity intended to be circumscribed by well-defined limits is an important principle in constitutional design. This methodology ensures that the designated tier of government or authority operates solely within the bounds meticulously set forth in the constitution. Conversely, the absence of enumerations of powers conveys a more expansive and less restricted ambit of authority for the entity in question. The approach implemented in the constitutional design of the Yugoslav Constitutional Law from 1953 presupposes that the municipal level of government was poised to be more agile, adaptable, and less constrained. Hence, in the realm of Yugoslav self-management, the designation of the “communal system” was judiciously employed to underscore its commitment to the tenets of direct democracy.

The Constitution of 1974 expressly declared the “municipality as an autonomous and fundamental socio-political community, founded on the authority and self-management of the working class and all working people.” Notably, municipalities were elevated to the same echelon as provinces, republics (federal units), and the federation itself, all categorized as “socio-political communities.” Moreover, the Constitution definitively outlined that “the functions of authority (governance) and management of other social affairs, except those mandated by the constitution to broader socio-political communities, are exercised in the municipality.”

Another implication of the communal system, particularly within the federal context, relates to representation at the federal level. As previously indicated, the constitutions of 1953 and 1963 brought about a significant shift in the evolution of the Yugoslav federal system by abolishing the house representing federal units and introducing two distinct types of councils. In both the 1953 and 1963 constitutions, the Federal Council was established, serving as a fusion of the traditional house of representatives and the house of federal units. Although its structure was unconventional, it more or less adhered to the traditional representative body format, pertaining to Yugoslavia as a state. The situation differed with the other council(s). While the Constitutional Law of 1953 introduced the Council of Producers as the second house of the Assembly, the 1963

³⁶⁴ *Ustavni Zakon o osnovama društvenog i političkog uređenja Federativne Narodne Republike Jugoslavije i savezним organima vlasti*, in *Službeni list FNRJ* 3/1953.

Constitution expanded the council framework to encompass the Economic Council, the Educational and Cultural Council, the Social and Healthcare Council, and the Organizational and Political Council, alongside councils of delegates of the working people in their respective workplace communities. This intricate network of councils pertained to Yugoslavia as a self-managing socialist-democratic community.

An additional implication of the communal system, particularly within the federal context, pertains to representation at the federal level. As previously mentioned, the constitutions of 1953 and 1963 dismantled the house representing federal units and instead established two types of councils, a notable development in the evolution of the Yugoslav federal system. In both constitutions from 1953 and 1963 the Federal Council existed as a combination of the House of Representatives and the House of Federal Units. Although atypically structured, this was more or less a traditional representative body, and it reflected the nature of Yugoslavia as a state. It is a different situation with other council(s). While the Constitutional Law of 1953 established the Council of the Producers, the Constitution of 1963 proliferated the number of councils to encompass: the Economic Council, the Educational and Cultural Council, the Social and Healthcare Council, the Organizational and Political Council, and councils of delegates from the working people in their respective workplace communities. This network of councils represented the nature of Yugoslavia as a socialist-democratic community. The Constitution of 1974 simplified the system of representation and reintroduced the representative house for federal units, the Council of Republics and Provinces. Simultaneously, the Federal Council comprised delegates from other self-managing entities. Both councils were constituted by delegations, with the electoral process commencing at the municipal level. In the case of the Federal Council, it was also concluded at the municipal level, with the direct election of delegates to this body. Importantly, delegates in the Federal Council represented self-managing entities beyond federal units, including business entities, cultural or educational organizations, and more. These entities possessed their own organizational structures and specific interests, thus constituting an autonomous and competing force vis-à-vis federal units. This intricate system was designed to epitomize the concept of “pluralism of self-managing interests,” articulated through delegates in both councils of the Federal Assembly. Thus, entities other than federal units became integral elements of the Yugoslav federal system.

The precise and elaborate explication of the Yugoslav federal system was again offered by Edvard Kardelj, who extensively explained the experience in constitutional design of the composite Yugoslav state:

In discussions on interethnic relations, we often encounter attempts to limit the debate to playing with the words federation and confederation. For some, confederation is the subject of nationalist bidding, aiming to discredit the achievements of the socialist revolution in the field of interethnic relations and create artificial crises in these relations. On the other hand, others see danger in confederation whenever it comes to overcoming the remnants of the centralized state. I believe that both of these reduce the discussion to outdated categories that do not solve anything in our system. They misguide us when it comes to discovering the objective laws that affect the development of interethnic relations in modern, especially our, society [...] Therefore, it seems that discussions revolving solely around these two or similar categories are deaf and blind to everything that modern developments in the productive forces of the world and scientific and technical progress have already brought into the social concept of a nation and interethnic relations in general. Not only that it gives the impression that these opinions are blind to the perspectives that the development of productive forces and scientific-technical progress not only open up but also impose with the necessity and strength of a natural law regarding the integration of humanity. Both federation and confederation, in today's sense of these terms, represent categories of a multi-ethnic state, which was a form of bourgeois political society in the era of capitalism. Both played a progressive historical role and were instruments of economic and cultural progress for many nations [...] Still, I have neglected their political, foreign-policy, cultural, and other aspects to emphasize their socio-economic basis, i.e., the fact that the system of private ownership in the capitalist era corresponded to capitalist-property relations among nations. From this fact arose the struggle for national independence and the struggle for imperialist domination over nations as well. Federations and confederations, like other forms of multi-ethnic states or state alliances, are expressions of such tendencies and struggles.

Likewise, similar contradictions can arise in interethnic relations in a socialist society as long as state-property relations dominate. The development of initial revolutionary forms of state ownership carries within itself the necessity for it to be expressed as national ownership, which gives rise to disputes over the distribution of national surplus labor. Negating this tendency in a centralized multi-ethnic state becomes the starting point for the emergence of a system of an greatatist economic and political hegemony (of one nation over other – S. M.), with all the consequences that such hegemony can inflict on the development of interethnic relations. Therefore, under such conditions, discussions about federation and confederation may indeed have

real substance. *However, can we still discuss interethnic relations in that sole manner in the midst of self-managing socialist society, where the surplus labor is increasingly controlled by the working individual and the free association of producers, rather than the state, be it a federation, confederation, or republic? Obviously, we cannot. I do not claim, however, that our society is already such an association, but that is its revolutionary goal, and the entire system is adapted to this goal. Therefore, we cannot view the development of interethnic relations only through the lenses of static legal concepts of federation and confederation, losing sight of the changes that occur in the development of self-management, especially concerning the role of the state in society. Hence, I believe that open questions about our federation should not be considered or resolved based on legal categories of federation or confederation but based on the results already achieved in the development of interethnic relations on self-management principles. These relations are already more advanced and democratic than both federation and confederation today and will be especially so in the further development of our self-managed society. In short, today's Yugoslavia is no longer a classical federation, nor can it be a classical confederation; it is a socialist self-managing community of nations, which, in many ways, represents a fundamentally new category in interethnic relations. The independence of nations in such a community becomes greater than in classic federations and confederations, but at the same time, the processes of integration are more open in all areas where common interests of nations and working people are expressed and where conditions for equality are guaranteed.*³⁶⁵

The quoted passage underscores Yugoslav federalism's distinctive character as “national federalism,” characterized by its pioneering approach to self-management and its profound impact on the federal framework. Despite the various forms and changes it underwent, Yugoslav federalism was fundamentally designed to address the national question within this multiethnic state. This means that one of its primary purposes was to find a political framework that could accommodate and manage the diverse ethnic and national identities within Yugoslavia. Such was the appreciation of the independence of the federal units and the reluctance towards interwar unitarianism and centralism that the first post-WWII Yugoslav constitution included a rather atypical provision, which, *mutatis mutandis*, endured in subsequent constitutions and in the practice of Yugoslav federalism. Namely, the 1946 constitutional provision did not merely stipulate that the federal government would not infringe upon the rights of the federal units but also explicitly declared that the Federation “protects and safeguards the sovereign rights of the

³⁶⁵ E. KARDELJ, *Raskršća u razvitku našeg socijalističkog društva*, in *Komunist*, 24, 1969, p. 47.

people's republics" (i.e. its federal units).³⁶⁶ In the first provisional government, formed in March 1945, even the separate Ministry for Federal Units was established. Notably, the structure of this ministry was unique, consisting of six ministers, each responsible for one of the federal units.³⁶⁷

The consolidation of the federal structure was a dynamic process that significantly influenced the governance and political landscape of the nation. It is hardly an exaggeration to argue that a significant element of the crisis during the late 1980s pertained to the Yugoslav federalism dilemma. The economic crisis Yugoslavia faced during that period can be attributed to the inadequacies of its economic model, while the political crisis mostly stemmed from divergent perspectives regarding the future of Yugoslavia as a federal state, which will be addressed in the following chapter.

Another fundamentally important aspect of Yugoslav federalism was the concept of self-management, which was a distinguishing feature of Yugoslav socialism. Self-management exerted a substantial influence on the dynamics between various levels or tiers of governance, extending beyond the traditional dual-tier model. Moreover, it introduced additional dimensions beyond territorial units, contributing to the complexity and uniqueness of Yugoslav federalism. In a nutshell, as explained by one of the leading constitutional scholars of the time, who was regularly involved in the constitution drafting in Yugoslavia,

“the (Yugoslav - S. M.) Constitution institutionalized a structural, socio-political, functional, and polyvalent federalism founded on the principles of self-governing entities. In doing so, this federalism returns to its original concept of communitarian federalism as expounded by the French sociologist and jurist Montesquieu and the Dutch-German political thinker and jurist Johannes Althusius in their respective works.”³⁶⁸

Another significant matter requiring attention pertains to the judicial resolution of disputes between federal units and the central government level, a mechanism that was only established in 1963. During the initial two decades, no judicial body was vested with the authority to adjudicate matters concerning the constitutionality of laws and other acts—a crucial element in federal systems within liberal democracies. The rationale for the absence of judicial review stemmed from the Yugoslav system's foundational principle of the unity of powers rather than their separation. In this context, the National Assembly, the core institution in the system of unity of powers, served

³⁶⁶ *Ustav Federativne narodne Republike Jugoslavije*, Službeni list FNRJ 10/1946.

³⁶⁷ *Ukaz o Vladi DFJ*, in Službeni list DFJ 11/45.

³⁶⁸ J. ĐORĐEVIĆ, *Ustavno pravo*, Savremena administracija, 1989, 338.

as the central body responsible for reviewing such matters. Even following the establishment of the Constitutional Court in 1963, this institution has consistently refrained from exercising the powers vested in it.

3. 3. *Historical Narratives Framing Socialist Federalism*

Yugoslavia's embrace of federalism was accompanied by various historical justifications. In this chapter, I'll address the various aspects of federal arrangements that were adopted in socialist Yugoslavia and supported by the corresponding historical narratives.

Undoubtedly, when designing federal formula, Yugoslav Communists had in mind the example of the Soviet Union, which served as a universal model for the organization of all aspects of state and society.³⁶⁹ The narrative of the October Revolution of 1917 was historicized primarily by contrasting the Soviet and tsarist regimes. The revolutionary change was seen as a cornerstone of the development of world history, and the fact that Lenin, the leader of the Soviet Revolution, had passed away two decades ago added to the charisma of the demised "master" and further facilitated the historicization of the Soviet experience.

Due to its steadfast promotion of the right to self-determination, the Soviet Union held a prominent position as a champion of oppressed people seeking liberation. The federal structure of the Soviet Union served as proof of that claim. As early as 1942, during the second session of the AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia), greetings were extended to Marshal Stalin with a particular emphasis on this principle:

*"today, as we are establishing the legitimate political representation of Yugoslavia, laying the foundation for a new, democratic, federal Yugoslavia, we look with hope to the Soviet Union and to you, Comrade Stalin, knowing that the Soviet Union has always been a true friend to every people fighting for their freedom."*³⁷⁰

This gesture underscored the narrative of the Soviet Union's commitment to supporting the struggles of nations striving for autonomy and freedom from oppressive forces. It also symbolized the broader global context of the era, where the Soviet Union's stand on self-determination

³⁶⁹ M. JOVANOVIĆ, *Preslikana ili samobitna društvena izgradnja: komparativna analiza u Ustavu FNRJ (1946) "Staljinovog" Ustava SSSR-a (1936)*, in Tokovi istorije, 1/2, 2008, pp. 280-289; K. ČAVOŠKI, *Ustav kao sredstvo agitacije i propagande*, Službeni glasnik, Institut za savremenu istoriju, 2011.

³⁷⁰ *Prvo i drugo zasedanje Antifašističkog veća narodnog oslobođenja Jugoslavije: (26 i 27 novembra 1942; 29 i 30 novembra 1943): po stenografskim beleškama i drugim izvorima*, Predsedništvo Narodne skupštine FNRJ, 1953.

resonated deeply with many nations grappling with hegemony, fostering a sense of hope among those yearning for their own self-governance. This was explicitly applied to interwar Yugoslavia, which did not recognize the ethnic and national distinctions of South Slavic peoples.

This is also where the concept of “fraternity and unity of the Yugoslav peoples/nations” comes into play. The deliberate use of the plural form in the slogan, referring to peoples/nations, signaled a clear departure from the unitary approach of interwar monarchist integral Yugoslavism. However, “fraternity and unity” indicated that these diverse peoples and nations were determined to coexist within a single federal state. Both Yugoslav Communists and their ideological rivals in the national question sought historical narratives that ultimately supported the idea of unity among the South Slavs. However, the communist approach envisioned a unity that celebrated and harnessed the creative potential of diversity, rather than imposing a homogenized oneness. This balance of diversity and unity was central to their vision of a harmonious relationship between Yugoslav peoples. Federalism was the framework to ensure this balance.

Another profoundly significant historical narrative revolved around the wrongdoings of the monarchist regime during the interwar period. This narrative firmly asserted that in monarchist Yugoslavia, the regime of greater Serbian hegemony, organized by the Serbian bourgeoisie, had stifled national identities. Integral Yugoslavism was seen as a facade concealing the exercise of this hegemony and the oppression and exploitation not only of other, unrecognized nations within Yugoslavia and minority ethnic groups but also of the Serbian population itself. The ruling greater-Serbian bourgeoisie had fled the country at the onset of the war, leaving the people defenseless. From abroad, they orchestrated a fratricidal conflict through supporters of the former regime who remained in the occupied country. Meanwhile, the bourgeoisie of the oppressed nations either opportunistically collaborated with the interwar Yugoslav regime or chose to collaborate with the occupying forces during the war, tarnishing their reputation as traitors to the best interests of the Yugoslav peoples.

This narrative is pervasive throughout the entirety of the written output of the Communist movement in Yugoslavia, but it was succinctly encapsulated in the programmatic article that was authored by Josip Broz Tito in December of 1942:

“Born in Corfu, in London and Paris, the Yugoslavia of Versailles became the most typical state of national oppression in Europe. Croats, Slovenes and Montenegrins were subjugated peoples, unequal citizens of Yugoslavia. Macedonians, Albanians and others were enslaved and subjected

to extermination. The Muslims, the German and Hungarian minorities served as a currency for bribery or as an instrument in the fight against the Croats and other peoples of Yugoslavia. A numerically insignificant minority of Greater-Serbian hegemonists, insatiable in their greed for enrichment, led by the king, ruled Yugoslavia for twenty-two years, created a regime of gendarmes, a regime of prisons, a regime of social and national injustice. To every justified demand of the oppressed peoples of Yugoslavia for equality, these gentlemen answered: ‘we fought on the Thessaloniki front’, ‘we liberated this country’, ‘we shed blood on Kajmakčalan!’ This blatant lie was used by these gentlemen in power, various speculators, and corruptors, defiling in this way the bright graves of true Serbian heroes-peasants, who died with a deep faith of giving their lives for the freedom and happy future of the Serbian people. On the other hand, various Frankists (Croat nationalists - S. M.), today’s Ustashas and others like them, attributed the criminal work of the great-Serbian hegemonic clique to the entire Serbian people, thereby creating hatred among Croats and other peoples towards the fraternal Serbian people. The Serbian people not only had nothing in common with such a criminal national policy of their masters, but they were also exploited and subjected to gendarmerie throughout the entire twenty-two years like other nations of Yugoslavia [...] The Serbian people painfully received insults and unjustified accusations that they were complicit in the national oppression of the other peoples of Yugoslavia [...] The persistent and stupid chatter of the hegemonic clique that Serbs, Croats and Slovenes are only tribes of one and the same people was aimed at serbization of the Croats and Slovenes. Yugoslavia was only a mask for that serbization...”³⁷¹

The narrative goes on asserting that, in stark contrast to all other political organizations, the Communist Party, which united all progressive forces under the banner of the People’s Liberation Struggle and advocated for national equality within a federal Yugoslavia, successfully struck a delicate balance between advocating for national independence and promoting unity among the Yugoslav peoples:

“Faithful to its principles that every nation has the right to decide its own destiny, the Communist Party, for the entire period of Yugoslavia’s existence, has stood unceasingly in the fight against such a national policy of the great-Serbian hegemonists. The Communist Party of Yugoslavia has stood up most resolutely against the oppression of Croats, Slovenes, Macedonians, Montenegrins, Albanians, and others.”³⁷²

³⁷¹ J. B. TITO, *Nacionalno pitanje u svetlu NOB*, cit., p. 12.

³⁷² Ibidem.

Yugoslav Communists emphatically emphasized that equal rights for all peoples and minorities was the only acceptable solution for a multiethnic state like Yugoslavia. They staunchly maintained their long-standing support for the federal organization of Yugoslavia, which was an integral part of their historical narrative regarding the Communist Party's role in the history of Yugoslavia. This narrative highlighted that its commitment to federalism was not a sudden decision but a deeply ingrained belief. This narrative formed the central and enduring framework for addressing the national question in Yugoslavia. References to this narrative were woven into a multitude of documents that laid the foundation for Yugoslav federalism, including the Yugoslav constitutions.

The pivotal documents of constitutional significance produced during the wartime period consistently emphasize the concept of "Yugoslav peoples," and at times explicitly mention each of these peoples, manifesting a clear departure from unitarianism. The foundational document, the *Declaration of AVNOJ* dated November 29, 1943, not only references the abolition of "greater-Serbian hegemony" in new Yugoslavia but also highlights the triumph over "the remnants of reactionary separatism" which was pursued by some political leaders among non-Serb nations. These accomplishments laid the groundwork for the establishment of a federal system grounded in the principle of "equality among the Yugoslav peoples," a stark departure from the interwar Yugoslav model as described in Tito's article.³⁷³

Another significant document that prominently incorporated references to the historical narrative concerning the injustices of the greater-Serbian bourgeoisie during the interwar period is the *Decision on the Founding of Yugoslavia on the Federal Principle*. This document explicitly associates the federal structure with the prevention of majorization or hegemony:

"To ensure that Yugoslavia becomes a genuine homeland for all its peoples and *never again falls under the control of any hegemonic clique, Yugoslavia is currently being built and will continue to be built upon the federative principle*. This principle guarantees a full equality for Serbs, Croats, Slovenes, Macedonians, and Montenegrins, that is for the peoples of Serbia, Croatia, Slovenia, Macedonia, Montenegro, Bosnia, and Herzegovina."³⁷⁴

³⁷³ *Deklaracija Drugog zasedanja Antifašističkog veća narodnog oslobođenja Jugoslavije 29. novembra 1943* [Declaration of the Second Session of the Anti-fascist Council of the People's Liberation of Yugoslavia on November 29, 1943], in *Službeni list DFJ* 1/45, p. 1.

³⁷⁴ Odluka o izgradnji Jugoslavije na federativnom principu, in *Službeni list DFJ* 1/1945.

The foundational framework for the prospective constitutional arrangement was chiefly delineated during the wartime epoch, with ensuing developments maintaining fidelity to this pre-established paradigm. The prevailing contempt for the interwar Yugoslav system was of such magnitude that Marshal Tito, in the immediate aftermath of the conflict, could proffer the assessment that, given that the old system was overturned, “notwithstanding the wartime devastation and impoverishment of our country, there occurred its simultaneous moral rebirth.”³⁷⁵

In addition to its foundation and justification rooted in the unfavorable assessment of the interwar Yugoslav state, federalism was further substantiated through its deliberate integration with the historical narrative of the People’s Liberation Struggle. Consequently, federalism assumed a pivotal role within the construct of the “sacred past,” a conceptualization adeptly articulated by the Party ideologue, Edvard Kardelj:

“Throughout the entire People’s Liberation Struggle, Yugoslavia adhered to a single principle: the principle of full equality and the right to self-determination of our nations. This principle was rigorously implemented to such an extent that the decisions made by the AVNOJ in Jajce, explicitly recognized our nations’ right to self-determination up to secession. I believe that it was precisely this recognition of the right to self-determination that allowed Yugoslavia to rise once more from the ruins into which it had been plunged by various proponents of the so-called unitary Yugoslavia [...] AVNOJ confirmed our nations’ aspiration to be equal within Yugoslavia. However, AVNOJ represented something more [...] It was an agreement among our nations to voluntarily remain in a common state, provided that the state was genuinely built on equality, i.e., founded on the federal principle [...] I believe this was a condition set by our nations to AVNOJ [...] Furthermore, I believe that the decisions of the Second Session of AVNOJ regarding the federal organization of Yugoslavia have a constitutional character. This does not mean that we are binding the hands of the Constituent Assembly. If it wishes, the Constituent Assembly can abolish the federation; that is its right. However, we cannot approach the matter as if we stand today facing a void in terms of the state’s organization. Yugoslavia is already a federal state [...] *The paramount accomplishment of our People’s Liberation Struggle resides in the establishment of a federal framework for Yugoslavia* [...] We have not forgotten the experiences from the time of the creation of the old Yugoslavia from 1917 onwards, starting with the Corfu Declaration. During that period, positions were preemptively granted to reactionary forces within our country, solidifying the hegemony of

³⁷⁵ *Treće zasedanje Antifašističkog veća narodnog oslobođenja Jugoslavije i zasedanje Privremene Narodne skupštine: 7-26. avgusta 1945: stenografske beleške*, Privremena narodna skupština Demokratske Federativne Jugoslavije, 1946, p. 59.

the reactionary greater-Serbian clique and monarchy. It was proclaimed that this would give rise to democratic unity, order, and peace in the country. However, we have witnessed that from this, in Yugoslavia, emerged internal strife, turmoil, perpetual discord, bloodshed, and national animosity.”³⁷⁶

The same reasoning can be discerned in the discourse of the minister of justice, Frane Frol, who also insisted on the undivisible acquaintance between the war efforts and the federal organization of the state. In Frol’s opinion

“the Constitution should be the legal expression of the will and aspirations of all the nations of Yugoslavia, which our nations unequivocally demonstrated during their four-year struggle in establishing fraternity and unity, equality, *that is to say – a federation, or, in short, the ultimate legal embodiment of these fundamental achievements of the struggle.*”³⁷⁷

Even before the convening of the Constituent Assembly following the war, a debate was underway regarding whether the Constituent Assembly should consist of one or two houses. The opposition argued that using a bicameral model for the Constituent Assembly would effectively presuppose the predetermined nature of the internal state organization, particularly the federal structure, and that the Constituent Assembly would not have the full capacity to genuinely constitute the state if it used such a model. This objection was fueled by the *Law on the Constituent Assembly* from August 1945, which stipulated two houses and mandated that the Constitution had to be approved by both houses. Additionally, the Law stipulated that once the Constituent Assembly had completed the Constitution, it would transition into a regular legislative assembly.³⁷⁸ The issue was addressed by one of the most prominent Party ideologues Moša Pijade on the grounds that

“the legislation of the old Yugoslavia was rejected by the people just as the laws of the occupiers were, as it could not provide a foundation for building anything that would assist them in the struggle, upon which the People’s Liberation Struggle could rely.”³⁷⁹

³⁷⁶ Ibidem, pp. 157-158.

³⁷⁷ Ibidem, 161.

³⁷⁸ *Zakon o Ustavotvornoj skupštini*, in Službeni list DFJ, 63/45.

³⁷⁹ *Treće zasedanje Antifašističkog veća narodnog oslobođenja Jugoslavije i zasedanje Privremene Narodne skupštine: 7-26. avgusta 1945: stenografske beleške*, Privremena narodna skupština Demokratske Federativne Jugoslavije, 1946, 30.

Interestingly, the most vocal advocates of the notion that a federal state organization was a *fait accompli* were non-Communist representatives, who continued to collaborate closely with the Communists within the Popular Front. The historian Vasa Čubrilović articulated during the AVNOJ session that the outcomes of the People's Liberation Struggle could not simply be disregarded. Conveniently reiterating the historical narrative about interwar Yugoslavia and offering his overview of developments since 1918, Čubrilović emphasized another critical point: Monarchist Yugoslavia, on the eve of the 1941 war, due to its dictatorship and non-democratic decision-making, lacked a legitimate constitutional order. Therefore, the People's Liberation Movement essentially established the legitimate order only during the war.

“This movement persevered through a significant struggle; it was already building the state during the war, establishing its authorities, and forming its legal institutions. Relying on these legal institutions, it established the fundamental principles and laws upon which it aimed to construct a renewed state. No one has the right to deny the legitimacy of building new institutions, especially considering that the old institutions had failed, and it had invested everything in rebuilding the state on new principles, in accordance with the wishes of all the nations [...] The People's Liberation Movement, bearing in mind that the primary prerequisite for the restoration of the state is its federal organization based on equality, has established this principle as the fundamental and first condition for rebuilding the state. Comrades, I do not see any other possibility for the restoration of the state without encountering a crisis like the one we experienced in 1941 if this foundation were not to remain intact [...] It is necessary to provide assurance to all the nations of Yugoslavia that the new Constituent Assembly will not be a St. Vitus' Day assembly and that every nation in Yugoslavia will be able to freely express its opinions, protect its interests, feelings, and traditions. The second reason would be of a moral-ethical nature. A formal objection has been raised against the bicameral system, suggesting that the institutions and legal framework established by the People's Liberation Movement were not established in a conventional manner, through voting. States are organized in two ways: the first is through struggle and warfare, and the second is through peaceful organization and reorganization. As a historian, I am not aware of any state that, during an uprising and war, was able to create its institutions and governing bodies, whether legislative or administrative, through secret voting by electoral law. However, I am aware of many states that were built during times of war and bloodshed. The method of organizing states by those who have sacrificed the most and shed the most blood for the independence of those states has a stronger ethical and moral foundation than any assurance provided by casting ballots.”³⁸⁰

³⁸⁰ Ibidem, p. 163.

Sreten Vukosavljević, another non-Communist member of the Popular Front, also made an argument during the third session of the AVNOJ. He contended that the AVNOJ, being a temporary representative body, actually lacked the competence to alter the already existing federal organization of the state. According to him, “someone more competent has already established it—the peoples of Yugoslavia.”³⁸¹ Therefore, he asserted that only the Constituent Assembly had the authority to determine whether or not the federal structure of the country would be abolished, emphasizing that the temporary representative body lacked the capacity to make such a decision. As a result, the temporary representative body’s legislation must adhere to the principles of an existing federal structure. Vukosavljević, who was a Serb, also underscored the reasoning, which was deeply rooted in the historical narrative about great-Serbian hegemony in the interwar Yugoslavia:

“It appears to me that we, the Serbs, should be particularly cautious, more so than any other nation in Yugoslavia, as it seems we may be inclined toward centralism and could cast doubt on the federal structure of our state. Historically, our Serbian people viewed the state as a unified entity, which was consistent with our nation’s state-building traditions. The Serbian nation was not hegemonic; it did not seek to subjugate other nations. Instead, there was a certain clique that first and most severely oppressed the Serbian people, followed by other nations [...] Today, we, the Serbs, as a nation, harbor a valuable experience that has come at a high cost. We should absolutely avoid giving rise to doubts. No one should do that, but least of all, we Serbs should provide any reason to suspect that we desire a centralized state structure. Both we Serbs and all of us together have come to the realization that a federal state organization is not only necessary but also beneficial.”³⁸²

Inextricably linked to the federal structure of the Yugoslav state was the principle of the right to self-determination of the peoples, including the right to secede. This right held paramount significance for the Communists, with Lenin having formulated the Marxist interpretation of this principle, while the liberal perspective found its most coherent articulation in Woodrow Wilson’s *Fourteen Points* from 1917. Yugoslav Communists staunchly upheld this principle during the War of Liberation, consequently garnering substantial support among all Yugoslav peoples. Their shared conviction was that the Yugoslav peoples were too small to sustain independent existence

³⁸¹ Ibidem, p 171.

³⁸² Ibidem, pp. 173, 175.

separately, yet sufficiently distinct and defined to preclude any form of ethnic engineering aiming at homogenizing their national identities into one single national identity. Therefore, the concept of “national federalism” appeared most fitting.

All the fundamental documents of the Yugoslav war and revolution from 1941 to 1945 emphasized the right to self-determination, including the right to secede. Particularly noteworthy is the *Declaration of the Second Session of AVNOJ*, from November 1943, which emphasized that by joining the War of Liberation, the Yugoslav peoples “secured for themselves the right to self-determination, including the right to secede or unite with other peoples.” The mutual recognition of this right by all Yugoslav peoples “fostered even closer collaboration in their joint struggle.”³⁸³

Approximately two years later, in the legislative rationale for enacting the Law on the Constituent Assembly, a historical context and historical perspective on the People’s Liberation Struggle were once again invoked, resulting in the following assertion:

“One of the greatest achievements of the War of Liberation, for which our nations have been fighting for decades in the past and present centuries, is the right to self-determination. The right to self-determination primarily means the freedom of a nation to decide whether it will form its own state or unite with other nations. The People’s Liberation Movement consistently adhered to the principles of self-determination for all our nations, and this very fact provided the greatest strength to the united armed uprising of the Yugoslav people against the occupiers. Based on their right to self-determination, the nations of Yugoslavia decided, during the historic Second Session of the AVNOJ on November 29-30, 1943, in Jajce, to live as fully equal nations in a common state. The decision of the Second Session of the AVNOJ on the federal organization of Yugoslavia gave legal, or rather, constitutional form to their agreement. Therefore, it is natural that this decision forms the basis for the entire construction of our constitution. The historical decisions of the Second Session of the AVNOJ also emphasized that after the war, our nations would have to make their sovereign decisions regarding the internal organization of the new Yugoslavia.”³⁸⁴

From the preceding discussion, it becomes evident that the federal structure of Yugoslavia had been determined prior to the convening of the Constituent Assembly. Throughout its sessions, prominent political figures of the era consistently reiterated a set of historical arguments that

³⁸³ *Deklaracija Drugog zasedanja Antifašističkog veća narodnog oslobođenja Jugoslavije 29. novembra 1943* [Declaration of the Second Session of the Anti-fascist Council of the People’s Liberation of Yugoslavia on November 29, 1943], in *Službeni list DFJ* 1/45.

³⁸⁴ *Treće zasedanje Antifašističkog veća narodnog oslobođenja Jugoslavije i zasedanje Privremene Narodne skupštine: 7-26. avgusta 1945: stenografske beleške*, Privremena narodna skupština Demokratske Federativne Jugoslavije, 1946, p. 459.

predominantly relied on a negative evaluation of the experience gained from the era of monarchist Yugoslavia.

A notable recurring theme was the persistence of sharp criticism directed towards the system of interwar Yugoslavia, particularly the prevailing Greater Serbian hegemony. It is worth highlighting that the representatives from Serbia were at the forefront of this critique. Blagoje Nešković, a prominent communist figure from Serbia, reminded his colleagues in the Constituent Assembly about the continuity of the federation's concept. He also delved into the historical impediments that had obstructed its realization:

“We are aware that as early as 1921, during the adoption of the Vidovdan Constitution, aspirations towards such a state and society were manifesting themselves, a vision that we have now realized and which we see embodied in our current Constitution. Back then, representatives of various political groups, under the pressure of various segments of the population, advocated for Yugoslavia to be a republic. They called for the state to be organized on the basis of a federation, for power to belong to the people, and for the structure of our state to be organized in a way that is genuinely for the people’s benefit and in their interest [...] Regrettably, we have seen that little came of these aspirations, and that the agendas of the ruling circles, primarily those of the greater-Serbian governments led to the adoption of a constitution of an entirely different nature. This constitution was in direct contradiction to the desires and aspirations of the broader population.”³⁸⁵

During that era, the autonomous provinces held a distinct status within the federal structure, different from the conventional federal units, and their association was closer to the Republic of Serbia. Nevertheless, it is crucial to recognize that they were acknowledged within this unique framework, which guaranteed their representation and recognized their specific needs.

In this context, it is particularly noteworthy to highlight the perspective of Fadil Hoxa, who represented the interests of the Kosovo Albanians and offered his commendation for the newly established federation. His commendation was grounded in the rights granted to national minorities, as he stated:

“Today, the Albanians in Kosovo and Metohija enjoy equal rights as citizens alongside all other citizens of the Federal People's Republic of Yugoslavia. They embrace the achievements of the People's Liberation Struggle alongside all the peoples of Yugoslavia. The land that was forcibly taken from them has been returned. They have the protection of their cultural development and the

³⁸⁵ Stenografske beleške Ustavotvorne skupštine Federativen Narodne Republike Jugoslavije [Stenographic Notes of the Constituent Assembly of the Federative People’s Republic of Yugoslavia], *cit.*, p. 191.

freedom to use their language. A total of 333 Albanian schools have been opened, along with the first gymnasium and four high schools in the Albanian language. Today, for the first time, Albanians in Kosovo and Metohija freely learn their mother tongue, their culture, and engage in reading and cultivating their literature, which is growing day by day. They are part of the People's Front and have formed their own organizational structure, the Albanian Committee, which encompasses broad masses of the population. Most importantly, Albanians in Kosovo and Metohija, together with Serbs and Montenegrins, directly elect their authorities. This is a historic moment where Albanians participate in governance. They have never participated in governance before, nor have they ever had a say in who governs them. Today, they freely elect their representatives and have their own people in high positions.”³⁸⁶

Fadil Hoxa’s statements shed light on the significant progress made in the inclusion and empowerment of minority populations within the newly formed federation, which tended towards a departure from neglect of the interests of the national minorities in the past to a spirit of cooperation and trust.

The federal organization of the state played a pivotal role in promoting not only political but also social and economic equality among the various federal units and their respective populations. This transformative shift was underscored by Krsto Filipović, representing Macedonia, who emphasized that his federal unit “had previously been subjected to colonial exploitation”. This reference harked back to Macedonia’s historical position within the former Yugoslav monarchy.³⁸⁷ The economic exploitation of Macedonia was a recurring theme in discussions about interwar Yugoslavia. This issue was particularly significant due to the fact that the region had been targeted for state-sponsored colonization efforts, primarily involving Serbs from other parts of Yugoslavia.

Until the dissolution of Yugoslavia, the main feature of the federal architecture of the state, as affirmed by the 1946 Constitution, remained largely unchanged, with more or less important modifications of its content.³⁸⁸ Subsequent constitutional developments didn’t significantly alter the historical narratives originally applied to justify the federal system. These historical narratives encompassed a general and conceptual representation of the past, which remained relevant as long as the overall direction of constitutional development remained largely

³⁸⁶Ibidem, p. 326.

³⁸⁷ Ibidem, p. 587.

³⁸⁸ J. ĐORĐEVIĆ, *Ustavno pravo, cit.*, p. 336.

consistent with its origins. As time passed, these narratives gradually receded from the forefront of constitutional debates, owing to their widespread acceptance within the prevailing socialist ideology. Consequently, the 1963 and 1974 constitutions explicitly incorporated crucial elements of the historical accounts that had previously served as legitimizing narratives, only indirectly alluded to in the constitutional text. Notably, the 1974 Constitution provided a comprehensive formulation of the dominant historical narrative. The Constitution was adopted

“Drawing upon the historical fact that workers, peasants, and progressive individuals of all nations and nationalities in Yugoslavia, united within the People’s Liberation Front under the leadership of the Communist Party, through their struggle in the People's Liberation War and socialist revolution, overthrew the old class-based order founded on exploitation, political oppression, and national inequality, and initiated the creation of a society in which human labor and individuals would be liberated from exploitation and arbitrariness, while every nation, nationality, and all of them together would find conditions for free and comprehensive development”

It further states that

“[t]he peoples of Yugoslavia, recognizing the right of each nation to self-determination, including the right to secession, based on their freely expressed will in the collective struggle of all nations and nationalities in the People's Liberation War and socialist revolution, and in accordance with their historical aspirations, aware that the further consolidation of their brotherhood and unity is in their common interest, and in conjunction with the nationalities with whom they coexist, have united to form a federal republic of free and equal nations and nationalities and created a socialist federal community of working people — the Socialist Federal Republic of Yugoslavia, in which, in the interest of each nation and nationality individually and all of them collectively...”

This historical narrative was the crystallized formula of the ideological framing of historical experience that led to the evolution of Yugoslav socialist self-managing communitarian federalism. It is of paramount importance, for understanding this form of federalism, to notice its dual nature: historico-political and socio-economic. This dual nature is reflected in the notions “federal republic” and “socialist federal community”.

The historical narratives developed by Yugoslav Communists often did not delve into the specifics of federalism’s form but instead offered a general response to the question: Why federalism? Communist historical accounts in support of federalism tended to focus mostly on negative aspects, highlighting the list of wrongdoings of the “previous regime,” which endorsed

unitarianism and rejected federal ideas. Positive historical narratives were reserved for the Soviet federalism and also for the Communist Party's timely recognition of the injustices of the monarchist regime and the acknowledgment of the rights of all peoples in Yugoslavia to self-determination.

Federation was understood as a solution to the whole range of issues that occur in the life of the state, and for each of them, either the general historical account applied or the specific one has been developed, but the offered solution has always been substantiated by the historical justification. These historical narratives asserted that federalism guaranteed, first and foremost, the overall equality of the different ethnicities that constituted Yugoslavia, their mutual recognition (in the Hegelian sense), the rights of ethnic minorities in the state, the solutions to the issues of economic exploitation of the underdeveloped regions, and so on.

The constitutional historical narrative articulated by the leading political figures has been successfully transferred into scholarly works and student's textbooks. Here is an example that encapsulates all the major ideas developed at the time of socialist Yugoslavia:

Yugoslav federalism is not a result of some cabinet ideology merely favoring federalism over unitarianism. It is the outcome of historical necessity and the consciousness about this necessity among the vast majority of citizens from all Yugoslav nations. The initial unification of Serbs, Croats, Slovenes, Macedonians, and Montenegrins was an expression of an objective process of economic and political integration among Yugoslav nations, driven by shared economic, geographic, political, national, and cultural interests, as well as the democratic will to realize this unity. However, in the first Yugoslav state (1918-1941), there was state unification but not political unity among Yugoslav nations. The old Yugoslav state was unitary and centralized, denying not only the national individuality of mature and conscious Yugoslav nations but also implementing denationalization policies, national inequalities, and oppression against unrecognized nations. In such conditions, reactionary political forces exacerbated national differences while proving incapable of organizing a unified Yugoslav community. The Serbian bourgeoisie and the bourgeoisie of other nations demonstrated their inability to establish a stable, unified Yugoslav state that all Yugoslav peoples would consider their own. However, a unified Yugoslav state community was not only a necessity for the economic, political, and cultural advancement of Yugoslav nations but also for their very survival. Independent, in small separate states, Yugoslav peoples could only become subjects of foreign dominance [...] Given all these circumstances, it was necessary to dismantle the old unitaristic and oppressive state organization and establish a new one that would simultaneously ensure unity without unitarianism and a community without the loss

of national individuality. Such a common state could be secured through a federalism-based state system. However, the federal state organization of Yugoslav nations could only be achieved with a change in dominant social relations. Only progressive and socialist forces headed by the working class could make it happen. These objective occurrences could not be realized without the positive influence of the subjective element. This subjective element had been advancing even during the existence of the old Yugoslavia. It was the Communist Party of Yugoslavia, which, especially since 1937, tied its struggle for democracy and socialism to the fight for new relations among Yugoslav nations, for their full equality and the recognition of the right to self-determination for each Yugoslav nation. During the period of the dictatorship (1929-1941), and particularly during the war, the ruling forces of the bourgeoisie completely detached themselves from the nation and proved incapable of defending the Yugoslav state from the fascist occupiers [...] The Communist Party, leading all progressive and patriotic forces of Yugoslav nations, became not only the sole party of democracy and liberation but also the only force capable of achieving unity among Yugoslav peoples. This unity could be realized through the revolutionary transformation of the state and social order and the creation of the foundations for new equal and fraternal relations among Yugoslav nations.”³⁸⁹

³⁸⁹ J. ĐORĐEVIĆ, *Ustavno pravo Federativne Narodne Republike Jugoslavije*, Arhiv za pravne i društvene nauke, 1953, pp. 188-189.

CHAPTER IV

Historical Narratives and Constitutional Frameworks of Government: Parliamentary Monarchy, Socialist Republic, Parliamentary Republic

1. Introduction: On the Forms of Government

In their basic forms, the key difference between a monarchy and a republic³⁹⁰ revolves around the constitutional provisions regulating the position of a head of state within the structure of government, particularly how they come into power and how long they serve. Monarchies typically uphold a hereditary principle with a lifetime tenure, whereas republics have an elected head of state who serves a fixed term, frequently with restrictions on reelection.³⁹¹ Apart from a few historical instances like ancient Sparta, which was ruled by two kings simultaneously, a monarchy typically features a single head of state.³⁹² Conversely, the notion of a collective head of state within a republic, historically, is by no means exceptional.³⁹³ Moreover, at the inception

³⁹⁰ Throughout history, notable thinkers have explored the dichotomy primarily between elective and hereditary forms of government, not necessarily applying notions of monarchy and republic, as what they mean today. In antiquity, Aristotle, in his work *Politics*, delved into the merits and flaws of various forms of government, including monarchies and polities, while Cicero in *De re publica*, contrasted the Roman Republic with monarchical rule. In the Middle Ages Marsilius of Padua in his seminal work *Defensor pacis* shown enthusiasm for the elective form of the government, and Niccolò Machiavelli in *The Discourses on Livy* and *The Prince* examined the benefits and challenges of republics and principalities. In the dawn of the modern epoch Montesquieu's *The Spirit of the Laws* provided a comparative analysis of different government forms (monarchical, republican, and despotic), while Jean-Jacques Rousseau, in his seminal work "The Social Contract," addresses the concept of popular sovereignty, ultimately recognizing the merits of the elective principle. In his discussion, Rousseau does not set monarchy and republic in opposition; rather, he posits that a republic encompasses any state ruled by laws. According to this perspective, even a monarchy can be classified as a republic if it is governed by legal statutes. Finally, Alexis de Tocqueville's *Democracy in America* offered insights into the American republic, indirectly contrasting it with European monarchies. These authors represent key perspectives in the historical and philosophical discourse on these two forms of governance. See: J. S. MCCLELLAND, *A History of Western Political Thought*, I-II, Oxford, 1996; D. BOUCHER, P KELLY, *Political Thinkers. From Socrates to Present*, Oxford University Press, 2003. In the contemporary scholarship, however, the issue of the monarchical or republican form of government does not constitute an utterly important topic, since the two forms of the government major issues of the constitutional design – the horizontal and/or vertical structuring of the polity – concerns equally contemporary monarchies as well as the republics.

³⁹¹ R. ELGIE, *Heads of state in European politics*, in N. M. MAGONE, *Routledge handbook of European politics*, Routledge, 2014, pp. 311-313.

³⁹² "A monarchy in the strict sense of the term is a state ruled by a single absolute hereditary ruler." V. BOGDANOR, *The Monarchy and the Constitution*, Clarendon Press, 1996, p. 1; P. COLLIVA, *Monarchia*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica*, cit., pp. 672-676.

³⁹³ This is particularly true for the former socialist countries. See: H. M. LENITZ, *Heads of States and Governments, A Worldwide Enciclopedia*, Routledge, 1994.

of republican forms of government, collective leadership was more often the norm than the exception.³⁹⁴ However, recent developments brings again opposite trends towards personalization of the governance.³⁹⁵

In both systems, the position of the head of state can encompass an active role with broad powers (as seen in absolute monarchies, constitutional monarchies, presidential systems, and semi-presidential systems) or a more limited involvement, potentially even reduced to ceremonial or protocol functions (such as in parliamentary monarchies and parliamentary republics).³⁹⁶ In each case, however, there exists a spectrum or continuum wherein the competencies of the head of state can be varied, even within the same model. For example, in a parliamentary monarchy, the head of state can still hold significant authority as a chief of the executive branch, even though a more passive role for the monarch has increasingly become a distinctive characteristic of this type of monarchy over time.³⁹⁷

Historically, the institution of monarchies predates that of the republic.³⁹⁸ These could be either hereditary or elective,³⁹⁹ while republics have always presupposed the regular, periodic election of the head of state. Therefore, the hereditary position of the head of state is not a clear criterion for distinguishing between monarchies and republics, except insofar as there are no republics with a hereditary head of state.⁴⁰⁰

³⁹⁴ For instance: Roman Republic (two consuls), mediaeval city-republics (city councils). See: W. R. EVERDELL, *The End of Kings: A History of Republics and Republicans*, University of Chicago Press, 2000, pp. 28-31 et passim.

³⁹⁵ A. BRADLEY, C. PINELLI, *Parliamentarism*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 650-671; I. McALLISTER, *The Personalization of Politics*, in R. J. DALTON, H. D. KLINGEMANN (eds), *The Oxford Handbook of Political Behavior*, online edn, Oxford Academic, 2 Sept. 2009, <https://doi.org/10.1093/oxfordhb/9780199270125.003.0030>, accessed 1 Jan. 2024.

³⁹⁶ As an example of some of the varieties of constitutional powers of the head of state I quote a comprehensive study concerning the capacity of the head of state to terminate the mandate of the government. P. SCHLEITER, E. MORGAN-JONES, *Constitutional Power and Competing Risks: Monarchs, Presidents, Prime Ministers, and the Termination of East and West European Cabinets*, in *American Political Science Review*, 103(3), pp. 496-512 doi:10.1017/s0003055409990062.

³⁹⁷ V. BOGDANOR, *The Monarchy and the Constitution*, cit., p. 5; A. SAJÓ, *Limiting Government*, cit., p. 176.

³⁹⁸ In the Near and Middle East, in the earliest city-states, “the rulers are the link between the human and the cosmos; hence we never find a republic, only monarchies. The human order reflects that of the gods. They must be placated and so priests have to come in as intermediaries to offer the necessary sacrifices and perform the rituals. The monarch himself is above them, either as a god... or vicar of god.” S. E. FINER, *The History of Government From the Earliest Times, Vol. I, Ancient Monarchies and Empires*, Oxford University Press, p. 29.

³⁹⁹ Typical examples are the Roman Empire or Holy Roman Empire.

⁴⁰⁰ However, these are traditional viewpoints that practice has globally challenged. In practice, there are systems such as military dictatorships, “hereditary” presidential systems, or executive monarchies, which do not fit within the proper definition any form of the republic. Presidential and parliamentary republics are the forms of modern democracy, necessitating the periodic, institutional renewal of leadership through popular elections. Additionally, presidentialism, distinguished by its separation of powers, is an alternative to parliamentarism within democratic systems. See: H. FIX-FIERRO, P. SALAZAR-UGARTE, *Presidentialism*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of*

It is important to recognize that the modern republic, emerging from the 18th century, developed as an alternative to absolute monarchy, but in a very specific sense. Namely, it did not necessarily imply a weak head of state as the opposite of an absolute monarch; rather, it emphasized the need for a time-limited mandate of the head of state, especially when endowed with actually broad powers.⁴⁰¹ Therefore, the time restriction placed on the head of state – a president of republic – obviously pursued different objectives, mainly to avoid the risks involved with the lifelong exercise of such extensive powers.

Given that neither constitutional authority vested in monarch or president nor hereditary versus elective nature of the head of state's role do not serve as a definitive criteria for distinguishing between monarchy and republic, it becomes essential to consider other facets of constitutional status, particularly concerning political and criminal accountability. This realm reveals the most significant contrasts. Here, one might argue that the president of a republic, even at their most powerful embodiment, is in a comparatively weaker position than even the least powerful monarch. Referring to the issue of liability, Alexis de Tocqueville notably remarked on the US president, that "his honor, his property, his liberty, and his life are the securities which the people has for the temperate use of his power."⁴⁰² In terms of various forms of liability (constitutional, political, criminal) the position of a president has been consistently weaker compared to that of a monarch.⁴⁰³

In conclusion, it is pertinent to acknowledge that the discourse on the interplay between monarchy and republic has been intricately intertwined with the concept of popular sovereignty. Inherently, this principle has inclined towards favoring the republic as a form of government elected by the people, thereby aligning more congruently with the ethos of popular sovereignty. Nonetheless, it is noteworthy that monarchies, too, have adeptly navigated a coexistence with the notion of popular sovereignty, evolving formulas that reconcile monarchical with this modern democratic principle.⁴⁰⁴

Comparative Constitutional Law, cit., p. 629; J. BROWNLEE, *Hereditary succession in modern autocracies*, in *World politics*, 59(4), 2007, pp. 595-628.

⁴⁰¹ H. FIX-FIERRO, P. SALAZAR-UGARTE, *Presidentialism*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 628-629.

⁴⁰² A. de TOCQUEVILLE, *Democracy in America*, London, Longman, 1862, p. 128.

⁴⁰³ S. GRABOWSKA, *The Head of State's Constitutional Liability*, in *Polish Political Science Yearbook*, 46(1), 2017, pp. 153-167.

⁴⁰⁴ P. DWYER, 'Citizen Emperor': *Political Ritual, Popular Sovereignty and the Coronation of Napoleon I*, in *History*, 100(339), 2015, pp. 40-57; U. MÜSSIG, *Reconsidering Constitutional Formation. National Sovereignty*, Springer, 2016, pp. 115-116.

In this chapter, I will explore the forms of government in Yugoslavia and its successor states. The focus will not solely be on the dynamics of the transition between monarchy and republic, but rather on their specific forms: parliamentary monarchy, socialist republic, and parliamentary republic. These are the stages through which the Yugoslav state evolved, and they are accompanied by constitutional historical narratives. In the following pages, I will delve into these distinct forms of monarchy and republic, setting aside those models that did not feature in the experience of Yugoslavia and its successor states.

2. Kingdom of the Serbs, Croats and Slovenes

2. 1. Parliamentary Monarchy

Defining parliamentarism presents a complex challenge. This constitutional arrangement can be characterized as a system that orchestrates the relationships among different branches of government, facilitating a separation of powers with a predominance of the legislative branch. This predominance is reflected in its substantial influence over the executive branch, potentially exclusive or shared with the head of state. A pivotal aspect of this influence is the political accountability of government members, which is, in its modern form, typically directed towards parliament and, in certain constitutional frameworks, extends to both parliament and crown. The parliament's right to exert political control over the executive is arguably the crucial hallmark of the parliamentary system. This hallmark of parliamentarism, widely agreed upon in constitutional law theory, is a *res facti non iuris*: it emerged as an integral aspect of parliamentarism over time, which is to say that parliamentarism was formed and crystallized purely practically, through life.⁴⁰⁵

The remote historical roots of the parliamentary monarchy are found in medieval England. This period was characterized by a notable conflict between the Crown and the realm's barons, with the emerging bourgeoisie becoming increasingly involved.⁴⁰⁶ However, although

⁴⁰⁵ For an overview see: M. COTTA, *Parlamento*, N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dizionario di politica*, cit., 774-784; Parliamentarism, in *Encyclopedia of Political Science*, pp. 1765-177. More extensively in: A. BRADLEY, C. PINELLI, *Parliamentarism*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., pp. 650-671; A. SAJÓ, *Limiting Government. An introduction to Constitutionalism*, cit., pp. 103-173.

⁴⁰⁶ J. R. MADDICOTT, *The Origins of the English Parliament 924-1337*, Oxford University Press, 2004, pp. 289-290 et passim. The origins of the English Parliament can be traced back to the later part of the 13th century, specifically under the reign of King Henry III and his successor, Edward I. The first official Parliament, often referred to as the "Model Parliament," was summoned by Edward I in 1295. This assembly included not only lords and clergy but also commoners, representing a broader spectrum of society than previous councils. Over time, Parliament evolved into a

indisputably rooted in medieval social and political conflicts, the modern form of the parliamentary monarchy has evolved from the later phases of the English constitutional practices, the aim of which was essentially the same as in the Middle Ages: limiting the power of the monarch, or, in the modern period, to control the executive branch.⁴⁰⁷

In Great Britain, the government's accountability to parliament is established more through constitutional convention than by any specific legal mandate.⁴⁰⁸ Legislative authority became vested in both the parliament and the monarch, while the monarch alone headed the executive branch.⁴⁰⁹ Paradoxically – and that is the key feature of the parliamentary monarchy in Great Britain – the monarch gradually began to abstain from practical exercising their constitutionally granted executive prerogatives.⁴¹⁰ Instead, the cabinet, composed of ministers appointed by the monarch, assumed these executive functions. Crucially, the cabinet eventually became accountable to parliament, whereas the monarch, of course, remained unaccountable. Thus, a characteristic of the parliamentary monarchy in the last decades of the 18th century became the dual responsibility of ministers – before the Crown and before the Parliament.⁴¹¹

This dynamic, where the cabinet exercises the monarch's executive powers and is subject to parliamentary oversight, effectively shifted the balance of power: it placed the legislative branch, or parliament, in a dominant position over the executive branch, which it effectively controls. This interplay formed the core principle of the parliamentary monarchy in Great Britain in 17th to 19th century. Owing to the dual accountability of ministers—both to the Crown and to

bicameral system with the House of Lords and the House of Commons, playing a crucial role in the governance of the country.

⁴⁰⁷ As Christoph Mollers explicitly asserts “the control of the executive is one of the most significant duties of every parliament.” C. MOLLERS, *The Three Branches: A Comparative Model of Separation of Powers*, Oxford University Press, 2013, p. 122. For an extensive analysis of the parliamentary control see: E. GRIGLIO, *Parliamentary Control of the executive. Tools and Procedures in Europe*, Brill, 2022; R. PELIZZO; F. STAPENHURST, *Parliamentary Oversight Tools: A Comparative Analysis*, Routledge, 2011

⁴⁰⁸ D. POPOVIĆ, *The Rise of Parliamentary Government*, In D. POPOVIĆ, *Comparative Government*, Edward Elgar Publishing (Retrieved Jan 11, 2024, from <https://doi.org/10.4337/9781789900750.00010>).

⁴⁰⁹ J. ALDER, *Parliamentary Supremacy In Constitutional and Administrative Law*. Macmillan Law Masters. Palgrave, London. https://doi.org/10.1007/978-1-349-15077-9_5; The reason for this supremacy of the Parliament rests in its representative nature and legitimacy it gained over time. See: R. REDSLOB, *Le Régime parlementaire*, Paris 1924, p. 12.

⁴¹⁰ The constitutional custom of the monarch's restraint from using his undisputed prerogatives has become so strong that Bagehot asserted that even the monarch's undisputed decision to dismiss the government would constitute a coup d'état. W. BAGEHOT, *The English Constitution*, Oxford University Press, 2001, p. 168.

⁴¹¹ I. JENNINGS, *Cabinet Government*, Cambridge University Press, 1969, p. 134. As Kari Palonen writes, “the responsibility of the government to the parliament is the key political issue in the history of parliamentarism in that it distinguishes parliamentary from non- parliamentary regimes.” K. PALONEN, *Parliament as Conceptual Nexus*, in P. IHALEINEN, C. ILIE, K. PALONEN (Eds.), *Parliament and Parliamentarism*, New York, 2016, p. 8.

Parliament—this form of parliamentarism has been termed dual or dualistic. However, it is more commonly referred to as classical parliamentarism. The consequential outcome of the dual accountability of ministers is the imperative to form a cabinet that secures the backing of Parliament, which virtually means deriving from the parliamentary majority.⁴¹²

In this system, the head of state originally retained a powerful lever for exerting political influence, which is the right to dissolve parliament. However, with the expansion of voting rights and the democratization of the political environment, the unilateral act of dissolution by the head of state (especially when it is an unelected monarch) became unacceptable. Thus, the Crown gradually lost the only remaining possibility of institutional political influence, and thereby the government itself became more firmly obligated to parliament. The balance of power between parliament and the Crown changed drastically in favor of the representative body, which resulted in the crown not being in a position to independently, according to its own findings, appoint ministers but having to do so with the consent of the parliamentary majority. The monarch is removed from political life without any cardinal or constitutional change. The form of parliamentarism thus created, which implies that the government is accountable only to parliament, is called monistic and is the predominant pattern of the contemporary parliamentary order.

In a nutshell, the evolution of the parliamentary monarchy came out of the changing dynamics between the monarch and the parliament, where the cabinet (or government) functioned primarily as an intermediary. Initially, the cabinet's main endeavor was to establish its independence from the influence of the Crown.⁴¹³ However, it soon encountered another powerful force: the politically engaged parliament. Over time, it was parliament that ultimately gained the upper hand in this tripartite relationship. This is where I leave the evolution of British parliamentarism and turn the attention to the Continent.

The already developed form of English parliamentary practices were adopted, *mutatis mutandis*, by continental monarchies, primarily in France, to some extent already by the 1814

⁴¹² As Bagehot remarked: "The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion of the executive and legislative powers. According to the traditional theory, as it exists in all the books, the goodness of our constitution consists in the entire separation of the legislative and executive authorities, but in truth its merit consists in their singular approximation. The connecting link is the cabinet. By that new word we mean a committee of the legislative body selected to be the executive body. The legislature has many committees, but this is its greatest. It chooses for this, its main committee, the men in whom it has most confidence. It does not, it is true, choose them directly; but it is nearly omnipotent in choosing them indirectly." W. BAGEHOT, *The English Constitution*, *cit.*, p. 11.

⁴¹³ W. R. ANSON, *The Cabinet in the Seventeenth and Eighteenth Centuries*, in *The English Historical Review*, vol. 29, no. 113, 1914, pp. 56–78. *JSTOR*, <http://www.jstor.org/stable/551263>. Accessed 27 Dec. 2023.

Constitutional Charter,⁴¹⁴ but in fully developed form only in 1830 Constitutional Charter.⁴¹⁵ Historical reasons have influenced the British model of dualistic (classical) parliamentarism to take root more firmly on the European continent, primarily in France, than in its country of origin. One of the reasons for this is that the crown and nobility on the European continent, unlike in Great Britain, were in a firmer alliance. In France the nobility was even more radical and conservative than the king Louis XVIII.⁴¹⁶ This means that the crown did not stand alone before democratic demands but formed a front with the nobility despite occasional disagreements within it. Apart from the internal aspect, the foreign policy element also played an important role: after the fall of Napoleon, even regarding the French constitution, in 1814 the main say was held by the Russian Tsar Alexander I.⁴¹⁷

After the revolutionary and counter-revolutionary events of 1789–1830 in France, the form of parliamentarism established in this country could be described as almost reactionary compared to the revolutionary constitutional models. It remained consistently dualistic and, although originally came from England, it will take the name after its French modification – the Orleanist parliamentarism, after the name of the French dynasty.⁴¹⁸ Unlike the consolidated English model, this form of parliamentarism is characterized by a strong role of the monarch and his real control

⁴¹⁴ According to Berthelemy the monarchy, as it functioned during the era of the Constitutional Charter of 1814, was effectively parliamentary due to the nature of the factual relationships between the crown and the representative house. See: J. BARTHÉLEMY, *L'introduction du régime parlementaire en France sous Louis XVIII et Charles X*, V. Giard & E. Brière, 1904, pp. 304-305; S. BOYRON, *The Constitution of France. A Contextual Analysis*, Bloomsbury Publishing, 2012, p. 12.

⁴¹⁵ Although there is a view that the roots of French parliamentarism are in the Revolution (for example, G. DODU, *Le parlementarisme et les parlementaires sous la Révolution 1789-1799*, Plon-Nourrit et Imprimeur-Éditeurs, 1911), this is not sustainable, since no constitution in the period from 1791-1799 established a separation of powers in the way required by a parliamentary order. Therefore, it is justifiably considered that the beginning of French parliamentarism is, in fact, the period of the Restoration and the Constitutional Charter of 1814. See: E. de WARESQUIEL, *Un paradoxe politique: La Chambre 'Introuvable' et la naissance du parlementarisme français (octobre 1815 - avril 1816)*, in *Commentaire*, LVII (1992), pp. 409-16. For an extensive overview see: T. PASQUIET-BRIAND, *La Réception De La Constitution Anglaise Au XIXe Siècle. Une Étude Du Droit Politique Français*, Varenne, Institut Universitaire Varenne, 2017.

⁴¹⁶ O. TORT, *La droite française (1814-1830)*, Berkeley, 2013.

⁴¹⁷ M. PRUTSCH, *Making Sense of Constitutional Monarchism in Post-Napoleonic France and Germany*, Springer, 2012, pp. 11-12.

⁴¹⁸ U. MÜSSIG, *Constitutional developments after 1830: towards a balance between monarchical and popular sovereignty*, in *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du droit / The Legal History Review*, 79(3-4), 2011, 489-519.

over ministers, while the parliament remained a weaker player in this balance of power. This was reflected in the ease of dissolution of parliament by the monarch's will.⁴¹⁹

However, by the last quarter of the 19th century, the strengthened French bourgeoisie would weaken the positions of the head of state (then already the president of the republic) in relation to parliament, so that the national representation would become the dominant branch of government to the extent that the formation and fall of the government became exclusively tied to the will of this body. The victim of this balance of power will be, of course, the executive's right to dissolution.⁴²⁰

Historical developments ensured that the "French model" of parliamentary monarchy attained prominence through the Belgian exemplar, enshrined in its 1831 Constitution.⁴²¹ This occurred as France, the country of its origin, diverged from the dualistic model of parliamentary monarchy in 1848, and embarked on a wayward constitutional trajectory in the following decades. Ultimately, the Belgian model, established in 1831, profoundly influenced by French Orleanist parliamentarism, facilitated the spread of the dualistic model of the parliamentary political regime across the European continent. The adoption or adaptation of the Belgian model primarily pertains to the government's structure, while an important element of this constitution – popular sovereignty – remained largely confined to its country of origin.⁴²² This included its adoption by various Balkan states such as Greece in 1864, Romania in 1866, Bulgaria in 1879, and in Serbia in 1888 and, after a short period of abolition of parliamentary system, again in 1903.⁴²³ In these nations, the adoption of the dualistic model was not predicated on an alliance between the (non-existent) nobility and the crown. Instead, it reflected the intrinsic strength of the crown, its established reputation within the nation, the vested interests of the civic elites in maintaining a robust ruling authority, and the influence of external political support.

⁴¹⁹ O. TORT, *La dissolution de la Chambre des députés sous la Restauration : le difficile apprivoisement d'une pratique institutionnelle ambiguë*, in *Revue Historique*, 2, 2000, pp. 339-365. More thoroughly in: P. ALBERTINI, *Le droit de dissolution et les systèmes constitutionnels français*, Presses universitaires de France, 1974.

⁴²⁰ P. ALBERTINI, *Le droit de dissolution*, pp. 292-293.

⁴²¹ B. DELBECKE, *Modern constitutionalism and legal transfer: the political offence in the French Charte Constitutionnelle (1830) and the Belgian Constitution (1831)*, T. DUVE (Ed.), *Entanglements in Legal History: Conceptual Approaches*, Max Planck Institute For European Legal History, 2014, pp. 427-459.

⁴²² D. GRIMM, *Types of the constitution*, p. 121.

⁴²³ O. POPOVIC OBRADOVIC, *op. cit.*, p. 36.

An important aspect to note is that parliamentarism, both in monarchy and in the republic, involves what's termed a "soft" separation of powers.⁴²⁴ This means that the different government branches, particularly the legislature and executive, exert considerable influence over each other, leading to a dynamic interplay of power that often lacks strictly defined procedural boundaries. In such a system, the balance of power is continuously negotiated, resulting in either parliamentary dominance (less commonly) or governmental predominance (more frequently). However, the key characteristic of this system is the persistent interdependence of these branches; neither operates in isolation. Typically, the government's dominance is more a matter of practice than principle, as theoretically and practically, the parliament always holds the power to withdraw its confidence from the government.

Finally, in parliamentary systems, a pivotal transformation occurs in the locus of sovereignty. Contrary to traditional monarchies, sovereignty was no longer vested solely in the monarch, or not entirely. In the United Kingdom, for instance, complex constitutional evolutions have recognized Parliament as the sovereign authority.⁴²⁵ John Austin, for instance, couldn't have been more explicit when stating "King is not sovereign."⁴²⁶ In France, on the other hand, the development of parliamentarism came along with the revival of the popular sovereignty, born out of the blood of revolutionary turmoil, and suppressed during Restoration. Under the "Roi Citoyen" the popular sovereignty was somehow restored, although the last claim remains debatable. In a nutshell, while parliamentarism invariably undermines the monarch's sovereignty, it does not at all automatically guarantee the triumph of popular sovereignty.

2. 2. Kingdom of the Serbs, Croats and Slovenes as a Parliamentary Monarchy

Parliamentary regime was adopted also for the new state of the Serbs, Croats and Slovenes.⁴²⁷ That the new Kingdom SCS would be a parliamentary monarchy with the Serbian royal house of Karađorđević was predetermined even before the Constituent Assembly

⁴²⁴ Some authors would even claim that parliamentarism presupposes not separation, but balance of powers., See: G. SARTORI, *Comparative Constitutional Engineering*, Macmillan, 1994, p. 102-104.

⁴²⁵ J. GOLDSWORTHY, *The Sovereignty of Parliament. History and Philosophy*, Oxford University Press, 2001; ID, *Parliamentary Sovereignty: Contemporary Debates*, Cambridge University Press, 2010.

⁴²⁶ J. AUSTIN, *A Plea For the Constitution*, John Murray, 1859, p. 3.

⁴²⁷ On parliamentarism in the first Yugoslavia see: A. FIRA, *Vidovdanski ustav*, Srpska akademija nauka i umetnosti, 2011; B. GLIGORIJEVIĆ, *Parlament i političke stranke u Kraljevini SHS*, Institut za savremenu istoriju, Narodna knjiga, 1979; D. POPOVIĆ, *Constitutional History of Serbia*, Brill, 2021.

commenced its sessions. This decision was initially underscored in the Corfu Declaration, in July 1917, affirming that the new state would be a monarchy led by the Serbian dynasty. This was enshrined in the St. Vitus Day's Constitution of 1921, proclaiming the new state of the South Slavs to be a "constitutional, parliamentary, and hereditary monarchy."⁴²⁸ The Constitution stipulated that "the legislative power is exercised jointly by the King and the National Assembly."⁴²⁹ In terms of ministerial accountability, the Constitution specified that "the ministers are accountable to the King and the National Assembly."⁴³⁰ Thus, this framework represented a model of dualistic parliamentarism. Yet, in reality, the monarchical element predominantly influenced the state's constitutional and political structure, reflecting a blend of parliamentary principles with strong monarch's authority. That implied uneven distribution of power between the Crown and representative body. In the context of the Kingdom SCS the Crown established an evident supremacy.⁴³¹

In establishing parliamentary monarchy through the 1921 Constitution, the historical narratives that glorified the struggle for a parliamentary, democratic regime in the Kingdom of Serbia, its dynasty, and, specifically, King Peter I Karađorđević played a significant role. Simultaneously, the pre-determination of the form of government raised questions about sovereignty: who holds sovereignty within the state, given that the monarchy was excluded from the future decision regarding the state's constitution? In the upcoming sections, I will examine these three topics, drawing upon the historical narratives that enveloped them: the idealization of Serbia as a prototype for a parliamentary system in the emerging state, the glorification of the Karađorđević dynasty, and the controversies surrounding the question of sovereignty.

2. 3. Historical Narratives Supporting Parliamentary Monarchy in the Kingdom of SCS

a) Parliamentarism

The parliamentary monarchy instituted by St. Vitus Day's Constitution drew its support from historical narratives that were not directly focused on parliamentarism itself but rather on the

⁴²⁸ *Ustav Kraljevine Srba Hrvata i Slovenaca*, cit., Art. 1.

⁴²⁹ *Ibidem*, Art. 46.

⁴³⁰ *Ibidem*, Art. 91.

⁴³¹ In essence, not one government was overthrown through parliamentary processes; all instances of government crises were instigated by the monarchy. See: LJ. DIMIĆ et al. (Eds), *Vlade Srbije 1805-2005*, Zavod za udžbenika I nastavna sredstva, 2005.

reverence for the pre-WWI Kingdom of Serbia. This admiration stemmed from a prolonged struggle against monarchical autocracy throughout the 19th century in Serbia, culminating in the establishment of a parliamentary regime in 1903. This regime and the protracted struggle that led to its formation were credited with empowering Serbia to emerge as the pivotal force in Yugoslav unification. Additionally, the establishment of the parliamentary monarchy was largely attributed to the democratic tendencies of the ruling house of Karađorđević, which succeeded the Obrenović dynasty – the latter being perceived as more autocratic.

History has it that in 1903, a significant dynastic shift occurred in Serbia: the last king from the Obrenović dynasty was assassinated, leading to the ascension of Peter Karađorđević to the throne. The new monarch, King Peter, unlike his predecessor, enjoyed the reputation of being a democratic, parliamentary ruler. He even translated John Stuart Mill's treatise *On Liberty*. In addition to instituting a parliamentary system, the Serbian 1903 constitution was notable for facilitating a relatively democratic political regime.⁴³² That is why Serbia, marked by its parliamentary democracy, distinguished itself in the region, enjoying prestige and influence among neighboring South Slavic nations.⁴³³ According to the view of a contemporary politician of that time

“Serbia was a constitutional and parliamentary state, and its ruler is the most constitutional and parliamentary king and sovereign, surpassing even any president of a republic in these respects.”⁴³⁴

This admiration for Serbia was not solely due to its democratic institutions but was also influenced by the presence of a royal house of domestic origin, the Karađorđević dynasty. This fact, in the era of nationalism, was particularly emphasized given the fact that the other South Slavic peoples at the time lived under the undemocratic and foreign regimes of the Austro-Hungarian and Ottoman Empires. The sole exception was Montenegro, which, like Serbia, was an independent state and had an indigenous royal dynasty. At the same time, Montenegro differed from Serbia in that it lacked a democratic political regime, despite taking initial steps towards establishing a parliamentary system.

⁴³² O. POPOVIĆ-OBRADOVIĆ, *Parliamentary System in Serbia (1903-1914)*, cit., 589-598.

⁴³³ I. BANAC, *National Question in Yugoslavia*, cit., pp. 80-81.

⁴³⁴ *II sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 2. februara 1921. godine*, in Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, I, Debata u načelu o nacrtu Ustava, Državna štamparija, 1921, p.

The glorification of Serbia and the intertwining of freedom and democracy with monarchy are vividly illustrated in the remarks of a representative in the Provisional National Assembly. This legislator, while criticizing those who were agitating to establish the new state as a republic, addressed the proponents of this idea with a poignant statement: “You might be satiated with freedom, but we, the newly liberated, yearn for a monarchy.”⁴³⁵ This statement powerfully encapsulates the sentiment of those who saw monarchy as an integral part of their newfound freedom. The statement reflects a particular understanding of the political regime of the Kingdom of Serbia, where the monarchy was not perceived as a suppressive or autocratic force, but rather as a fundamental pillar supporting freedom and democracy. The Serbian monarchy was seen as a stabilizing and unifying force that upheld democratic values and protected the freedoms of its citizens. Drawing on such a perception of Serbia, Regent Aleksandar Karađorđević could emphasize the need “to swiftly transplant the fruits of the internal state development, which have earned Serbia a deserved reputation among our entire nation, to the rest of the state territory as well...”⁴³⁶

Milenko Vesnić, the president of the Constitutional Committee, made a significant observation in the context of highlighting the significance of the experience of constitutional struggles in Serbia. Vesnić highlighted that

“Our struggle for the Constitution and constitutional freedoms in Serbia can, to some extent, be compared with the aspirations manifested in France; that is, with the endeavors to find means in the fundamental state laws that will primarily protect citizens in their basic rights.”⁴³⁷

Vesnić’s understanding sought to move the importance of Serbia’s constitutional history further from the local perspective by drawing a connection with the most influential European constitutional struggles – the ones that took place in 18th-century France. It aimed at positioning the Serbian 1903 constitution as an essential reference point for the new state by tapping into a rich vein of French democratic thought and practice. It provided historical context and legitimacy for the Serbian experience by aligning it with globally respected values and principles of governance.

⁴³⁵ Stenografske beleške Privremenog narodnog predstavništva, Državna štamparija, 1919, 9. mart 1920.

⁴³⁶ Stenografske beleške Privremenog narodnog predstavništva, 16. Mart 1919.

⁴³⁷ *II sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 2. februara 1921. godine*, in Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, I, Debata u načelu o nacrtu Ustava, cit., p. 23.

Having in mind the overall positive image of Serbia, it comes as no surprise that the first constitution of the Kingdom of the Serbs, Croats, and Slovenes was modeled after the 1903 Constitution of the Kingdom of Serbia, which itself embodied a form of dualistic parliamentarism.⁴³⁸ In a nutshell, when after the unification in 1918 the time came to draft the constitution for the new Kingdom of the Serbs, Croats and Slovenes, the Serbian constitution of 1903 served as an influential template, reflecting a blend of democratic principles with the tradition of a nationally rooted monarchy, resonating with the sentiments and aspirations of the broader South Slavic population. As clearly articulated by Laza Marković, a member of the 1920 Constituent Assembly and its Committee for drafting the constitution and one of the leading constitutional scholars of the time, the constitution of the new state should be following the model of

“the Belgian constitution, the English unwritten constitution and parliamentary law, and finally, the Serbian constitution of 1903... Our people’s state with a people’s dynasty naturally had to remain a monarchy, and we had to choose monarchical institutions. By accepting the monarchy, we wanted (...) this monarchy to be strictly constitutional and parliamentary.”⁴³⁹

In a similar vein, Marko Trifković, the Minister for the Constitutional Assembly, referred to the long struggle for parliamentarism in Serbia and invoked its example as a model to be pursued. As a member of the Radical Party, which stood at the center of the struggle against the monarch’s autocracy in 19th century Serbia, Trifković sponsored his party’s role in the constitutional history of Serbia at the time, particularly highlighting the democratic nature of the constitution the Radical Party eventually ensured back in 1903:

“The Serbian Constitution, forged from a long, arduous, and challenging struggle, was modeled after the Belgian Constitution, noted for its forward-thinking principles. I can state, without fear of being accused of exaggeration, that the remarkable resilience our people in Serbia demonstrated against our adversaries, and their deep commitment to freedom, owe much to our progressive Constitution. Our citizens recognized their sovereignty at the local level, their authority in the districts, and their true mastery in the region and the state. They understood that only those who had their trust could become their local leaders or presidents.

⁴³⁸ S. JOVANOVIĆ, *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca, cit.*, 57-58.

⁴³⁹ *VI sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 9. februara 1921. godine*, In Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, I, *Debata u načelu o nacrtu Ustava, cit.*, p. 64

They realized that only those they freely elected could represent them in the National Assembly. They knew that only individuals who had the full confidence of their elected representatives could lead the state administration and the Government. This realization – that the state genuinely belonged to them and that the state’s welfare was intrinsically linked to their own – is why they cherished the state so deeply. This is the reason they fought so heroically to reclaim their state and to integrate their yet-to-be-liberated brethren into this state.”⁴⁴⁰

According to Trifković, it wasn’t even necessary to elaborate that the Yugoslav people were truly monarchists and that they “loved their current dynasty”. However, he added just as I do not need to prove this, likewise, I think, it is not necessary for me to prove that our people also wish that their monarchy be constitutional and parliamentary. Our people undoubtedly do not want these two aspects to be separated from each other. They want the two to be together.”⁴⁴¹

The minister expressed the view that the essential elements of modern parliamentarism – such as democratic governance, popular sovereignty, the significance of electoral representation, leadership accountability, and the government's responsiveness and responsibility towards its citizens – were widely embraced across the nation. It conveyed the notion that the “liberal constitution,” ardently fought for throughout modern history, was a pivotal force inspiring people to fight for their homeland and the liberation of other Yugoslav nations. In his discussion, the minister, Trifković, by referring to the historical experience of the Kingdom of Serbia, was actually suggesting what kind of constitution the new Yugoslav state should adopt.

The President of the Constituent Assembly, Ivan Ribar, similarly elaborated on the significance of introducing the parliamentary monarchy regime in Serbia two decades ago, historicizing this event:

“With the implementation of the Constitution of June 5, 1903, which included the assurance of all political rights of citizens and the establishment of a true parliamentary system of governance, Serbia introduced genuine popular regime. The consequences of this rule, which resonated with the feelings and moods of the entire nation, not only within Serbia but also beyond its borders, were that Serbia became the hope and strength of all our people under foreign rule... and gradually a

⁴⁴⁰ Ibidem, p. 23.

⁴⁴¹ Ibidem.

movement began to form against this foreign domination, in favor of the unification and liberation of our entire nation.”⁴⁴²

Once established, the parliamentary system in the Kingdom of Serbs, Croats, and Slovenes was short-lived. Party alignments predominantly took on an ethno-national character, and such were the political struggles. This led to an assassination in the assembly in June 1928, where the most prominent Croatian representatives in Parliament were killed. This served as a basis for King Alexander to establish a dictatorship on January 6, 1929. However, it’s not without irony that even the introduction of the king’s dictatorship did not occur without, at least brief, reference to the historical narrative I have presented here. In abolishing the Vidovdan Constitution, which had defined the state as a parliamentary monarchy, King Alexander noted that only forced by circumstances he abolished “parliamentarism, which, *according to the traditions from my unforgettable Father*, remained also my ideal.”⁴⁴³

The affirmative historical narrative about Serbia and its parliamentary regime as a model to be followed in the new state faced an important challenge in the Constituent Assembly. While Serbian parliamentary democracy of the era was held in high esteem and widely admired, it was not without its inherent flaws and dysfunctions, evident from its very inception. These were brought to light by many opposition representatives in the Constituent Assembly. They would point out that the constitution enabling parliamentary democracy established in 1903 was a direct result of a military *coup d’état*, which included the brutal assassination of the Obrenović royal couple. The military faction responsible for the coup remained deeply influential in the country’s political life, often referred to as “the fourth constitutional factor” alongside the King, the government, and the parliament. Additionally, political life was dominated by the Radical Party, which exhibited characteristics of what would today be termed a populist movement. This party often showed disregard for fundamental democratic institutions such as free and fair elections, the rule of law, and minority rights. A well-known anecdote provides a vivid illustration of the shortcomings of the Serbian parliamentarism that existed during this time period. When the opposition, with the intention of preserving the principles of parliamentary order, as exemplified by Great Britain, attempted to challenge the government on these principles, they were met with a retort that was

⁴⁴² XIV redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, 14. aprila 1921, in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, Br. 7, p. 6.

⁴⁴³ Proklamacija Kralja Aleksandra I, in Službene novine, 1/29.

characterized by a sharply cynical tone from Nikola Pašić, the leader of the ruling Radical Party: “I’m as akin to Gladstone as you are to the English.” Such an answer not only dismissed the claims made by the opposition, but also underscored the gap between the ideals of parliamentary democracy and the realities of its practice in Serbia at the time. Another illustrative example, the one concerning the majority-minority relationship in the parliament, was extended in *Samouprava*, the official organ of the ruling Radical Party: “The minority fundamentally has only one right, and that is to direct all its efforts towards becoming the majority, and until it succeeds, it must reconcile itself with powerlessness and exclusion”.⁴⁴⁴

Jovan Đonović highlighted a number of concerning issues of pre-WWI Serbian parliamentarism: the persistence of clandestine military organizations, assaults by military officers on members of parliament, the murder (in the presence of the justice minister) of two officers imprisoned for opposing the army’s dominant military faction, and so forth. Additionally, Đonović emphasized various irregularities in parliamentary practices:

“Throughout this entire period, from 1903 onward, there was only a single genuinely free election that even the opposition couldn’t criticize. The party that secured the majority in that election managed to govern Serbia for merely 11 months during the 17-year span of Serbian parliamentarianism...”.⁴⁴⁵

A socialist, Triša Kaclerović also paints a less idealized image of the Serbian parliamentary monarchy, highlighting instances of violence, suppression, and limited true democratic governance:

“Those who have been involved in politics, both in and out of Parliament, are very well aware of the challenging state of our political and social life due to the excessive power wielded by the military officer clique in our country... Constitutions were torn apart, and there was pressure from irresponsible actors on the government to pursue certain policies in Parliament. And this, gentlemen, also proves that when it comes to the Constitution, the supreme and fundamental law of a state, there is a difference between a Constitution on paper and the actual Constitution in practice... The impact of this irresponsible military factor is still felt right here in the Constituent Assembly. It hovers like the spirit of Saint

⁴⁴⁴ D. STOJANOVIĆ, *Srbija i demokratija*, Udruženje za društvenu istoriju, 2019, p. 333.

⁴⁴⁵ *XIII sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 18. februara 1921. godine*, in *Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, p. 207.

Archangel Gabriel with a flaming sword, ready to extract the soul, meaning to seize power from all those who refuse to obey.”⁴⁴⁶

The criticisms raised by opposition members and Republican-leaning politicians were anything but baseless. The parliamentary system in the Kingdom of Serbia prior to WWI and the unification was notably unstable, with significant and negative influence from covert military factors. Nonetheless, as pointed out by researchers, since 1903, Serbia had realized its “first significant parliamentary experience.” On a positive note, the period saw commendable developments: press freedom, freedom of speech, the right to political organization and assembly, and (with few exceptions) the absence of politically motivated legal actions or imprisonment. Moreover, there was an enhanced commitment to constitutionalism and the rule of law – these achievements are important to acknowledge.

b) The Dynasty

The glorification of the positive role of the Karađorđević dynasty in the historical struggle for political freedoms, democracy, and parliamentarism was evident even during the activities leading to the unification into a common state during WWI and after the war. This was clearly expressed in the Corfu Declaration, which explicitly stated that the new state would be

“a constitutional, democratic, and parliamentary monarchy headed by the Karađorđević dynasty, which has proven that it aligns with the ideas and sentiments of the people and places the people’s freedom and will at the forefront (Emphasis is mine – S. M.).”⁴⁴⁷

At the same time there was a prevailing notion of the mutual interconnection between democracy and the parliamentary political regime,⁴⁴⁸ on one side, and the personality of King Peter and the Karađorđević dynasty, on the other. This was clearly expressed in the discussion by Milan Pribičević:

⁴⁴⁶ XXI redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, Br. 14, p. 41.

⁴⁴⁷ *Krfska deklaracija*, in D. JANKOVIĆ, B. KRIZMAN, *Grada o nastanku Jugoslavije*, I, Institut društvenih nauke, 1964, pp. 16-18.

⁴⁴⁸ Indeed, in continental Europe parliamentarism is identified with democracy, being intended more as a principle of legitimacy, for the exertion of public power than as a form of government. Such connection with democracy resulted from the reaction against absolutism. A. BRADLEY, C. PINELLI, *Parliamentarism*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., p. 653.

“We support the dynasty because it originates from the peasant’s *opanak* (traditional footwear) and because our people have created almost a legend around the name of King Peter. Our people view the Karađorđević dynasty as representatives of national leadership... Our nation sees in the Karađorđevićs their national champions, most deserving of credit for national liberation...”⁴⁴⁹

Alternatively, Pribićević highlighted that the monarchy’s support was somewhat conditional, hinging on the ruler’s commitment to serving the people’s interests. He unequivocally pointed to the history of revolts and the dethroning of autocratic rulers in Serbia, issuing a cautionary reminder:

“We knew how to deal with those kings who did not serve the people. Today, we embrace the monarchy as a means to organize our state. If the monarchy hinders our development, we will certainly know what to do with it!”⁴⁵⁰

A famous Croatian politician, Ante Trumbić also extolled the role of Peter Karađorđević and the dynasty as crucial for unification, as well as for their overall role in the past, which included the democratization of the country and its political regime.

“I am in favor of our state being, as it indeed is, a monarchy with the Karađorđević dynasty at its helm. This is because, through its history, especially in the latest period of Serbia’s history, but in our overall past, the Karađorđević dynasty has earned the right to lead the political life of our state... The Karađorđević dynasty led the nation in struggle, particularly our reigning King, who marked a new era in the history of Serbia and our entire nation. He directed and led the people in their fight for freedom. I believe that our history will record his name on its most glorious pages as the King Liberator...”⁴⁵¹

Indeed, Trumbić saw the monarchy more as a tribute to the Karađorđevićs than a fundamental principle. Consequently, his interpretation of the Constitutional Committee’s proposal that the new state should be a monarchy was quite distinctive:

“I understand that the text, as formulated by the Constitutional Committee... does not establish the principle of monarchy in an absolute sense, as if, by chance, the Karađorđević dynasty were not

⁴⁴⁹ *XXVII redovni sastanak 10. maja 1921. godine*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, Br. 20, p. 9.

⁴⁵⁰ *Ibidem*.

⁴⁵¹ *XXXIII redovni sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, Br. 26, p. 3.

ruling in this country... I just wish to explain my opinion, that the monarchy in the first section should signify a state led by the Karađorđević dynasty alone.”⁴⁵²

Ivo Pavičić, a delegate from Croatia in the Constituent Assembly, drew a symbolic link between historical occurrences in Croatian history and current events. He commended King Peter as an avenger and restorer of the new indigenous dynasty. Reflecting on an event from the distant 12th century, when Croatia came under the rule of Hungary, Pavičić reminded:

“Let us remember, on this occasion, the tragic death of the last Croatian king from the native Croatian dynasty, Petar Svačić, and take pride in the fact that another Petar avenged his heroic demise.”⁴⁵³

Živko Miladinović, another member of the Constitutional Committee, recalled to his colleagues an address he had delivered at the time in the Austro-Hungarian parliament. In his praise of Serbia and its constitutional history, Miladinović pointed out that Serbia had evolved into “a constitutional and parliamentary state, with King Peter surpassing any republican president in constitutional and parliamentary adherence... A republican president couldn’t match the liberal-mindedness and consideration King Peter showed towards his people and country.”⁴⁵⁴

Furthermore, Miladinović uniquely expressed his support for the monarchy by noting, “our state may outwardly seem like a monarchy, yet in reality, it functions like a republic.”⁴⁵⁵ Drawing on the historical narrative that links the Karađorđević dynasty intrinsically with Serbian statehood, the same member of the Committee observed that

“by its governance and its lived-through experience, the Serbian state has truly demonstrated its nature as a constitutional and parliamentary state. Therefore, we must ask ourselves, where would we be in this state had there not been the beloved Karađorđević dynasty?”⁴⁵⁶

In the sessions of the Constituent Committee, the justice minister strongly highlighted the beneficial impact of King Peter Karađorđević’s reign, from 1903 onwards, in establishing a liberal political regime in Serbia.

⁴⁵² Ibidem, p. 4.

⁴⁵³ *XXVII sastanak Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, Br. 20, p. 23.

⁴⁵⁴ *X sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 14. februara 1921. godine*, in *Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, pp. 100-101.

⁴⁵⁵ Ibidem, p. 101.

⁴⁵⁶ Ibidem, p. 101.

In our recent history, we've seen two distinct periods. First, the rule of King Milan and King Alexander up to 1903, characterized by severe restrictions and often outright prohibitions on all forms of political freedoms. It was only after the 1903 revolution that we entered a phase marked by broad political liberties and civil rights... when freedom of expression, both orally and in writing, was fully granted...⁴⁵⁷

For Tomislav Tomljenović, the Vice President of the Constitutional Committee, the Karađorđevićs were “connected through their past with the people,”⁴⁵⁸ while “this dynasty has never shown, through any of its forebears..., a reluctance to work alongside the people.”⁴⁵⁹ This abundant admiration for the Karađorđevićs led a critic of the monarchy to make a sarcastic comment that the assembly was filled not with monarchists but with “dynasticists.”⁴⁶⁰

In essence, the advent of parliamentarism and the democratic regime in Serbia in 1903 were seen as manifestations of the king's commitment to these ideals, which were also expressions of the will of the Serbian people, perceived as inherently democratic. As such, parliamentarism and democracy were closely intertwined with the monarchical structure and the charismatic influence of the Karađorđević dynasty that, as it was argued, faithfully followed the people's aspirations. It is also important to note that the Karađorđević dynasty's roots were grounded in the fact that its founder led the insurrection that initiated Serbia's liberation from Ottoman rule. This fact further cemented the historical significance of the House of Karađorđević in shaping the nation's political trajectory.

When the time came to discuss the constitution of the new state, critics of the government extended their own arguments and presented their perspective on history. They demonstrated that there was not a unanimous agreement regarding the commitment to monarchy. Jovan Đonović, a member of both the Constitutional Committee and the Constituent Assembly, distilled Serbia's monarchical history over several decades with this observation:

“It's quite significant to acknowledge that, over the past 65 years, the Serbian people compelled one monarch to abdicate, exiled three, and assassinated two. These actions were clearly not born

⁴⁵⁷ Ibidem, p. 207.

⁴⁵⁸ Ibidem, p. 127,

⁴⁵⁹ *IL redovan sastanak Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, in *Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, Br. 41, p. 23.

⁴⁶⁰ Ibidem, p. 5.

of affection or appreciation for their leadership... This explains the shift in public sentiment towards republicanism and away from monarchical rule.”⁴⁶¹

c) The Sovereignty Issue

Finally, regarding the form of governance, the question of the sovereign in the new state was also linked to it. It has already been mentioned that through political decisions (such as the Corfu Declaration) and the act of unification (the First of December Act), it was predetermined that the new state would be a monarchy led by the Karađorđević dynasty. This decision significantly restricted the scope of the Constituent Assembly’s authority. To emphasize further the ruling authority more, it was decreed that the king would have the power to dissolve the Constituent Assembly, as well as to determine its rules of procedure by his decree. Its representatives even had to swear allegiance to the king. On the top of that, the Constituent Assembly’s inaugural session commenced with the reading of the royal address.⁴⁶²

From the outset of its proceedings, representatives with republican leanings raised objections, feeling that the Constituent Assembly’s right to determine the form of government was unfairly restricted. The fact that the Constituent Assembly could not decide upon the form of government (monarchy or republic) was understood as a clear indicator that the Assembly is deprived of the right to render a sovereign decision. But whose sovereignty was thereby infringed?

One viewpoint held that popular sovereignty, an irrefutable principle, was compromised due to the Constituent Assembly’s lack of comprehensive decision-making authority, despite being elected by the people. Another perspective asserted that the government had effectively “undermined the *sovereignty of the Constituent Assembly* (Emphasis is mine – S. M.)” which should embody the people’s will. Lazar Marković, a prominent authority on this matter among government supporters, offered a resolution stating that sovereignty is a shared domain between the people and the king.

On the question of whether sovereignty resides with the people, with the assembly, or if either of these entities shares sovereignty with the monarch, no refined discussion over the specifics of any particular constitutional theory took place. The debate revolved around the vaguely understood issue of whether the power of the people – interpreted by some deputies as

⁴⁶¹ XLII redovni sastanak Ustavotvorne skupštine Kraljevine Srba Hrvata i Slovenaca, in Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, Br. 35, p. 18.

⁴⁶² S. JOVANOVIĆ, *Ustavno pravo Kraljevine SHS, cit.*, pp. 22-23.

“popular sovereignty” and by others as “sovereignty of the Constituent Assembly” – was compromised by the constraints placed on the Assembly through the denial of its right to determine the form of government.

According to republican Jovan Đonović, the infringement of popular sovereignty was a consequence of the monarchical principle as such, since in the monarchy

“The people who bear the weight of the state, who sustain it with their toil and labor, and defend it with their blood, are not the masters in monarchies. There is someone else above them, someone superior to them – the monarch. Talk of popular sovereignty in monarchies is mere wordplay because as long as the people's decisions depend on someone external and superior to them, the people are not sovereign. After this great world war, where the people made the greatest sacrifices and demonstrated their maturity and courage, I believe they should be left to be the masters in their own home, without the need for a guardian.”⁴⁶³

This perspective also reflected, apart from a general view, a specific local perspective on the historical narrative of state creation and the struggle for statehood. In the case of Serbia, it was always emphasized that the main role in this struggle was played by the people, who were the creators of the state. Therefore, almost all political parties in their programs used the phrase “a people’s state”. This ultimately pointed out, from a historical perspective, who its creator was: a people’s state effectively meant that in such a state, the power should belong to the people.

Since the ruling party, who stood behind the Draft of the Constitution of 1921, had a distinctly populist history, it was not difficult for the opposition to remind those who under the new state were defending monarchy and deliberately limited the Constitutional Assembly’s ability to decide on the form of government, of their own past. Hence, the republican Jovan Đonović reminded the governing political faction that in 1883, they themselves had championed the concept of undisputed popular sovereignty. When advocating for the alteration of the constitution at that time, they had put forth a proposal with the following statement in its first article: “The Serbian people are sovereign, all power emanates from the people, the people are the source of all power in the state.”⁴⁶⁴

This reminder to the ruling parties of their own past was more than mere party squabbling. Taken together, those parties dominated the political scene in pre-WWI Serbia, effectively

⁴⁶³ *VI sednica Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, održana 9. februara 1921. godine*, in *Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, p. 47.

⁴⁶⁴ *Ibidem*, p. 48.

enjoying the support of over 90% of the electorate. Now, under the new circumstances, in the new state, the opposition reminded the ruling parties that they owed this support to their unequivocal commitment to popular sovereignty, which they eventually abandoned:

“During the struggle for freedoms and civil rights, the Radical Party, even when recognizing the Monarchy, believed that the Monarchy should be merely a decoration, a figure without any substance, and that all rights should belong to the people. The slogan of a sovereign people was the rallying cry with which the radicals won over the majority of the rural and urban population. If at that time no other Monarchy was needed than the one envisaged by the radicals, certainly is less so today; today, after so much bloodshed, after so many bloody experiences, the people are weary of rulers, weary of the Monarchy.”⁴⁶⁵

The stance that Yugoslavia was a people's state was not disputed by the government parties, which advocated for the monarchy. They, in fact, were the most vocal proponents of this view, even in the new state. Therefore, it was important for them to emphasize that the history of the royal house of Karađorđević, they unequivocally supported, begins “from the *opanak*” (from the peasant footwear). With such a narrative about the dynasty’s peasant origin, it was possible for the government parties to advocate the view that the position of such a ruling house was unquestionable. Their stance was that

“our Assembly cannot depose the King, for the King exists and the King is sovereign, sharing sovereignty with this Constituent Assembly, and no one can compel him to approve such decisions by which the Constituent Assembly would wish to establish a republic.”⁴⁶⁶

At the end, the 1921 Constitution was proclaimed as a constitutional pact,⁴⁶⁷ enacted by the will of the people’s representation with a significant role of the crown in its proclamation. The prevailing view is that sovereignty in the Kingdom of Serbs, Croats, and Slovenes belonged jointly to the people and the king. Moreover, the king was a more dominant factor since the form of governance was not within the competence of the Constituent Assembly. Ultimately, the predominant view emerged that royal authority precedes the Constitution and that sovereignty is shared between the people (or Constituent Assembly) and the King. Consequently, the

⁴⁶⁵ *XLV redovni sastanak*, in *Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije*, Br. 38, p. 8.

⁴⁶⁶ *X sednica Ustavnog odbora Ustavotvorne Skupštine*, in *Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, p. 99.

⁴⁶⁷ A. FIRA, *Vidovdanski ustav*, cit, p. 29.

Constitution of the Kingdom of SHS came into effect after it was signed by Regent Alexander Karađorđević, on behalf of the then gravely ill King Peter I.

3. Yugoslavia as a Republic

3. 1. A Socialist State as a Republic

The notion of a republic was perceived by the communists with such intrinsic obviousness that it scarcely necessitated detailed exposition or theoretical underpinning. However, from a theoretical perspective, Marx's (and Marxism's) stance on the idea of a republic is, of course, more nuanced. In brief, it could be stated that Marx's attitude towards republicanism stemmed from the belief that a republic, in the form it historically materialized until his epoch, was not the "final say" of history.⁴⁶⁸ Among many references to the idea of republic, I can quote, as a paradigmatic, one of the points made by Engels: "Marx and I, for forty years, repeated *ad nauseam* that for us the democratic republic is the only, political form in which the struggle between the working class and the capitalist class can first be universalised and then culminate in the decisive victory of the proletariat."⁴⁶⁹ Hence, it is a platform for a struggle far more significant than a form of government; it is nothing less and nothing more.

The Soviet Union, established following the 1917 Revolution, was the first socialist republic. Consequently, Lenin, the leader of the revolution, had a significant influence on shaping the political and constitutional framework of this novel state form. Although in the Marxist-Leninist context a republic is simply an organizational form of the state that is expected to gradually become obsolete, from a constitutional theory perspective, be it liberal or Marxist-Leninist,⁴⁷⁰ as long as a form of state governance exists, it constitutes not only a legitimate but also an essential area for scholarly inquiry.

⁴⁶⁸ See: J-C. ISAAC, *The Lion's Skin of Politics: Marx on Republicanism*, in *Polity*, 22(3), 1990, pp. 461–488, doi:10.2307/3234759; N. SULTANY, *Marx and Critical Constitutional Theory*, in P. O'CONNELL, U. OZSU, *Research Handbook on Law and Marxism*, Elgar, 2021.

⁴⁶⁹ F. ENGELS, *Reply to the Honourable Giovanni Bovio* (1892), available at: <https://marxists.architexturez.net/archive/marx/works/1892/02/critica-sociale.htm>

⁴⁷⁰ Within the Marxist intellectual tradition, the concept of "theory of state and law" is more frequently used compared to "constitutional theory". First scholars who delved into the theory of state and law were N. Korkunov, in pre-revolutionary Russia, and later E. Pashukanis. See: A. POLYAKOV, *The theory of state and law by Nikolay Korkunov*, in B. Brožek et al. (Eds.), *Russian Legal Realism*, Springer, 2018, pp. 67-78; E. PASHUKANIS, *The Marxist Theory of State and Law*, in P. BEIRNE, R. SHARLET, *Selected Writings on Marxism and Law*, Routledge, 2019, pp. 273-

In this chapter, “socialist republic” is defined as a governmental form influenced by Marxist-Leninist theory of state and law, aimed at achieving socialist socio-economic order and, ultimately, a communist society. This implies that within the term “socialist republic,” socialism is the dominant partner, while the republic is, ultimately, an instrumental means for achieving it. Regarding its constitutional structure, Karl Marx, in his renowned work on the Paris Commune, offered a foundational framework for its operation:

“Instead of deciding once in three or six years which member of the ruling class was to misrepresent the people in Parliament, universal suffrage was to serve the people, constituted in Communes, as individual suffrage serves every other employer in the search for the workmen and managers in his business... The Commune was to be a working, not a parliamentary body, executive and legislative at the same time.”⁴⁷¹

This rejection of the idea of the parliamentary representation, which up to that time became a golden standard of the political participation in a liberal society, was an expression of an attitude that was “not illiberal but antiliberal.”⁴⁷² This citation from Marx’s work eloquently outlines key tenets of a Marxist-based constitution, particularly the ideas of direct democracy and the unification of legislative and executive powers within the assemblies, i.e. soviets.⁴⁷³ These ideas served as a common thread connecting the state conception of radical Marxists and Communists with the Jacobins and the Convention of 1793-1794.⁴⁷⁴

However, in a socialist state there is a functional distinction between legislative, executive, and judicial functions, which are exercised by respective institutions - the assembly, head of state, government, and judiciary. The judiciary’s link with the legislative body essentially adheres to the traditional notion of separation of powers.⁴⁷⁵

301. For the later and definitive formulation of this theory, refer to: A. Y. VYSHINSKY, *The Law of the Soviet State*, Macmillan Company, 1948, 5-38. For a critical analysis, see: H. KELSEN, *The Communist Theory of Law*, New York, Frederick A. Praeger, 1955, pp. 1-50.

⁴⁷¹ K. MARX, *Paris Commune*, (available at: <https://www.marxists.org/archive/marx/works/1871/civil-war-france/ch05.htm#:~:text=Instead%20of%20deciding%20once%20in,and%20managers%20in%20his%20business>)

⁴⁷² D. GRIMM, *The Types of Constitution*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, cit., p. 128.

⁴⁷³ On these principles see: A. VYSHINSKY, *The Law of the Soviet State*, pp. 162-177; A. B. EVANS, *Rereading Lenin's State and Revolution*, in *Slavic Review*, 46(1), pp. 1-19. doi:10.2307/2498617; *Law and the Constitution of Soviet Society: The Case of Comrade Lenin*, in *Law & Society Review*, 22(3), 1988, pp. 575–614.

⁴⁷⁴ A. SOBOUL, *Some Problems of the Revolutionary State 1789-1796*, in *Past & Present*, 65, 1974, pp. 52-74.

⁴⁷⁵ Regarding the unity of power, particularly interesting is the following elaboration, developed in his textbook by one of the leading constitutional lawyers of socialist Yugoslavia, Jovan Đorđević: The concept of the unity of power is a sociopolitical premise that pertains to a global explanation of the essence of all political authority. Its value is

In its fully developed form, a socialist republic is conceptualized as a state embodying the dictatorship of proletariat. Within this context, “dictatorship” closely aligns with the notion of “power”. Namely, the Marxist-Leninist doctrine interprets dictatorship as any form of class supremacy, which manifests itself as an organized power (state) that one class exercises over another. That is why, for instance, even the liberal state was referred to, by Marxists, as a form of the “dictatorship of bourgeoisie”. This perspective arises from the understanding that class conflict is the fundamental theme in history, encapsulated by Marx’s assertion in the *Manifesto* that “the history of all hitherto existing society is the history of class struggles”. Additionally, it posits that every state represents the structured power of the ruling class and that, consequently, “the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie.”⁴⁷⁶ Lenin escalates Marx’s concepts to more extreme outcomes, stating that dictatorship of proletariat “does not necessarily mean the abolition of democracy for the class that exercises the dictatorship over other classes; but it does mean the abolition of democracy (or very material restriction, which is also a form of abolition) for the class over which, or against which, the dictatorship is exercised.”⁴⁷⁷ It aligns with Lenin’s perspective that every state embodies a form of dictatorship.⁴⁷⁸ Given that class struggle is deemed an historical inevitability and the state manifests the prevailing class’s dominance, Marxist ideology infers that the most democratic state is the one in which power, i.e. dictatorship, is vested in the majority – proletarians, conveniently, with peasants supporting them.⁴⁷⁹

generally approximate... Therefore, this premise cannot hold the significance of an axiom, let alone serve as a foundation or key to explaining the organization of authority in a specific political and social system, especially not in a democracy... The unity of power, in itself, neither organizationally nor functionally, can pertain to the judicial function and generally to the function of protecting constitutionality and legality. This is the case in any society that respects the minimum rights of the individual and belongs to civilization. These functions, which are axioms of every advanced thought and civilized practice, cannot be realized without the autonomy of bodies and the independence of individuals who ensure the application of the constitution and laws, i.e., the interests and rights in conflict. J. ĐORĐEVIĆ, *Ustavno pravo*, Savremena administracija, 1989, p. 571.

⁴⁷⁶ K. MARX, F. ENGELS, *Manifesto of the Communist Party*, Charles H. Kerr & Company, 1915, p. 15. (available at: <https://archive.org/details/manifestoofcommu1910marx>)

⁴⁷⁷ V. LENIN, *The Proletarian Revolution and the Renegade Kautsky*, in V. LENIN, *Collected Works*, Vol. 28, p. 235.

⁴⁷⁸ “Bourgeois states are most varied in form, but their essence is the same: all these states, whatever their form, in the final analysis are inevitably the dictatorship of the bourgeoisie. The transition from capitalism to communism is certainly bound to yield a tremendous abundance and variety of political forms, but the essence will inevitably be the same: the dictatorship of the proletariat.” V. LENIN, *State and Revolution*, in *Collected Works*, Vol. 25, Progress Publishers, 1974, p. 418. (available at: <https://www.marxists.org/archive/lenin/works/cw/pdf/lenin-cw-vol-25.pdf>).

⁴⁷⁹ See: A. PRZEWORSKY, *Ruling against Rules*, in T. GINSBURG, A. SIMPSON (Eds.), *Constitutions in Authoritarian Regimes*, Cambridge University Press, 2014, p. 31

According to Marxist-Leninist doctrine, bourgeoisie conceal and deny the existence of class struggle that it wage against peoltariat. In contrast, communists, upon gaining power, openly operate from a class standpoint. They use the organized proletarian party as an instrument of class struggle. This explicit acknowledgment of class struggle and the leading role of the proletarian party, often enshrined in the constitution, stands in stark contrast to the liberal democratic view, which typically emphasizes individual rights and downplays class as a central societal division.⁴⁸⁰

The constitutional framework for a head of state in socialist republic often exhibits distinctive features. In many socialist republics, collective head of state was initially favored as it reflected the principles of collective decision-making. This approach was thought to be more in line with socialist and communist ideals, although, in some cares, also a single head of state was established.⁴⁸¹ However, despite the formal powers of the collective head of state, the real political power often resided with the leadership of the Communist Party, regardless of whether the head of state was a singular or a collective body.

Over time, some socialist states transitioned to having a single head of state, often with the intent of consolidating power and increasing efficiency in governance. Indeed, through constitutional changes during the 1970s and 1980s, a number of socialist countries, with the notable exception of Yugoslavia, strengthened or even introduced the role of the president (USSR, Romania, Cuba) or increased the power of the chairperson of the collective head of state (Bulgaria). In such cases, the president or chairperson could be very powerful, especially if they also held the top position in the Communist Party.

Whatever constitutional provisions were prescribed, within socialist republics, real power was typically concentrated in a narrow circle within the ruling party, with the party leader often playing an especially dominant role. Political influence tended to shift following changes in the positions held by key party figures. The ubiquitous presence of a nearly parallel, informal

⁴⁸⁰ The role of the Communist party was for the first time enshrined in the Soviet constitution from 1936, while other socialist states followed that example later on. In socialist countries, including the USSR, it was common to undergo a certain period of socialism construction before the “constitutionalization” of the party. Regarding the USSR, there’s also a belief that mentioning the party in constitutions before 1936 would have confirmed Trotsky’s criticism that the “dictatorship of the proletariat” had become a “dictatorship of the party.” A. PRZEWORSKY, *Ruling against Rules*, in T. GINSBURG, A. SIMPSON, *Constitutions in Authoritarian Regimes*, *cit.*, p. 33. Aut See also: J. N. HAZARD, *The Common Core of Marxian Socialist Constitutions*, in *San Diego Law Review*, 19(2), 1982, 297-311.

⁴⁸¹ R. F. FURTAK, *The Political Systems of the Socialist States : An Introduction to Marxist-Leninist Regimes*, Palgrave Macmillan, 1986, pp. 11-14 et passim; F. I. M. FELDBRUGGE, *The Distinctiveness of Soviet Law*, Kluwer Academic, 1987, pp. 8, 23; O. BIHARI, *The Constitutional Models of Socialist State Organization*, Akadémiai Kiadó, 1979, pp. 150-152.

constitution alongside the written one in socialist countries is not only intriguing from the perspective of constitutional law but also from the viewpoints of sociology and anthropology of law. Moreover, it is crucial to take into account the distinct political, constitutional, and legal traditions historically prevalent in a given state.

3. 2. *Yugoslavia as a Socialist Republic*

The establishment of Yugoslavia as a republic was the culmination of a complex revolutionary process, interwoven with the efforts in the People's Liberation Struggle.⁴⁸² In the terminal phase of the communist ascendancy to power, a sort of constitutional pageant was staged in a form of compromise between the revolutionary aspirations of the communists — the de facto power bearers — and the vestiges of the interwar regime's continuity, represented by the government in exile.⁴⁸³ Commencing in 1944, a series of engagements transpired between the revolutionary authorities, under communist leadership, and the exiled government, which retained recognition by the Allied forces as the legitimate Yugoslav authority.⁴⁸⁴ A provisional government was forged in March 1945 through a conciliatory resolution, amalgamating representatives from both extant administrations and other eminent individuals, with Marshal Tito presiding. The pivotal question — the form of the government — was eventually adjudicated by the Constituent Assembly, where the Popular Front, commandeered by the communists, held a majority. This assembly, on November 29, 1945, declared Yugoslavia the Republic, henceforth designated as the Federal People's Republic of Yugoslavia.⁴⁸⁵

Although the communists had secured absolute authority, the constitution they rendered in 1946 did not reference socialism at all. Edvard Kardelj, the leading party theoretical and ideological authority, stated cautiously that the new constitution contains only “the indication

⁴⁸² B. PETRANOVIĆ, *AVNOJ - revolucionarna smena vlasti*, cit.

⁴⁸³ The Tito-Šubašić Agreement, struck in June 1944 between Yugoslav Partisans and the government-in-exile, was a key step in forming a post-war Yugoslav government. It united Josip Broz Tito's Partisans with Ivan Šubašić's royal government-in-exile. An important aspect of the agreement was the fate of the Yugoslav monarchy. It was decided that the future of the monarchy would be determined by the Yugoslav people. This was a significant move towards establishing a socialist Yugoslavia post-war. D. PLENČA, *Sporazum Tito-Šubašić*, in *Istorijski glasnik*, 3, 1963, pp. 51-64.

⁴⁸⁴ B. KRIZMAN, B. PETRANOVIĆ, *Jugoslovenske vlade u izbeglištvu 1941-1945*, I-II, Arhiv Jugoslavije, Globus, 1981.

⁴⁸⁵ For the more thorough understanding of the process see: B. PETRANOVIĆ, *Političke i pravne prilike u vreme prelazne vlade*, Savremena, 1964.

towards development of socialism.”⁴⁸⁶ The transition of Yugoslavia into a socialist republic was a gradual process, reflected in the constitutional developments from 1953 to 1974. The 1953 Constitution was the first to define Yugoslavia as a “socialist democratic federal state,” notably avoiding the inclusion of “socialist” in the state’s official name. Subsequently, the 1963 Constitution introduced the concept of socialism into the name of the state, thereby evolving into the Socialist Federal Republic of Yugoslavia. The same constitution recognized the Yugoslav party, the League of Communists as “the guiding force of the working class and working people in building socialism and in achieving solidarity among working people and the brotherhood and unity of the nations.”⁴⁸⁷ Ultimately, in 1974, Yugoslavia constitutionally defined its system of self-management as a “distinct form of proletarian dictatorship.”⁴⁸⁸ This marked the culmination of its developmental trajectory as a socialist community.

The post-WWII Yugoslavia became a republic in many aspects constitutionally organized after the model of the Soviet Union.⁴⁸⁹ At the foundation of its order lay the doctrine of the unity of powers, with the National Assembly serving as its formal epicenter.⁴⁹⁰ In the 1946 Constitution, there was still mention of the “Government of the FPRY” as the “supreme executive and administrative organ of the state authority”, while the subsequent constitutions from 1953 to 1974, introduced the “executive council” as the executive body of the Federal Assembly. This terminological evolution signals the shift towards a more cohesive model of the unity of power within the constitutional structure.

The trajectory of the position of the head of state in socialist Yugoslavia was a complex one. In the first period, under the 1946 Constitution, the role of the head of state was performed

⁴⁸⁶ *Ustavotvorni odbori Savezne skupštine i Skupštine naroda, cit.*, p. 35.

⁴⁸⁷ *Ustav Socijalističke federativne Republike Jugoslavije*, in *Službeni list* 14/63.

⁴⁸⁸ *Ustav Socijalističke federativne Republike Jugoslavije*, in *Službeni list*, 9/74

⁴⁸⁹ M. JOVANOVIĆ, *Preslikana ili samobitna društvena izgradnja: komparativna analiza ustava FNRJ (1946) i „staljinskog“ ustava SSSR-a (1936)*, in *Tokovi istorije, cit.*, pp. 280-290.

⁴⁹⁰ The National Assembly was defined in the 1946 Constitution as the “representative of national sovereignty” and the “supreme organ of state authority” of the Federative People’s Republic of Yugoslavia (Art. 49, 50); following the constitutional change in 1953 it was defined as the “representative of national sovereignty and the highest organ of authority of the federation” according to the 1953 Constitution (Art. 13); subsequently, in the 1963 Constitution as the “highest organ of authority and organ of social self-governance, within the rights and duties of the federation” (Art. 163); and finally as the “organ of social self-governance and the highest organ of authority within the rights and duties of the federation,” (Art. 282) according to the 1974 Constitution. See: J. ĐORĐEVIĆ, *Ustavno pravo FNRJ*, *Arhiv za pravne i društvene nauke*, 1953, pp. 240-253; N. STJEPANOVIĆ, *Načelo jedinstva vlasti i naš novi ustavni sistem*, in *Anali Pravnog fakulteta u Beogradu: tromesečni časopis za pravne i društvene nauke*, 2, 1953, pp. 129-141; R. MARKOVIĆ, *Izvršna vlast*, *Savremena administracija*, 1980, pp. 179-182; J. ĐORĐEVIĆ, *Ustavno pravo*, *Savremena administracija*, 1989, pp. 571-573.

by a collective body - the Presidium of the National Assembly. This body was established by a specific law, in response to the vacancy of the head of state position following the proclamation of Yugoslavia as a Republic.⁴⁹¹ The 1946 Constitution defined that the Presidency comprises a “President, six vice-presidents, a Secretary, and up to thirty members.”⁴⁹² The 1953 Constitution established the office of the President of the Republic, as a singular head of state, elected by the Federal Assembly. Under this Constitution, the President of the Republic, along with the Executive Council preceded by the President of the Republic, performed the executive functions, both being the executive bodies of the Federal Assembly. However, this development brought a significant expansion of the head of state’s powers, compared to the 1946 Constitution.⁴⁹³

This system persisted for a decade until the 1963 constitutional reform introduced a new phase in the evolution of the head of state in socialist Yugoslavia. While maintaining the Federal Assembly’s competence for electing the head of state, the new constitution, unlike the previous one, did not establish the competence of the Assembly for the removal from presidential office. The roles of President of the Federal Executive Council and President of the Republic were now delineated, and the office of the President of the Republic was no longer considered an executive office of the Assembly.

This modification instituted a bicephalous structure of the executive, conferring considerable sway on the President of the Republic in governmental affairs. Specifically, the President could withhold execution of the Executive Council’s regulations of “higher political relevance”, prior to their publication. In situation such as this, the potentially contentious matter had to be brought before the Federal Council of the National Assembly in order to receive a decision that was definitive.⁴⁹⁴ Furthermore, the Constitution gave the President the unique, albeit indirect, authority to dissolve the assembly in the event that certain legislative impasses were reached: if a law that had been approved by the Federal Council was rejected by another council of the Assembly, but the President still considered it to be essential, then the Federal Assembly would be dissolved. The President would enforce a temporary application of the law, as adopted by the Federal Council.⁴⁹⁵ The Constitution also stipulated uniquely that there was no limit to the

⁴⁹¹ *Zakon o Pretsedništvu Ustavotvorne skupštine*, in *Službeni list* 95/45, p. 1021.

⁴⁹² *Ustav Federativne narodne republike Jugoslavije*, 1946.

⁴⁹³ J. ĐORĐEVIĆ, *Državno uređenje Federativne Narodne Republike Jugoslavije*, Savez udruženja pravnika Jugoslavije, 1954, p. 53.

⁴⁹⁴ *Ustav SFRJ*, in *Službeni list*, 46/63, (Art. 218).

⁴⁹⁵ *Ibidem.*, (Art. 189).

number of terms Josip Broz Tito could be re-elected to the office, allowing for indefinite re-election of Josip Broz Tito every four years. Otherwise, the Constitution allowed only for one re-election.⁴⁹⁶

Finally, the 1971 amendments to the Constitution reintroduced a collective head of state, the Presidency of SFRY.⁴⁹⁷ This was confirmed in the 1974 Constitution, while at the same time the office of the President of the Republic was retained. This created a parallelism in competencies but the Constitution resolved this paradoxical predicament by making the President of the Republic the *ex officio* head of the Presidency. By 1971 amendment to the Constitution the role of the President of the Republic became virtually individualized, specifically linked to Josip Broz Tito. The new constitutional architecture did not foresee the election of a new President following the termination of Tito's term, which, by the explicit provision enshrined in the 1974 Constitution, was not limited by time. Following Tito's death in 1980, the function of the President of the Republic ceased to exist, leaving the Presidency as the collective head of state. Although there were some differences in the constitutional architecture of the President of the Republic in 1963 and the Presidency in 1971 (1974), these differences were not significant regarding the issues addressed in this chapter. An exception is the situation where the failure to pass a law, as requested by the President of the Republic, leads to the dissolution of the Federal Assembly. While there were no consequences for the President of the Republic in such instances, the 1974 Constitution, under identical circumstances, stipulated that alongside the dissolution of the Assembly, the mandate of the Presidency would also cease.⁴⁹⁸

The election of Marshal Tito as President of the Republic without a term limit partially altered the understanding of the constitutional concept of the presidency itself in Yugoslav constitutional theory. As Dimitrije Kulić argued in his commentary on the 1974 Constitution of Yugoslavia, the history of numerous political systems has demonstrated that the fulfillment of the role of a head of state, whether in a democratic or less democratic form, is contingent upon a variety of circumstances. These included also "individual's personal capabilities, experience, commitment, and readiness to devote these capabilities to the service of the people and the nation

⁴⁹⁶ *Ibidem.*, (Art. 220).

⁴⁹⁷ *Ustavni Amandmani XX do XLII*, in *Službeni list SFRJ*, 29/71, (Amendment XXXVI).

⁴⁹⁸ *Ustav SFRJ*, in *Službeni list*, 9/74, (Art. 319).

that has entrusted them with this position.”⁴⁹⁹ This clearly suggested that the constitutional framing of the office can be individualized, tailored to fit the specific person.

3. 3. Historical Narratives Supporting the Idea of the Republic

a) Against Monarchy

The proclamation of Yugoslavia as a republic meant, effectively, the abolition of the monarchy. Hence, the historical narratives justifying the preference for a republic were, in essence, arguments against the monarchy. These narratives predominantly stemmed from national experience. This is unambiguously evident in the initial lines of the Declaration on the Proclamation of Yugoslavia as a Republic, adopted by the Constituent Assembly on November 29, 1945. The monarchy was primarily held accountable for undermining age-old aspirations for unification:

“Throughout twenty two years of Yugoslavia’s pre-war existence, the long-held aspirations of its people for national equality and social justice remained unfulfilled. Rather than the realization of their brotherly unity founded on mutual respect and equality, the reign of a hegemonic clique deepened divisions and fueled discord amongst them.”⁵⁰⁰

Moreover, in line with the previously mentioned historicization of the People’s Liberation Struggle, substantial focus was given to the narrative surrounding the recently concluded war.

“This policy of subjugation and fragmentation of the nations, coupled with the harsh political and social repression enacted by reactionary factions under the monarchy’s leadership, eroded the nation’s internal strength and its international standing. This fragility culminated in dire consequences during the fascist onslaught on Yugoslavia in April 1941. In the face of this April invasion by German and other fascist forces, Peter II Karađorđević lacked both the capacity and the determination to rally his people against the aggressors. He chose exile, abandoning the peoples of Yugoslavia to their dire straits. Throughout the People’s Liberation Struggle, Peter II Karađorđević’s actions only served to undermine the resistance against the occupiers. He actively supported national traitors who, since 1941, relentlessly opposed the People’s Liberation Army and the people's liberation movement, whilst colluding with the invading forces.”⁵⁰¹

⁴⁹⁹ D. KULIĆ, *Ustav SFRJ iz 1974. Komentar*, Privredna štampa, 1979, p. 390.

⁵⁰⁰ *Deklaracija o proglašenju Federativne Narodne Republike Jugoslavije*, in *Službeni list*, 93/45.

⁵⁰¹ *Ibidem*.

The historical narrative elaborated in the Declaration occupies two-thirds of the text of the document, shaping the official interpretation of events during the war and the role of the Karađorđević dynasty in that conflict.

The proclamation of the republic necessitated, primarily, invoking local conditions. Nevertheless, the examples from European history also served the purpose. Edvard Kardelj, as one of the leading ideologues of the new system, characterized the new form of the Yugoslav state as a “plebeian republic of Jacobins.” This succinct expression encapsulated a universe of historical associations linked to the experience of the First Republic in France. Understandably, the revolutionary and republican components of this formulation were the most significant.

Hinko Krizman, a famous lawyer and member of the Constituent Assembly, offered a more pointed association, drawing, *mutatis mutandis*, parallels to the French experience:

“When in the last century the French people stood before the momentous decision of whether to give their homeland a republican or monarchic form of government, one great patriot and statesman of France said this: If the monarchy threatens the unity of the people and the security of the French state, then I am against the monarchy... And the recent past is a heavy and bloody proof of the accusation against the Karađorđević dynasty... which is the main culprit for the hatred and misfortune that arose between the Serbs and Croats.”⁵⁰²

The association made by Krizman, though somewhat vague due to its placement of Yugoslav interethnic conflicts within the French context, was nonetheless vivid in its illustration. His discussion aptly demonstrates how historical narratives often operate as a system of associations, lacking deeper connections among the historical situations that are juxtaposed. This highlights the common tendency to draw parallels in historical discourse that, while evocative, may not always be grounded in substantive or direct relational links.

The idea of a republic itself did not generate particular enthusiasm. There was no concerted effort to ideologically link it to the concept of republicanism, as seen in France and in the USA, or as monarchies endeavored to foster allegiance to the principle of monarchism. However, it is true that the oldest tradition of republicanism, aside from the anti-monarchical stance of socialists and, later-on, communists, was represented by a group of Serbian intellectuals gathered in the Republican Party. They indeed cultivated ideological republicanism, so the proclamation of the republic in 1945 was an opportunity to self-sponsor their own historical contributions. This also

⁵⁰² Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije, *cit.*, 66.

suit the wish of the communists to provide the proclamation of the republic with as many ideological and historical justifications as possible and to create an atmosphere of consensus over the issue of monarchy. In that vein, Vladimir Simić, a representative of this group of republicans in the Constitutional Committee, reminded that

“justice and truthfulness require to be stated here that republicanism, that republicanism as such... was created and born in Serbia. Justice and truthfulness also require to be acknowledged today that this was the synthesis of the political development and life in Serbia, which lasted for more than a century.”⁵⁰³

It was critical to underscore this point since the Karađorđević royal family originated from Serbia and given that the monarchy had been a symbol of national inequality and the oppression of non-Serbian peoples within Yugoslavia. Therefore, it was crucial to illustrate that the dynasty lacked support within Serbia and among the Serbs. Precisely for this reason, the Declaration pronouncing the republic was deliberately tabled by 115 Serbian representatives in the Constituent Assembly, which was particularly emphasized and widely communicated. The proposal for the Declaration was submitted and read to the assembly by Blagoje Nešković, then the leader of the Serbian communists, on behalf of the delegates from Serbia.⁵⁰⁴

In the monarchist Yugoslavia, Croats were particularly dissatisfied with the monarchy and King Alexander. Therefore, the first to welcome this proposal was the Croatian representative, Andrija Hebrang. Hebrang also contextualized the proposal from his Serbian colleagues within a historical narrative of Serbia as a land of freedom:

“With this proposal, Serbia once again demonstrates its consistent commitment to its freedom-loving past, distancing itself and condemning all the misdeeds committed by the Greater Serbian clique with the monarchy at the forefront, both before and during the war.”⁵⁰⁵

In the spirit of fraternity and unity, leading Slovenian communist Boris Kidrič emphasized that in monarchical Yugoslavia, regardless of ethnic origin, there existed “two fronts” – the monarchist and the anti-monarchist. While the former was comprised of “the most obedient servants of the court... from the prime minister to the last policeman,” the latter was the “front of the people.” This front consisted of

⁵⁰³ *Ustavotvorni odbori Savezne skupštine i Skupštine naroda*, Izdanje Narodne skupštine FNRJ, 1946, p. 50.

⁵⁰⁴ *Zapisnik I perthodnog sastanka Savezne skupštine Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije održanog 29 novembra 1945 godine u Beogradu*, in *Službeni list* 97/1945.

⁵⁰⁵ *Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije*, *cit.*, p. 45.

“the noblest Serbs, Croats, Slovenes, Macedonians, and Montenegrins. The strife between these two fronts raged passionately and in myriad forms until 1941, with the bravest sons of the Yugoslav peoples – the entire body of the Communist Party, alongside the avant-guard individuals and factions from other political parties – sacrificing their blood and lives.... It was the rightful honor of the Serbian representatives to present this proposal to the Federal Assembly, as they were the chosen and entrusted voices of the people. This honor was valiantly earned by the Serbian nation through their heroic resistance, particularly since 1941, from the inception of the uprising to the triumphant end of the war and the forging of their state, a people’s state – the Republic. Indeed, it is upon the shoulders of the Serbian people that the solemn duty rests to cleanse their history of the most dishonorable names of Peter and the other Karadorđevićs.”⁵⁰⁶

Vasa Čubrilović, another Serbian republican and a leading intellectual of the period, also contributed to the discussion by drawing on the experience of the Kingdom of Serbia and the subsequent Kingdom of Yugoslavia as examples illustrating the incompatibility of monarchy with democracy:

“All institutions have failed, all social forces have proven insufficient, and political movements were incapable of providing the state with a stable social and political order. Our monarchy, like all Balkan monarchies, proved incapable of reconciling the principle of monarchism with the principles of true democracy. That eternal struggle between personal regimes and the people, which fills the entire political history of Serbia in the 19th and 20th centuries, continued in old Yugoslavia. It has become indisputable that democracy and monarchy cannot be reconciled.”⁵⁰⁷

Not only did the concept of democracy reveal itself as unattainable within the framework of a monarchy, but more precisely, the realization of popular sovereignty proved to be an elusive goal. As articulated by Marko Carević, the pursuit of popular sovereignty was indeed a defining characteristic of modern Serbian history, yet it found itself inherently limited within the confines of a monarchical system.

“Popular sovereignty, in its historical perspective, has been manifesting since the earliest days of our state and political life as a popular struggle and the aspiration of the people to self-govern. This popular struggle for the principle that the people are the source of all power has expressed a tendency against centralism as a state system and its closest bearer, the monarch.”⁵⁰⁸

⁵⁰⁶ Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije, *cit.*, pp. 46-47.

⁵⁰⁷ *Ustavotvorni odbori Savezne skupštine i Skupštine naroda*, p. 89.

⁵⁰⁸ Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije, *cit.*, p. 69

Numerous speakers took the floor in the Constituent Assembly, primarily highlighting the deficiencies of the monarchy as evidenced through both ancient and recent history. This, of course, justified its abolition and the establishment of a republic: the monarchist form of governance “had demonstrated the severe sufferings endured by peoples”; monarchy brought “the hardships and tribulations suffered by our nations at the hands of various emperors, kings, and princes, and their wicked and insatiable bands”; the late king was described as the “chief protector of exploitators” and the regime of the Kingdom was labeled “monarcho-fascist”, characterized by “terror, plunder, and extortion”;⁵⁰⁹ in a nutshell, monarchy signified “all betrayal, all national oppression, all corruption, all lies, all vileness, all intrigues, all betrayals, all the selling out of Yugoslavia.”⁵¹⁰

Finally, one of the speakers in the Constituent Assembly reminded his colleagues of the experience of the first free territory in occupied Europe, formed by the Yugoslav partisans in 1941, known as the Užice Republic. It wasn't just about the name that contained the concept of a republic, but also the fact that in this short-lived partisan state, there were governing bodies – people's councils – which would become the foundation of the local government system as per the 1946 Constitution:

“In 1941, from the perspective of the small Užice Republic, the belief that everything would eventually turn out well seemed strange and unbelievable, fantastic and unachievable to many of us, including myself.. Now, at the beginning of 1946, our Užice Republic has grown into a federation of Yugoslav republics.”⁵¹¹

In wrapping up the discourse on the transformation of Yugoslavia into a republic, it is of significance to revisit an intriguing turn of events. As previously mentioned, the Constitution of Yugoslavia, enacted in 1953, introduced the office of the President of the Republic. It was in this very year that Josip Broz Tito was elected to this position. This constitutional change was not driven by principled reasons supported by specific historical narratives. However, there were personal reasons, explicitly communicated, which indirectly indicated that the role of President of the Republic was introduced specifically for the individual chosen for this position:

In the annals of history, both classes and nations have witnessed the emergence of individuals with the rare foresight to discern paths of development and avenues to victory far beyond their contemporaries. These figures have risen to become the emblems under which millions have

⁵⁰⁹ Ibidem, p. 261.

⁵¹⁰ Ibidem, p. 64.

⁵¹¹ Ibidem, pp. 732, 733.

rallied. Among our own, the Yugoslav peoples, such a figure has indeed graced our history. In the era of resistance against the antiquated, anti-populist regimes, a formidable revolutionary movement was birthed, spearheaded to combat the tyranny of exploiters and oppressors. This movement held the key to resolving the inherent contradictions of the old Yugoslavia and steering our nations towards triumph. The year 1941, which loomed as a harbinger of enslavement and annihilation for our peoples, was transformed by the invaders' design. Yet, it metamorphosed into a year of resistance, a year of glory, a year of honor, thanks to the profound influence of this revolutionary movement that had taken root in our land and, foremost, its architect – the creator of this great Liberation movement. Again in 1948, as new external foes encroached upon our hard-won freedom and independence, threatening the fruits of our Revolution, it was this same monumental force that stood resolute. It rallied our Yugoslav peoples, repelling the onslaught, safeguarding the legacy of our Revolution – our liberty, our sovereignty – primarily owing to that same indomitable spirit, bestowed upon us by our own people long before. In a little over a decade, our peoples forged historical achievements comparable to the most momentous events across all eras and nations. These feats were attainable due to the presence of an extraordinary individual among us, a visionary who could see beyond the ordinary, who could embody and channel the collective aspirations, desires, and creative vigor of our nations. This individual nurtured within our people the spirit of combat, the ethos of labor, the devotion to socialism, and the profound love for the freedom and independence of our land. That luminary is Josip Broz Tito. (Upon the mention of Marshal Tito's name, all the people's deputies rise, engaging in prolonged and fervent applause. The ovation persists for a ten minutes).⁵¹²

Marshal Tito retained this position steadfastly until his death in 1980. His prolonged presidency, spanning nearly three decades, was underpinned by two pivotal constitutional revisions. The 1963 Constitution enshrined a special clause, explicitly stating that “for the election to the position of the President of the Republic, there are no limitations for Josip Broz Tito.” This was further solidified in the 1974 Constitution, which granted the Federal Assembly the power to “elect Josip Broz Tito as the President of the Republic without term limits.”

However, these constitutional decisions were steeped in a historical context and were enacted

“commencing from the historic role of Josip Broz Tito in the People’s Liberation War and the Socialist Revolution, in the formation and development of the Socialist Federal Republic of

⁵¹² Stenografske beleške Narodne skupštine FNRJ, 1953, pp. 185-186.

Yugoslavia, in the evolution of the Yugoslav socialist self-managing society, in realizing the brotherhood and unity of the peoples and nationalities of Yugoslavia, in strengthening the country's independence and its position in international relations, and in the struggle for peace in the world, and in accordance with the expressed will of the working people and citizens, the nations and nationalities of Yugoslavia.

This provision not only exemplified an unconventional constitutional arrangement but also symbolized the deep intertwining of Tito's person with the overall Yugoslav political system. It reflects how history and constitutional law can intertwine in the crafting of a nation's political reality. However, it is important to note, in the context of this chapter's topic, that such a defined position of the head of state reminded many of a – monarchy.

The narrative regarding the “historic role of Josip Broz Tito” was well-known to everyone living in Yugoslavia at the time: given the above-cited motivation on the occasion of his first election to the presidency, it requires little explanation. This narrative permeated the educational system, political life, and popular culture. What is particularly noteworthy is that the constitution-makers felt the need to emphasize that this highly unusual constitutional position of the president of the republic was grounded in historical reasons.

Constitutional theory has also contributed to explaining such a constitutional arrangement. Dimitrije Kulić, for instance, wrote that “the fact that Josip Broz Tito is already well-known from the historical days of our revolution, indicates the logic and significance of introducing an individual head of state.”⁵¹³ Law students, in the indispensable textbook on Constitutional Law authored by Jovan Đorđević, could read an even more elaborated explication of Marshal Tito's constitutional position:

“Socialist democratization is not only alien to but also opposed to such forms of individualized power that can lead to autocracy and personal rule, a regime of 'personality cult' and irresponsibility. However, *democracy disappears if it turns into 'mediocracy'; it was created, preserved, and its glory carried by strong and capable individuals.* Not only sincere democrats and fighters for it but also those who had the courage to say 'no' when the majority said 'yes'; not to the enemies of freedom, justice, and truth... The principle of limitation on electability does not apply to the first President of the Republic, Josip Broz Tito; this is not a principle of a lifelong president but represents a suspension of the principle of limitation on electability in terms of the *possibility of*

⁵¹³ D. KULIĆ, *Ustav SFRJ. Komentar, cit.*, pp. 389-390. See also: J. ĐORĐEVIĆ, *Ustavno pravo*, 1989, p.390.

*electing an indisputable personality of exceptional historical role... The position and actual role of such a relatively unique President of the Republic inevitably carry the signature of political authority and conceptions about political decision-making and the method of governance of a distinctly statesmanlike personality of the first President of the Republic. This function in the system of governance and administration acquired dimensions and necessary authority based not on the accumulation of power but on the political role and personal authority of the president. (All emphasis is mine – S. M.)*⁵¹⁴

b) The Sovereignty Issue

The 1946 Constitution stated that the National Assembly was the “representative of national sovereignty.”⁵¹⁵ The concept of popular sovereignty persisted until the last Yugoslav Constitution in 1974, which posited that the SFRY was “a state founded on the sovereignty of the people.”⁵¹⁶ This was the finalization of the process that started already during the war. Namely, the acts of Yugoslavia’s revolutionary government bodies from that period consistently emphasized the sovereignty of the people. In the Declaration of the Second Session of the AVNOJ from November 1943, it was clearly stated that this revolutionary body “represented the sovereignty of the people” of Yugoslavia.⁵¹⁷ Furthermore, even King Peter II Karađorđević was compelled to issue a decree recognizing that “the peoples of Yugoslavia will express their *sovereign will* (Emphasis is mine - S. M.) about the organization of the state through a freely and democratically elected Constituent Assembly.”⁵¹⁸

The Ministry for the Constituent Assembly invited in 1946 all citizens, along with political, social, scientific, professional, and other organizations and institutions, to discuss the draft of the Constitution and submit their remarks, proposals, and suggestions. Edvard Kardelj, the Minister for the Constituent Assembly, explained:

“Putting this draft Constitution up for broad public debate and public scrutiny before the final decision of the Constituent Assembly *aims to provide our citizens with the opportunity to freely express their opinion on all matters of the basic law of our new state.* Besides freely electing and

⁵¹⁴ J. ĐORĐEVIĆ, *Ustavno pravo*, 1989, pp. 537, 545.

⁵¹⁵ *Ustav FNRJ*, 1946, Art. 49.

⁵¹⁶ *Ibidem*, Art. 3.

⁵¹⁷ *Deklaracija Drugog zasedanja Antifašističkog veća narodnog oslobođenja Jugoslavije*, in *Službeni list* 1/45, p. 2.

⁵¹⁸ *Ukaz o prenosu kraljevske vlasti na Namesnike*, in *Službeni list* 11/45.

choosing their representatives in both houses of the Constituent Assembly, *our citizens are given another opportunity to express their will and views on the fundamental principles and specific organization of the Federal People's Republic of Yugoslavia* (Emphasis is mine – S. M.).⁵¹⁹

This approach expressed the recognition of popular sovereignty as a principle of new constitutional design.

The recognition of popular sovereignty in the post-war Yugoslav constitution marked a stark contrast to the previous period under the Kingdom of Yugoslavia. In the kingdom, sovereignty was shared between the king and the people. However, with the proclamation of the monarchical dictatorship in 1929, sovereignty was effectively usurped by the king alone. Thus, by adopting the principle of popular sovereignty, another historical grievance was addressed and eliminated, fitting into a broader historical narrative about the monarchy in Yugoslavia:

“Comrades, the origin of our Constitution is what makes it unique. Its uniqueness lies in the fact that it is given by our nations to themselves. Today in the Federal People’s Republic of Yugoslavia, there are not two parties, as before, one a ruler and the other—the people, among whom the constitution was made as a kind of contract or agreement. A single unique sovereign factor has survived our history so far. That factor is the sovereign and free peoples of Yugoslavia. On our political field, cleared of historical and social obstacles and barriers, without a king and without a court and monarchical enslaving clique, today stand the free Yugoslav peoples, to give themselves a constitution.”⁵²⁰

This process was praised as unique and democratic, quickly gaining a positive evaluation that entered the Constitutional Law textbooks. Jovan Đorđević, an undisputed authority on constitutional law in socialist Yugoslavia, wrote in his textbook: “It’s undeniable that such a method is fully democratic, made possible by deep social and political transformations in our country. These reforms ensure that the highest state acts largely represent the actual desires and aspirations of the people. The people embraced this invitation, leading to a truly widespread discussion about the Constitution.”⁵²¹ Following the official interpretation and adding his perspective as a member of the Constitutional Commission, Jovan Đorđević linked the abolition

⁵¹⁹ E. KARDELJ, *Put nove Jugoslavije*, Kultura, 1950, p. 205.

⁵²⁰ Stenografske beleške Ustavotvorne skupštine Federativne Narodne Republike Jugoslavije, *cit.*, p. 304.

⁵²¹ J. ĐORĐEVIĆ, *Ustavno pravo Federativne Narodne Republike Jugoslavije*, Odbor za udžbenike Udruženja studenata prava, 1947, p. 127.

of the monarchy with the emergence of popular sovereignty in Yugoslavia. This connection was made while also reproducing the privileged historical narrative of that era:

“With the abolition of the monarchy and the proclamation of the republic, the new state formally assumed all the rights of representing the people’s sovereignty that it had already effectively held in its hands... The principle of popular sovereignty is fundamentally opposed to any form of monarchy, which always implies either a division of power between the ruling classes and the king or a complete control by the monarch... The anti-people stance of the monarchy in the history of our nations, particularly the reactionary behavior of Alexander Karađorđević and the traitorous role of his son Peter, transformed our people’s democratic will into a widespread and massive republican sentiment. The Constituent Assembly’s Declaration of the Republic... represented a further strengthening of the state organization and the legalization of the long struggles and aspirations of the masses for a truly democratic order. The monarchy, which had dominated the political life of old Yugoslavia and hindered any advanced economic, political, and cultural movement, was rejected by the will and strength of the people and relegated to the museum of antiquities alongside the bureaucratic-centralist system and other reactionary forms and institutions of the old state order.”⁵²²

4. Demise of Yugoslavia and Post-Yugoslav Time

4. 1. Parliamentary Republic

The modern republican form of government manifests in two primary types: the presidential and the parliamentary republic. Each type represents a distinct constitutional configuration based on the principle of separation of powers that delineates the balance and allocation of powers among various state institutions.

In a presidential system, the President, elected by the people, serves as both the head of state and the head of government, embodying a convergence of executive authority (monocephalous, monistic executive). This framework, exemplified in the constitutional

⁵²² J. ĐORĐEVIĆ, *Ustavotvorno pravo FNRJ*, Arhiv za pravne i društvene nauke, 1953.

architecture of the United States, typically manifests a rigorous demarcation of powers among the executive, legislative, and judicial branches.⁵²³

Contrastingly, in a parliamentary republic, the roles of the president of the republic and head of government are typically separate, forming a bicephalous executive. The Prime Minister, who is usually the leader of the majority party in the legislature, holds the reins of government. This arrangement facilitates a closer relationship between the executive and legislative branches, often leading to a constitutional arrangement of less strict separation of powers. The executive derives its legitimacy and authority directly from the parliamentary majority, which, most typically, also elects the president, too.⁵²⁴

The genesis of the parliamentary republic, analogous to its counterpart, the continental parliamentary monarchy, originated within the ambit of French constitutional evolution. More precisely, the post-1871 trajectory of French constitutional history, encompassing the eras of the Third, Fourth, and Fifth Republics — pivotal for this discourse — manifests diverse iterations of the parliamentary republic. This spectrum spans from configurations where the head of state assumes a largely ceremonial role to more contemporary frameworks that incline towards a presidential paradigm.

At its core, the dynamics of the French parliamentary system are reflective of the prevailing constitutional doctrines of the time, particularly in terms of the institutional locus of genuine popular sovereignty. In the nascent stages of the Third Republic, French parliamentarism was constitutionally fashioned in 1875 after the Orleanist, dualistic model. This meant, in the first place, the establishment of a pronounced role of the President of the Republic.⁵²⁵ However, after pursuing a constitutionally perfectly indisputable dissolution of the Lower House of the National Assembly (*Assemblée Nationale*) in 1877, the President of the Republic precipitated a profound political crisis. This action elicited vehement political rebuke, criticizing the President's move as an affront to popular sovereignty, which was argued to be incarnated in the legislature. Consequently, so long as the dualistic 1875 Constitution was in force, no subsequent president

⁵²³ One of the best representations of the U.S. constitutional system can be: E. CHEMERINSKY, *Constitutional Law* (several editions). For specifics on the presidential system see: E. POSNER, A. VERMEULE, *The Executive Unbound: After the Madisonian Republic*, Oxford University Press, 2011.

⁵²⁴ G. VERGOTTINI

⁵²⁵J. GARRIGUES, E. ANCEAU, *Discussing the First Age of French Parliamentarism (1789–1914)*, In P. IHALAINEN, C. ILIE, K. PALONEN (Eds.), *Parliament and Parliamentarism: A Comparative History of a European Concept*, Berghahn Books, 2016, p. 49-61. <https://doi.org/10.1515/9781782389552-006>

ventured to repeat such an act. This episode also led to a sustained and notable abstention by the President of the Republic from dismissing ministers who retained parliamentary confidence.⁵²⁶

Therefore, the French parliamentarism, while constitutionally delineated as distinctly dualistic, functionally operated as *de facto* monistic. Moreover, due to the weakened position of the government in French parliamentarism, this system even tended towards a Convent-type model, with the absolute dominance of the representative body. The apparent intention to shift France closer to a form of parliamentary equilibrium through a dual attempt at constitutional reform in 1946, which ended up in the establishment of the Fourth Republic, did not yield the desired outcome. The fortification of the executive, a longstanding weakness of the French constitutional framework, was ultimately achieved through the enhancement of the constitutional position of the President of the Republic as per the 1958 Constitution of the Fifth Republic. This system is often referred to as semi-presidential, but it fundamentally constitutes a variation of the parliamentary system.⁵²⁷ Initially, the president was elected by an electoral college, but since 1962, direct popular election was introduced. This change aligns more closely with a constitutional order that envisages a strong president, who appoints the prime minister, who does not need a ministerial countersignature and remains politically unaccountable.⁵²⁸

Contrary to the Orleans-style parliamentary regime, which emerged as a clear model for continental monarchies (through the Belgian 1830 constitution), French republican parliamentarism is more aptly regarded as a precursor and not the model to other forms of parliamentary republics. Its practices served as a valuable experiential foundation for other states to consider or emulate. However, this was a period when parliamentary experience, even through parliamentary monarchies, had already gained considerable traction. Consequently, some states, despite changes in the form of government from monarchy to republic, already possessed their own, at least rudimentary, parliamentary traditions and experiences with representative bodies. On the other hand, following the collapse of socialism, this system gained widespread popularity in Eastern and East-Central Europe.⁵²⁹

⁵²⁶ Ibidem, pp. 54-56.

⁵²⁷ G. VERGOTTINI, *Diritto costituzionale comparato, cit.*, 555-556.

⁵²⁸ Ibidem, pp. 696-697.

⁵²⁹ R. ELGIE, *The Politics of Semi-Presidentialism*, in R. ELGIE (Ed.), *Semi-presidentialism in Europe*, Oxford University Press, 1999, pp. 13-14. This collective volume offers the extensive accounts of several European countries, including ones in Central and Eastern Europe.

Indeed, the regimes of a parliamentary republic differ from those of a parliamentary monarchy solely in terms of constitutional architecture regarding the source of legitimacy, political and criminal accountability, and the fixed duration of the head of state's tenure. In addition, the president of a republic does not possess sovereignty in any regard, contrasting with a monarch, who retains this attribute, at least symbolically. In other aspects of the constitutional position, there are no significant differences between a monarch and the president of a republic. In scholarly works, the type of separation of powers plays a more important role as a criterion for classification. Therefore, constitutional monarchy and presidential republic fall into the same category, as do parliamentary monarchy and parliamentary republic.

Given that parliamentarism is the oldest form of constitutional architecture of the modern state, it has inevitably influenced other systems – presidential and directorial.⁵³⁰ The same assertion could be made for countries with socialist constitutionalism: even they, in their constitutional theory and practice, inevitably rested on the institutions that exist in parliamentarism.⁵³¹ Although Marxism-Leninism is characterized by a strong resistance to the parliamentary system, even Vyshinsky, in his seminal work on the Soviet legal system referred to the soviets as – “socialist parliamentarism.”⁵³² Hence, the subsequent transition of former socialist states towards one of the forms of parliamentarism did not mean venturing into *terra incognita*, nor were the state institutions on which parliamentarism rests a complete novelty.

4. 2. *Historical Narratives Supporting the “Revival” of Parliamentarism*

All the states that emerged from the dissolution of Yugoslavia adopted constitutions that envisioned some form of parliamentary system. However, only Serbia and Croatia had any significant historical experience with representative bodies before 1945, so I will focus on those two cases. In Croatia, the *Sabor*, broadly speaking the historical precursor of a parliament, had medieval roots. In Serbia, following liberation from Ottoman rule, there was a tradition of popular assemblies and, from 1903, a parliament.

⁵³⁰ M. A. COHENDET, *Quel régime pour la VI^e République?*, in *Revue du Droit Public*, 1-2, 2002, p. 173.

⁵³¹ See for instance: J. ĐORĐEVIĆ, *Ustavno pravo Federativne Narodne Republike Jugoslavije*, cit., p. 246: “The 1946 Constitution was fundamentally based on the principle that the working people exercise power through their representative state bodies, namely the people's councils and assemblies (Article 6). *This foundational premise was implemented via a structure of power that does not significantly differ from the well-known mechanism of the separation of powers.* (Emphasis is mine - S. M.)”

⁵³² E. VYSHINSKY, *The Law of the Soviet State*, p. 166.

Both the Constitution of Serbia of September 1990 and the Constitution of Croatia of December of the same year, were enacted within the context of the then-valid Yugoslav constitution, which was still the constitution of a socialist state, indeed a state of the “dictatorship of the proletariat”. In this respect, these constitutions, which introduced a parliamentary regime in Serbia and Croatia, of were in contradiction with the federal constitution. However, the political circumstances in Yugoslavia at that time were already chaotic enough, and the disintegration of the federation almost certain, that this phenomenon did not provoke any serious reaction. Even the Federal Constitutional Court addressed the issue only superficially.⁵³³

There are indications that, in Croatia’s case, this tradition directly influenced the shaping of its 1990 Constitution. The position of the head of state, as defined by this Constitution, corresponds to the form of the parliamentary regime termed a semi-presidential system.⁵³⁴ This Constitution granted the President extensive powers, among which the constitutional provisions in Article 98 are particularly noteworthy. According to this article, the President of Croatia possesses substantial authority over the government since the President not only “appoints and dismisses the Prime Minister of the Republic of Croatia” but also “upon the recommendation of the Prime Minister of the government of Republic of Croatia, appoints and dismisses its deputy prime ministers and members”.⁵³⁵

This particular constitutional provision, in many respects, seemed custom-designed to accommodate the ambitions of Franjo Tuđman, the first President of Croatia, who exhibited tendencies towards exerting personal influence over constitutional affairs. Tuđman’s political style often reflected a desire for centralized control, and this constitutional arrangement facilitated such an approach by granting the President significant influence in the appointment and dismissal of key government figures. This structure enabled Tuđman to maintain a considerable degree of control over the executive branch, aligning it closely with his vision and political objectives.

Given President Tuđman’s profound influence on constitutional solutions, it’s noteworthy to mention his elaboration on the parliamentary heritage in Croatia:

⁵³³ The Constitutional Court, in several instances, issued decisions on the constitutionality of certain acts of constitutional character (declarations of independence by Slovenia and Croatia, amendments to the constitutions of Slovenia and Serbia, etc.). However, the Court, in these decisions and opinions, never invoked historical arguments, even though it could have done so in such fundamental matters as the nature of Yugoslav federalism.

⁵³⁴ S. SOKOL, *Polupredsjednički sustav i parlamentarizam*, in *Politička misao*, 39(3), 1992, pp. 3-17.

⁵³⁵ *Ustav Republike Hrvatske*, in *Narodne novine*, 56/90, (Art. 98).

“When it comes to the structure of state authorities, it is worth recalling that in continental Europe, governments in the modern sense began to take shape with the development of democracy from the mid-19th century, particularly modeled after the structure of the monarchy in France from 1830-1848 following the July Revolution, or the so-called Orleanist parliamentarism. Hitherto monarch’s cabinet was organizationally separated from him and transformed into a government (comprised of a president and ministers) responsible to both the head of state and the parliament. This system, which we might today, *mitatis mutandis*, call semi-presidential, was adopted in Croatia, concurrently with other European nations, when in 1848 Ban Josip Jelačić appointed the Ban’s Council, which was accountable to both him and the Croatian Parliament, and had five departments (or ministries): for internal affairs, the military, finance, justice, and education.”⁵³⁶

President Tuđman’s commentaries often reflected a unique blend of historical analysis and personal vision for the nation’s governance. By delving into the nuances of Croatia’s parliamentary traditions, Tuđman aimed to anchor the constitutional reforms in a broader historical context, asserting continuity with the past. Therefore, the reference to Orleanist parliamentarism appears to be a deliberate choice. It is important to recognize that this specific form of parliamentarism, as has been emphasized, entailed a strong head of state before whom ministers were politically accountable, just as they were to the parliament. Through this historical reminiscence, by aligning the modern Croatian parliamentary system with the Orleanist model, he underscored the significance of the powerful role of the head of state within the parliamentary framework, thereby justifying his own position and influence within the Croatian political system. This historical analogy served not only to validate the existing constitutional arrangement but also to highlight continuity with a specific tradition of governance that supports a dominant presidential role in a parliamentary democracy. This approach was not merely an exercise in historical interpretation but a strategic move to legitimize his political agenda and mold the newly independent Croatia’s constitutional framework to align with his leadership style and political goals.

It is also important to emphasize that during this period, Croatia endeavored to distance itself as much as possible from its communist past, retaining only the fact of its own statehood within socialist Yugoslavia. This selective retention was part of a broader effort to redefine the national identity in a way that emphasized Croatia’s historical sovereignty and minimized its

⁵³⁶ F. TUĐMAN, *Govor u prigodi proglašenja Ustava Republike Hrvatske*, in *S vjerom u samostalnu Hrvatsku*, cit., p. 118.

communist legacy. This strategic distancing was reflective of a wider post-communist trend in Eastern Europe, where nations sought to reestablish their identities in the post-socialist era, often focusing on pre-communist or non-communist aspects of their history while acknowledging state continuity.

Unlike the Croatian constitution, where historical narratives were either explicitly present or strongly implied, the Serbian approach was more subtle, when it comes to applying historical narratives from the pre-socialist period. The 1990 Serbian Constitution only contains scarce references history in its preamble, recalling the “centuries-long struggle of the Serbian people for freedom, their freedom-loving, democratic and nation-building traditions, and the historical development.”⁵³⁷ The constitution also aligned with Serbia’s parliamentary tradition (dualistic parliamentarism) in that it envisioned a state leadership role with semi-presidential elements: direct election of the head of state (Art. 86) and the absence of the requirement for ministerial countersignature were two of the most prominent features of this system.⁵³⁸

The turn towards democratic, parliamentary experience in Serbia was present at the time in the highest party forum of the Serbian communists, the Congress of the Party, held in March 1990. The official party herald, *Borba*, reported on this event in an article titled “New Identity of Serbian Communists.” Under the subtitle “Serbian Democratic Tradition,” the newspaper conveyed the words of Ratomir Vico, the keynote speaker, on the occasion of the highest party gathering:

“The reform program we adopted at the Congress represents a fruitful fusion of the future and contemporary reality with Serbia’s democratic tradition: the achievements of the People’s Liberation War and the revolution, self-managing democracy, socialist democratic tradition..., as well as *significant elements of the liberal civil society tradition* (Emphasis is mine - S. M.).”⁵³⁹

This statement from the party congress encapsulates a significant shift in the approach of the Serbian Communist Party. It highlights a strategic blend of various historical and political traditions, acknowledging the importance of integrating diverse elements from Serbia’s past. By referencing both the socialist democratic tradition and the liberal civic tradition, the party expressed its ambition to build a more inclusive political platform.

⁵³⁷ *Ustav Republike Srbije*, in *Službeni glasnik*, 98/06, (Preamble).

⁵³⁸ D. POPOVIĆ, *Constitutional History of Serbia*, *cit.*, p. 226.

⁵³⁹ *Borba*, 14. March 1990, p. 3.

At that time, the leaders of Serbia preserved a formal and, to a lesser extent, an ideological connection with the League of Communists of Serbia, the ruling party for several past decades. Because of that connection, their historical account did not openly support liberal democracy or parliamentarism; doing so would have been a too large shift from their recent political and ideological views. Instead, the regime in Serbia, without completely abandoning but seeking to radically reform its paradigm, employed a dual “ideological strategy”: the ruling post-communist structure somewhat vaguely highlighted the narrative about “Serbian democratic traditions,” referring not solely (and not primarily anymore) to the socialist past; simultaneously, it allowed for significant leeway for other actors (intellectuals and the opposition) to more intensely emphasize this very same narrative with much more nationalist flavor. The most notable shift in the late 1980s and early 1990s regarding the communists’ ideological stance was their cessation of nationalism criticism and a move away from “Titoism,” hitherto a privileged ideological paradigm in Yugoslav socialism. This change marked a significant deviation from their previous ideological positions. By the mid-1980s, criticism of Serbian nationalism was a cornerstone of the ideological narrative of Serbian communists. However, by the end of that decade, this stance underwent a radical change. Serbian communists rejected the most extreme forms of nationalist rhetoric that flourished at that time but did not entirely dismiss its ideological and societal consequences, such as the rise of nationalist sentiment within society. Instead, they sought to leverage this growing nationalism for their purposes. While aligning with emerging nationalist sentiments and accommodating a broader discourse on democratic, non-communist traditions within the country, the Serbian leadership endeavored to preserve aspects of the communist past they deemed valuable. Thus, they aimed for an amalgamation of positive heritage from all epochs of Serbian history, as perceived through their lens.⁵⁴⁰ This was the broader political and ideological background for the “revival” of Serbian parliamentarism.

During the period in question, as I’ve already mentioned, the political regime in Serbia became increasingly tolerant of interpretations of Serbian history that diverged from the socialist, Marxist perspective. This change in attitude facilitated a growing interest in topics previously not

⁵⁴⁰ For the context see: S. P. RAMT, *Balkan Babel: The Disintegration Of Yugoslavia From The Death Of Tito To The Fall Of Milosevic*, Westview Press, 2002; G. STOKES, *The Walls Came Tumbling Down: The Collapse of Communism in Eastern Europe*, Oxford University Press, 1993, pp. 232-237; A. PAVKOVIĆ, *Anticipating the disintegration: Nationalisms in former Yugoslavia, 1980–1990*, in *Nationalities Papers*, 25(3), 1997, pp. 427–440. doi:10.1080/00905999708408516; A. PAVKOVIĆ, *The Fragmentation of Yugoslavia: Nationalism and War in the Balkans*, Palgrave Macmillan UK, 2000, pp. 88-90, 103-109.

prioritized, one of which was – Serbian parliamentarism. It is particularly noteworthy that this subject was explored and written about not only by regime-affiliated writers but also by individuals often opposed to the regime. This fact alone underscores the ubiquity of discussions on Serbia’s democratic traditions as the country embarks on a new chapter of parliamentary governance. Therefore, the years 1989-1991 saw a conspicuous increase in publications focused on Serbia’s parliamentary tradition, far exceeding the output of previous years. Understandably, perspectives on this tradition varied among the government, the opposition, and intellectuals outside the political fray. While a minority of researchers critically approached the uncritical glorification of this parliamentary heritage, there was significant synergy in acknowledging at least one issue – the importance, current relevance, and actuality of the topic.

In the period of constitutional change, the authorities, in all fairness, did not explicitly speak of the restoration of parliamentarism. It was the opposition that directly and explicitly linked the omnipresent invocation of the “Serbian democratic traditions” with the request for the “restoration of parliamentarism”.⁵⁴¹ One of the leaders of the opposition at the time, Vojislav Koštunica, emphasized that, compared to other parts of Yugoslavia, “the democratic traditions in Serbia are the richest,” and that “the fundamental characteristic of this democratic tradition is parliamentarism.”⁵⁴² There is no doubt that under the broad term of “Serbian democratic traditions,” which eventually was enshrined in the preamble of the Constitution, even from the perspective of the governing reformed communists parliamentarism was implied.

⁵⁴¹ Vuka vole samo do izbora, *Borba*, 15. jun 1990, p. 5.

⁵⁴² Demokratijom iz krize, *Borba*, 28. avgust 1990, p. 8.

CONCLUSIONS

I have arrived at the end of my discussion. The thesis offers three distinctive conclusions: (1) In the former Yugoslav region, historical narratives mainly served two purposes in constitutional design: the first was to legitimize a constitutional novelty, while the second was to emphasize the relevance of a particular constitutional arrangement. The historical narratives served these purposes notwithstanding the type of political regime; (2) historical narratives were more a matter of argumentation than motivation in designing constitutions; (3) historical narratives offered “emotional back-up” in designing constitutions throughout the Yugoslav region; finally, (4) historical narratives also provided a rational basis for resolving specific constitutional issues, following the idea of history as the “space of experience” or *magistra vitae*.

As to the first conclusion, the research has shown that during the 20th century, historical narratives consistently represented an instrument of constitutional design in the Yugoslav region, regardless of the nature of the political regime. Whether in a variant of a liberal order (the 1921 Constitution of the Kingdom of Yugoslavia, post-socialist constitutions of the early 1990s) or under the authoritarian regime (Yugoslav constitutions of 1931, 1946, 1953, 1963, and 1974), historical narratives were consistently present.

Consequently, the key factor determining the prominence of historical narratives in constitutional design is not the nature of the political regime. What tipped the difference was whether a given constitution represented a significant departure from previous frameworks. This is particularly notable in cases where the constitution introduces a novel solution, marking a distinct break from the previous approach. In a nutshell, the new constitutional provision required as deep or as strong historical roots as possible. Therefore, the extent to which historical narratives were integrated within a particular constitutional design was directly proportional to the novelty of the constitutional proposal. This purpose, which amounted to the legitimization of constitutional novelty, is evident, for example, in the 1921 Constitution, referencing to “Our new homeland,” and the 1946 Constitution, echoing the notion of “new Yugoslavia.” In these cases, a deliberate search for historical underpinnings is present. The tendency is not only prevalent in traditional contexts but also in revolutionary contexts, where the reliance on historical narratives is perhaps even more pronounced. The reliance illustrates a fundamental need to anchor transformative

constitutional changes in historical legitimacy, demonstrating the enduring influence of historical narratives in shaping constitutional identities and transitions. Similarly, the explanation accompanying the 1953 Yugoslav constitution focused extensively on a historical narrative about Marshal Tito to elaborate on the function of the President of the Republic, for the first time introduced in the constitutional design as he was expected to be elected to that position.

This thesis has also shown that in the distinct political, social, and historical milieu of the Yugoslav and post-Yugoslav regions, historical narratives have been employed mostly for addressing the guiding constitutional values, the state territorial organization, and the forms of government. In such cases, historical narratives served the purpose of relevance, which posits that the gravity of an issue directly influences the presence of historical narratives employed. This phenomenon highlights a strategic approach by constitution makers, who sought to substantiate the resolutions of guiding constitutional values with a plethora of arguments, leveraging historical experience as a fundamental source of legitimacy. Notable cases include the extensive substantiation by historical narratives of the “national unity” within the 1921 and 1931 constitutions of the Kingdom of Yugoslavia, “fraternity and unity” in the SFRY constitutions of 1946, 1953, 1963, and 1974, and “national tradition” in the constitutions of nations emerging from the dissolution of Yugoslavia. This interplay between constitutional values and historical narratives served the legitimization process: the guiding values not only critically influenced the constitutional design but also had historical roots that predated the constitution; conversely, by being enshrined in the constitution, these values received a formal ratification, thereby solidifying their significance. The territorial organization of the state is another critical area where historical narratives were prominently featured. Discussions around unitarism-centralism or federal structures, which were critically important, were steeped in detailed historical accounts. Finally, the nature of the political system — whether a monarchy or a republic, parliamentarianism or socialist “dictatorship of proletariat” — is also very much defined through historical lenses. On this account, the issue is: which part of the history was relevant? Thus, while the socialist constitutions often historicized the recent past, particularly emphasizing the role of the Communist Party and its historical significance, the post-socialist constitutions tend to pivot towards seeking legitimacy in a more distant past, which, allegedly, was suppressed “during communism”.

Second, the discussion in this thesis also assessed to what extent historical narratives influenced the constitutional design, which represented a more sensitive task than identifying the

areas where these narratives manifested. One of the offered conclusions is that discussions in constitutional committees, which contained historical arguments, were less colored by pathos and emotion than speeches in the assembly during constitutional debates. The debates in constitutional committees were more focused on substantive arguments than historical reminiscences. Thus, it seems that historical narratives are more a matter of argumentation than motivation. This, of course, is not insignificant, especially if certain narratives can be linked to actual historiographical findings, which is not necessarily their regular feature.

Third, I have highlighted the related role of emotions in constitution-making processes. Fear is most often cited. However, in the context of historical narratives, it proved challenging to definitively confirm or refute its influence. Nevertheless, various sources testify that historical narratives are unequivocally intended to evoke feelings of pride and anger. Regardless of whether one considers the style of formulation and expression in historical argumentation or observes the audience's reactions during the debates (meticulously recorded by stenographers), it is clear that the process of constitution-making is invariably influenced by the emotional responses elicited by historical narratives among its audience. In this sense, historical narratives offered "emotional back-up" in designing constitutions throughout the Yugoslav region.

Finally, not in contradiction with the previous conclusion, historical narratives also serve as a source of rational or seemingly rational decision-making. They encompass 'lessons' that warrant consideration, thereby possessing the capacity to inform rational choices, whether based on actual or presumed experiences. However, it's important to note that in the case of historical narratives, the rational element could be merely illusory: as previously emphasized, historical narratives often lack factual truth, yet they are treated as authoritative despite their demonstrable inaccuracies.

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