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The 1974 Constitution as a Factor in the
Collapse of Yugoslavia or as a Sign of
Decaying Totalitarianism

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THE 1974 CONSTITUTION AS A FACTOR IN THE COLLAPSE OF YUGOSLAVIA OR AS A SIGN OF DECAYING TOTALITARIANISM

*I was puzzled, sometimes, by the sheer number, the quantity of those who IN FACT HAD KNOWN EVERYTHING, but said it later, from safe distance... It turned out that the old dictator was quite lonely; in reality, his key generals hated him, his trusted commandants were secret sympathizers of the same demonic or demonised movements against which they had more or less fought in the civil war. Party **apparatchiks** were allegedly secret admirers of the European style democracy. His obedient politicians - executors, hunters, sycophantic devourers of roast lamb, conflicted with the dictator, all the time but undetected by the world. Zealous propagators of the most genial constitutional solutions or economic projects originating in the head of a teacher college dropout¹ were in fact convinced from the very beginning that the latter would not work, that they were fallacious and that their consequences would be disastrous (Prodanovic, 28).*

The historical and intellectual origins of the 1974 Constitution.- The Constitution of the Socialist Federal Republic of Yugoslavia, promulgated on 21 February 1974, has been often quoted as one of the reasons for the civil war in that country, or at least as one of the contributing factors leading to Yugoslavia's disorderly and bloody dissolution. In fact, it has such a poor reputation, even among those who have never read it, that it is not surprising that no one claims to have been its author, as suggested by the young Serb writer and painter quoted above.

¹ Reference is to Edvard Kardelj, see footnote 2.

We shall attempt to examine the validity of such statements, but before we do so this Constitution has to be placed in proper historical perspective and an effort should be made to understand the reasons why this constitutional text was framed as such.

"Socialist" Yugoslavia was famous for its social and legislative experiments and for the frequency with which it changed its constitutions and its official name. After the 1946 Constitution, which was, together with its (never later to be changed) national emblem, a rather uninventive replica of the "great" Stalin's Soviet Constitution of 1936, new constitutions, in a new "self-management" vein were adopted in 1953, 1963, and 1974. These constitutions were extensively amended in 1967, 1968, 1971, 1981, and 1988!²

Whereas the 1946 Constitution could be explained the product of efforts of a thoroughly bolishevised Communist party to impose its will and to apply the time tested Soviet "solutions" to Yugoslavia, from the 1953 Basic Law onwards the Communist leadership was at pains to develop its own, original approaches to the purpose, justification, organisation and development of a "socialist" State outside the Soviet dominated camp of "people's democracies". The story of the Stalin-Tito split is well known and shall not be retold here (D. Djordjevic, 328). In this context it is important to note, however, that the ideological differences between the Soviet Communist Party (including its international tool, the Cominform, the substitute for the dissolved Communist International) had not preceded the conflict, but were developed by the Yugoslav Communists after 1948. The latter were under attack by almost all established Communist parties in the world as traitors and capitalist flunkies and feeling that a wholesale incorporation in the West would not only be against their Marxist upbringing and worldview but mean an eventual loss of power. They made great efforts to produce an ideological basis for a system that remains socialist and Marxist, while appearing to be more humane and democratic and, what was most important, removing the country from the "socialist camp" and the Soviet orbit.

² It is to be noted that the main architect of all constitutions and amendments adopted until his death was Edvard Kardelj, a close associate of Tito and the chief ideologist of the Communist Party (Later League) of Yugoslavia. He was always at hand to "scientifically" justify changes in Tito's policies and has therefore been compared to an ideological tailor (Schöpflin, 186, 189). Kardelj was an ethnic Slovene. I hate to refer to the ethnicity of former Yugoslav political actors, but I find it necessary to do so in view of the deplorable tendency of many writers on Yugoslavia to explain the motivations of the former predominantly by their national origin. I shall therefore indicate ethnicity whenever it can be established without doubt.

By borrowing from early Marx, the anarchists, social democrats, and even fascist corporativists, the doctrine of self-management was propounded and put into experimental use in 1950 following the adoption of a law instituting workers' councils in enterprises, which was subsequently enshrined in all constitutions and relevant statutes after 1953. The practical effects of self-management will be discussed later but it should be immediately noted that it became a great public relations success among socialist intelligentsia everywhere. This, combined with a benevolent attitude of security establishments toward the first defector from the Soviet empire, was to protect Tito's regime from serious criticism both from the liberal left and the conservative right for quite some time. The nature of dissidence in Yugoslavia and the absence of support for human rights movement there can be explained by the fact that for a long while Communist Yugoslavia was either an attractive social experiment or at least something "much better" than the Soviet Union and its satellite states.

Security considerations and Tito's idiosyncratic thirst for recognition and pomp accounted for the accompanying doctrine of non-alignment. As a result, from the late fifties onwards Yugoslavia was not an internationally isolated country and, together with its President, enjoyed international prestige way beyond her power and potential. In their introductory programmatic parts, all Yugoslav constitutions since 1963 have devoted lengthy passages to international relations, where the traditional debt to "socialist internationalism" has been combined with allegiance to "peaceful coexistence".

The break with the USSR had, however, an effect which was not immediately noticeable. Namely, rebelling against Soviet dominance meant at the same time a departure from the universalist Communist dream of a world social order where the national proletariat would have only one state, devoid of the bourgeois trappings of ethnicity. Already the Soviet Union was not a nation state but the embryo of a universal workers' state open to new citizens from everywhere. Many Communists, including those from pre-war Yugoslavia, had no difficulty in imagining themselves and their country becoming a part of the USSR. In 1948, however, Tito and his associates stood up against Soviet and other Communists to defend the right of every national Communist party to run things their own way or, to put it quite bluntly, to establish its own, sovereign dictatorship (of the proletariat). This brand of Communism was rightly called "national Communist" and it eventually became very popular in Europe and elsewhere, under different guises (such as e.g. "Euro-Communism" in Italy and Spain), but the nagging question has remained as to how adapt an internationalist doctrine to national limitations. In the case of Yugoslavia the unanswered question was: on whose behalf did Tito stand against Stalin and

ruthlessly purge his followers in Yugoslavia? On behalf of the sovereign state of Yugoslavia, on behalf of its ethnically diverse population, or on behalf of a well defined nation? The logical next step could be made, and it was eventually made, namely, towards the right of Communist parties in (ethnic) nations of Yugoslavia to be independent of the "supra-national" League of Communists of Yugoslavia.

The germ of nationalism, somewhat legitimised among the Communists in 1948 and thereafter, has been compounded by the latent and overt nationalism of the rest of the population and non-Communist political actors. It is true that Tito's regime became truly popular in Yugoslavia only after the rift with Stalin, but the nature of the support was again dubious in socialist or Communist terms. It was resistance against foreign domination, the first step towards other kinds of nationalism. From the very beginning, Tito and the Yugoslav Communist party met serious and organised internal resistance only from nationalists. In the war, apart from German and Italian units, the Partisans had to fight the Ustasa groups and the army of the "Independent State of Croatia", the forces of the Serb movement of General Mihailovic, the Slovene nationalist "White Guard", the Albanian nationalist bands in Kosovo etc. This continued long after the seizure of power; whereas the orderly, legalistic opposition of the old political parties had already been dealt with smoothly in 1945 and 1946, the new regime had to carry on fighting incursions of nationalist guerrillas, especially in Croatia, for quite some time..

Organised and systematic action abroad against the Communist regime in Yugoslavia was almost without exception undertaken by nationalist émigré groups, some of whom engaged in terrorism. On the other hand, emigrating non-nationalists found it very difficult to organise themselves in "all-Yugoslav" groups and their statements in favour of democracy sounded too intellectual and found little support. Finally, after the definitive stabilisation of the regime in Yugoslavia, dissidence was gradually overshadowed by nationalism. To be sure, the most famous dissident, Milovan Djilas³, was a proponent of democracy and modern socialism, but opponents of Yugoslav Communism in the same or similar democratic vein were harder and harder to find. As in some other Communist countries, nationalist dissidents, in order to get international support, masqueraded as democrats, but the final record was very sombre. One should only remember that, at the time, human rights groups were hailing the likes of the present chief ideologue of the nationalist Communist (renamed Socialist) Party of Serbia Mihailo Markovic, the chauvinist and anti-Semitic President of Croatia, Franjo Tudjman, the nationalist-militarist Slovenian minister of defence Janez Jansa and the fascist Serbian leader Vojislav

³ A Montenegrin.

Seselj (until recently closely allied with the national Communists of Serbia). If we set aside the benefits of hindsight, there seems to be no evidence that the Communist leadership of Yugoslavia was aware of the enormity of the national issue, at least until the late sixties, and then it approached it, as we shall presently see, from the wrong angle⁴. Initially, the Communists were carried away by their success in the liberation war, where their investment in the Yugoslav cause and "fraternity and unity" of the Yugoslav nations proved to be politically wise at the time when all of them were treated by the aggressors as racially inferior. In resolutely supporting the federal structure of the state, they thought they had done away with the perennial squabbling in pre-war Yugoslavia, where centralism meant Serb domination. This was acceptable for the democratic public opinion, including the remnants of the traditional political parties, which were more concerned with the brutal imposition of Communist power by the tested devices of intimidation by secret police and mobs, as well as by rigged elections.

The new rulers believed to have solved "national question" in true Marxist fashion (and it should be remembered that Joseph Stalin was the foremost Marxist authority in the field), whereas they in fact swept the issue under the carpet immediately after consecrating their federalist war programme in the 1946 Constitution. Subjects related to national claims; indeed the history of national conflicts (including the gruesome massacres during the war) became taboo, along with everything the authorities chose to label as "nationalism". For a long while it became impossible to air openly national claims, which, as a result were buried in some kind of political hole, whence they re-emerged in full force, but in a primitive and warped form, only after Tito had been safely dead for a number of years.

In solving the "national question", the Yugoslav Communists, notwithstanding their amazing and very non-Communist powers of adaptation, still carried over some of their pre-war ideological baggage. The crucial feature of their rule, which affected all judgements on constitutionality in Yugoslavia, was the disdain of laws and legality. In the view of at least Tito and the enormously influential "old guard", statutes were at best mere instruments of rule and constitutions were largely ornamental. They were not to be taken seriously, since behind them was the inalienable power of the Communist party that would arbitrate or impose its will

⁴ For some time we have to be reconciled with the fact that we know very little about what really went on in the inner circles of the Communist decision making until Tito's death, and even thereafter. There is no order in the archives of the Party (parties), and some of them have been pilfered, memoirs are self-indulging and unreliable and the now highly regarded "patriotic" historians are selective and partial. Ordinary state archives are of little help since the most relevant disputes took place and important decisions were made in party conclaves.

whenever necessary. The most important paradox of Yugoslavia, reflected in all constitutions, was that, while the state was federal, it was run or "guided" by the Communist Party functioning under the principle of "democratic centralism". Thus, it appeared that the federation was constitutionally unable to remove leaders in the republics, but this was performed with relative ease, as soon as the central Party leadership had so decided. Of course, Tito's monarchical position as the unchallenged Party leader (and an eternal head of state) was decisive, which helps explain the turn of events after his death.

There was another residue from the pre-war days that would undoubtedly influence the attitude of many Serbs, especially the nationalist ones, towards the new constitutional order. The pre-war Kingdom of Yugoslavia was diagnosed by the native and international Communists, as by many others, as a centralist state dominated by the Serb elites. The instructions of the Comintern went as far as suggesting to the Yugoslav Communists that they should even co-operate with the rightist non-Serb nationalists, including the Ustasi, in attempts to bring down a state that was controlled by the Serbian bourgeoisie cohabiting with the treacherous bourgeoisie of the non-Serb nations (D. Djordjevic, 321). In spite of the fact that, outside what was later to become Serbia proper, the rank and file of the Partisans was disproportionately Serb, the obsession with reducing the danger, that the most numerous nation would pose to the new federation, remained. Thus, the lands inhabited mostly by the Serbs were divided into several parts. In addition to Serbia proper (roughly corresponding to the borders of Serbia in 1912), there was a separate Republic of Montenegro⁵, and two autonomous provinces were created within Serbia: Vojvodina, with a Serb majority, and Kosovo and Metohija, where the majority was increasingly Albanian⁶. Other Serbs remained in republics defined by the names of other nations or in Bosnia and Herzegovina, which was the only "anational" federal unit. There had been proposals to create an autonomous province

⁵ The ethnic nature of Montenegro is complicated. The simplest statement is that some Montenegrins believe that they are only Serb, whereas others feel that they are Montenegrin and at the same time Serb. These attitudes have very often to do with the prevailing political climate.

⁶ Kosovo and Metohija was originally a region (oblast). Later, with its promotion to a province, the "Metohija" part of the name was dropped - to please the Albanians, it was believed. It is quite understandable, then, that the nationalist-populist movement in Serbia, together with practically abolishing the autonomy of the province, restored "Metohija" to its title. This is only one of the examples of the war of words, so dear to dogmatic Communists and nationalists alike. In fact, "Kosovo" is a very Serb word indeed, derived as it is from the name of a bird, whereas "Metohija" has non-Slavic (but not Albanian) roots. The Kosovo Albanians insist, in their turn, on the albanized version "Kosova" and, naturally, reject "Metohija".

in Croatia, encompassing areas where the Serbs were in a majority (Krajina), but they were not accepted (Schöpflin, 181). As a result, the whole arrangement has been from the very beginning regarded by many Serbs as having been arrived at their expense. The ultranationalists among them have had even wider complaints: for them, Macedonia was also carved out of Serbia (which it had annexed in 1913) and the Macedonians, as well as the later recognised ethnic Muslims, were allegedly estranged Serbs, who had been encouraged by the new regime to adopt an "artificial" ethnicity⁷.

The situation immediately preceding the adoption of the Constitution.-

The framework for the federation had already been determined by 1946, so that the 1974 Constitution cannot be held responsible for it. However, there were developments immediately preceding the drafting of that document that were probably the main concern of its drafters and which could explain the specifics of that Constitution.

In the 1960's there were strong indicators of a crisis in Yugoslavia, manifested through economic difficulties, social tension and sometimes overt nationalism. They were mostly beyond the comprehension of the Partisan ruling elite, but inspired the reform-minded younger generation in the Communist Party to look for new solutions. They essentially tried to modernise self-management (nobody dared mention capitalism) by giving it real substance in terms of some kind of market economy and by freeing it from the constraints of statism. In 1966, two important events took place: the political police was weakened and its conservative chief, Aleksandar Rankovic, removed by Tito himself⁸. At the same time, an ambitious economic reform was announced in order to do away with rigid central planning and most of the state and party tutelage.

The economic reform was neither acceptable to Tito's immediate conservative entourage nor Marxist intellectuals, who in June 1968 inspired and led a curious revolt of students in Belgrade and in some other university centres, which was an

⁷ The complaint about "invented" or "artificial" nations is common to nationalists throughout East and Central Europe (Dimitrijevic 1993, 36).

⁸ Tito acted principally for personal reasons and not in order to liberalize the system. Rankovic was a Serb and for some Serbs his deposition (including criminal charges, later dropped by Tito's decision in his capacity of President of the Republic) was another anti-Serbian gesture. This led to the grotesque consequence that the funeral, in 1983, of this erstwhile dreaded chief of secret police, best known for his persecution of non-Communist Serbs, attracted huge crowds in Belgrade (Prodanovic, 92).

imitation of similar leftist outbursts in Paris and elsewhere, in that its thrust was against the "red bourgeoisie", and in favour of a truly Marxist education and full egalitarianism⁹. The students themselves were generally against the regime, but some of their most influential intellectual leaders were neo-Marxists, concerned with the purity of the doctrine and egalitarianism and who perceived the new "middle class" as the greatest danger to society. While his less clever lieutenants got panicky, Tito appeased the crisis quite simply, by making a conciliatory and paternalistic speech praising the young generation and inviting students to go back to classrooms and libraries. The regime nevertheless seized immediately the opportunity to scrap the "socially unjust" economic reform and to strengthen the police, with the excuse that the student revolt had been inspired by foreign agents.

This is when the reformers within the party (no other channels were available at the time) shifted the centre of their activity to the more economically developed republics in the hope that the managerial elites there would be stronger in the absence of the federal dogmatists and their primitive supporters from the backward areas. In some ways, this was a resistance against the centre, essentially similar to that of Tito against the Comintern, but this time an association with nationalism was more inviting. This became quite clear in Croatia, where the reformist Communists, headed by Miko Tripalo, appealed to the population and almost immediately got unwanted and loud support from Croat nationalists, some of them invoking the memory of the puppet Nazi state in Croatia and the imagery of the Ustase, which was extremely disquieting to the local Serbs¹⁰.

At the same time, the Serbian Communist Party was in the hands of reformists around Marko Nikezic, who were better at handling Serb nationalism, in spite of the vulgarity of the nationalist "mass movement" in Croatia and the formidable challenge of raising *Albanian nationalism in Kosovo*¹¹.

In Slovenia, the reformists, led by Stane Kavcic, were most concerned with economic development, which they primarily envisaged within the boundaries of

⁹ The proposal was to rename the University of Belgrade "The Red University - Karl Marx".

¹⁰ Miko Tripalo is now in strong opposition to the nationalist regime in Croatia and belongs to human rights groups denouncing the persecution of Serbs. *Vreme* (Belgrade), 27 December 1993, p. 29.

¹¹ It was at that time that the famous nationalist writer and later (impeached) president of the new Federal Republic of Yugoslavia, Dobrica Cosic, lost his positions in the Serbian Communist Party for warning against the Albanian menace and thus gained most of his political popularity. Appealing to the visceral fear of Serbs of the Albanians seems to be the surest way to obtain political support: this is how Slobodan Milosevic was catapulted into prominence in 1987.

that republic. Nonetheless, they could not have been seriously accused as nationalists.

After some hesitation Tito did away with all the reformist party leadership. From the way he and his conservative associates handled the affair it was quite obvious that they were less concerned with nationalism than with what they called "anarcho-liberalism"¹² The purge, initiated by a circular letter countersigned by Stane Dolanc¹³, had the makings of a cultural revolution. Directors of the most successful enterprises were sacked (irrespective of self-management), the ablest editors and journalists were dismissed, university professors were removed (in clear violation of the laws), senior civil servants were demoted etc. to be replaced by docile and incompetent *apparatchiks*, obedient to the new federal and republican party leadership, which now included a considerable number of aged Partisans, recalled from retirement or semi-retired. Without satisfying the newly introduced criterion of "moral-political fitness" even junior posts in the administration, schools and enterprises could not be held. Marxism was (for the first time!) introduced in the obligatory part of the curricula in all schools at all levels. In many cases, but not as a rule, criminal prosecution followed¹⁴.

¹² Stalinist and neo-Stalinist Communist have always been masterful at devising invectives which combined incompatible adjectives, in this case a possibility for an anarchist to be liberal. Given the repeated statements of Tito between 1969 and 1971 that he did not observe any important signs of nationalism in Croatia, he decided to act when Croat "anarcho-liberalism" became confused with Croat nationalism, as indeed in the "Croatian Spring" insistence on Croat identity came to be identified with nationalism. If only nationalism was at issue, Tito would have spared the Communist leadership in other republics. Nobody has ever hinted that Nikezic and his associates were nationalists. The views on one of the surviving prominent Serbian leader of the time are expressed in: Perovic.

¹³ At that time secretary of the federal League of Communists. This close associate of the ageing dictator remained very powerful after Tito's death. In the state hierarchy he was the federal minister of the interior and head of security services. A Slovene.

¹⁴ In this respect an interesting suggestion was made in that the repression of nationalists was harsher than that of "Marxist humanists, modernists and universalists in the glorious sense" (Anderson, 414). However, the example given does not seem convincing: a group of neo-Marxist philosophers and sociologists in Serbia was "only" thrown out of their teaching positions and spared prison, not because they were not nationalists but because they were not identified with the reformists and modernizers in the Party. The peak of their rebellion had been in 1968-1969, when they considered the "anarcho-liberal" Nikezic group as principal advocates of the "red bourgeoisie". The identical group in Croatia was treated accordingly. Harsh punishment was meted out to intellectuals in both republics who were not Marxists, or did not identify

Wholesale regression, in the early 1970s, of the once comparatively attractive Yugoslav approach to socialism, which I believe was the true beginning of the Yugoslav catastrophe, went largely unnoticed abroad. Since it was mostly directed against the liberal elite, the purge did not involve mass persecution of ordinary citizens, who had more rights than the inhabitants of other "socialist" countries, including the all-important right to travel abroad, which enabled many of them to be migrant workers: their income, together with what soon became generous foreign credits, papered up the fundamental economic crisis, which was to re-emerge in the 1980s (Shoup, 129). Accordingly, even human rights organisations had to concentrate on the repression of free opinion and expression, which, again in comparison to the Soviet block, looked politically irrelevant (Anderson, 415).

It is very important to note that, at the time of the gestation of the 1974 Constitution, Communism (in its "real-socialist" version) looked quite alive and well universally and the West was perceived as being in moral, economic and strategic disarray. As a number of selected events will demonstrate, this was the time of the end of the Cold War, which resulted in some grandiose arrangements with the Communists and in increasing relevance of the non-aligned movement.

In 1970, the Soviet Union consolidated its grip on Czechoslovakia and West Germany normalised its relations with Poland by recognising the Oder-Neisse border. In 1971, China became represented at the United Nations by the Beijing government and the Soviet Union and India signed a treaty of friendship and mutual co-operation. In 1972, president Nixon visited China and the Soviet Union and both Germanys recognise one another. In 1973, the Western powers recognise East Germany and West Germany receives Brezhnev, as do the United States and France; West Germany normalises relations with Czechoslovakia and after the Yom Kippur war Arab oil exporting countries declare an oil embargo against the West. In 1974, Willy Brandt had to step down because of the presence of East German spies in his entourage, India exploded its first atomic bomb and president Nixon was forced to resign over the Watergate scandal.

In the light of these events the regime in Yugoslavia had no reason to believe that the prevailing interpretation of Communism was historically doomed and that there was any challenge to the Yugoslav government's comfortable international position as a tolerable socialist entity and one of the leaders of non-alignment, as such, it was furthermore exempt from the anti-Western rage in the developing countries. It was no wonder then, that, faced by the troubles at home, the Titoist old

themselves as such, especially if they could be labeled as nationalists, which made criminal prosecution easier.

guard believed that more of the same was the proper medicine. This meant, in the first place, strengthening "socialism" and the role of the League of Communists and "deepening" self-management. This universal cure sought above all to protect and "deepen" the federal structure of the state.

Finally, Tito's cultural revolution purged the League of Communists of all liberal and pragmatic reformers and gave precedence in all professions to opportunists and poorly educated followers of the official line. At that time, no important influence on state matters was possible outside the party; after 1971 non-party philosophers, political scientists, jurists and economists were after 1971 reduced to virtual non-persons, although, to be sure, physical repression was exceptional. On the other side, there was an army of apologetic hands eager to apply their unimpressive skills in the production of convoluted and long legislative texts and ideological treatises. The tendency was towards anonymity, as was amply confirmed in the 1974 Constitution and the general climate it favoured and created, was towards anonymity. A "name" could only surface in areas most remote from politics: as in many other "socialist" countries this eventually resulted in strange political elites at the outset of post-Communist pluralism, composed of illustrious personalities devoid of political talent and with little experience and skill in handling public matters.

The 1971 constitutional amendments and public debates.- The 1974 Constitution cannot be studied in isolation of the preparatory work undertaken already in 1971 in the form of amendments to the 1963 Constitution. Draft amendments were formulated early in 1971 and, as usual, put on "public debate". This invitation was accepted in good faith in some intellectual quarters, with results reminiscent of Mao's "thousand flowers" campaign. One of the liveliest discussions was held at the University of Belgrade and resulted in the arrest and sentencing of one professor of law, outright dismissal of several other members of the Faculty of Law with still others being relieved of teaching assignments. The issue of the Faculty journal containing the papers and the summary of the discussion was banned and destroyed¹⁵. This was a clear indication that the intentions of the authorities were anti-liberal and anti-democratic but, in spite of some participants in the debate having been labelled as nationalists, repression was not clearly (or only) anti-nationalist.

The amendments were perceived by liberal critics as further complicating the political process with the result that decision-making in state organs became all but

¹⁵ A reprint was published in 1990. *Anali Pravnog fakulteta u Beogradu*, 3/1971 (1990)

impossible without the extra-constitutional intervention of the Party and its guidance, which was again formally acknowledged. There had already been a tendency to atomise self-management so as to have it cover only trivial affairs, thus diverting the interest of the population from crucial political issues. Another clear tendency was to weaken the federation in favour of the republics by delegating more power to the legislatures of the latter and by preventing the federal Parliament from making a decision if it is vetoed by the members from a federal unit. This, in addition to the quasi-independence of the autonomous provinces, was again an argument in favour of the further deterioration of the position of Serbs, many of whom believed that the nationalists in Croatia had been compensated for their apparent defeat.

A truly decisive shift was to be observed, generally, in the strengthening of party leadership in the republics and their transformation into semi-independent feuds of the republican Communist elite. This was probably due to the re-instated conservatives being only skin-deep Marxists, abhorring liberal democracy and capitalist entrepreneurs (or, as they called them: "technocrats"), but with weak immunity on nationalism, if it could serve their autocratic ambitions. The thinning ideology created a vacuum that was to be filled by nationalism.

The 1974 Constitution as Law.- After another series of empty public debates (now no one dared sincerely participate) the new Constitution was promulgated on 21 February 1974. It was an unusual, enormously long (406 articles), verbose and confused text, leaving the reader with an irresistible impression that its purpose was rather to hide than to reveal. Nevertheless, it was praised as original and non-legalistic by apologists in Yugoslavia, as well as by some observers abroad (Djordjevic, 12; Zecevic, 5, Flanz, 6). Mystification was intensified by new jargon which was difficult to comprehend in the original Yugoslav versions, and almost impossible to translate¹⁶. The old dogmatic Communist tendency to rename in order to change was brought to its paroxysm¹⁷.

An excursion through the new terms is probably the least tedious way of

¹⁶ I shall be using the valiant translation into English by Marko Pavicic, published in Blaustein, A.P. - G.H. Flanz, *Constitutions of the Countries of the World*, Dobbs Ferry, N.Y.: Oceana, 1986.

¹⁷ After the adoption of the Constitution, "newspeak" permeated all legislation, public discourse and administration. There were no wages and salaries anymore: "working people" had "personal incomes", schools became "educational centers", peasants and farmers were replaced by "agricultural producers", tenants were promoted into "bearers of tenant rights", etc.

introducing this Constitution.

"Delegate" was thus a new term, not only to indicating parliamentary deputies but also members of intermediary "delegations" that elected them after being themselves elected by inferior delegations. This concealed a system of multiple indirect elections, where the population had the chance to choose only at the lowest possible level, whereas the delegates had a fully bound mandate and were easily replaceable if they did not follow the instructions of the delegations (which, naturally were convened only when the Party found it opportune). In its jargon, "delegates were responsible to their delegational basis". Federal decision-making was thus made even more remote than in the past when there was at least an illusion that elections presenting one candidate offered a real choice and that the deputy was answerable to his/her electorate. At the microscopic local level voters were unfamiliar with the names of the proposed candidates for the basic delegations, so that the symbolic presence of slightly more candidates was meaningless. This charade was called the "delegation system" and was praised as a major departure from "bourgeois parliamentarism" towards direct democracy (Lovric, 3; Nikolic).

The inherent inequality of citizens.- The population was divided into the "working class", "working people" and "citizens". "Working class" was not clearly defined but it was there to indicate the source of power (e.g. Art. 1), in accordance with Marxist theory. "Working people" were for all practical purposes men and women employed in state ("socially owned") enterprises and institutions. They were also "citizens", but others were "citizens" only, and could not fully benefit from the electoral process as being outside "self-managing organisations and communities", which, through their particular delegations, sent delegates to the Federal Parliament. Ordinary citizens were theoretically able to act, together with "working people", in "socio-political communities", which was the new name given to territorial units, from the federation to the commune, but their real participation was in "local communities" of their immediate neighbourhood, where their electoral powers ended with the selection of a "delegation". The right to join "socio-political organisations" was reserved to "working people". Such organisations masqueraded as civil society but were firmly controlled by federal statute, which made their creation and activity dependant on the approval of the largest of them all, the Socialist Alliance of the Working People (a successor to the National Front, without even token participation of any political party but the Communists, who were the guiding force in the

Alliance and formally appointed members of the Alliance's leading bodies) (Rozić)¹⁸.

The mystique of self-management.- The Constitution devoted most of its provisions to self-management in the public sector, which was designated as "associated labour" and included all activities performed with "socially owned" (i.e. state) resources. The whole structure was atomised to the extreme. Self-management became fully universal and covered non-economic activities, such as the state administration, schools and theatres. A former enterprise or institution became an "organisation of associated labour" and was divided into several "basic organisations of associate labour", which were supposed to be rounded technological units, but in the frenzy of the implementation of the constitution, became ridiculously minute and artificial, such as e.g. schools cut along classes or groups of subjects, typists representing a separate basic unit from accountancy etc. "Organisations of associated labour" could then further associate in "composite associations of associated labour" (e.g. railways) or co-operate with individuals in "contracting organisations of associated labour". The whole self-management system was protected by "social attorneys of self-management" and "self-management courts".

A conscious effort was made to dislodge the legislative functions from the parliaments and transfer them to self-managing bodies, which, instead of laws created "self-managing agreements", "social compacts" and "inter-republican compacts".

The "classic" political provisions of the Constitution.- In contrast to the self-managing parts of the Constitution, which account for most of its length, which were compounded in 1976 by the still longer accompanying Law on Associated Labour (671 articles!)¹⁹, classical constitutional matters were dealt with less

¹⁸ One of the features of Yugoslav "legal totalitarianism" was the extreme legal obstacles facing the founders of any non-governmental organization. Laws on "associations of citizens", passed in all republics after the adoption of the 1974 Constitution imposed on them a rigid uniform structure, including the duty to have certain unusual organs, such as e.g. boards of self-managing control and councils on general people's defence. Another interesting feature was that all-Yugoslav associations had to be reorganised on a strictly federal basis, with the central organs composed of delegates of republican associations. Municipal administrative organs were the sole judges of compliance with the statutes and have been known to refuse registration or re-registration because of most trivial flaws, such as wrong sequence of provisions or titles of officers not corresponding fully with the the wording of the laws.

¹⁹ Blaustein, A.P - G. H. Flanz, *Constitutions of the Countries of the World*, Supplement, Dobbs Ferry, N.Y.: Oceana, 1979.

mumbo-jumbo and appeared to allow for a better insight into compromises made in the Party leadership. While Kardelj's and his associates' ideas about the ramifications of integral self-management were not opposed by anyone in the Party, either because they were irrelevant to the exercise of real power, or too difficult to follow, or appeared as attractively but innocuously learned and original departures from "bourgeois parliamentarianism", articles relating to the structure of the federation, its competencies and relevant decision-making were easier to understand and became increasingly important as it became obvious that the republican parties gained more independence and that their arrangements should be protected from the intervention of a federal parliament, which could not be relied on to rubber-stamp them, unless the parliament was not an exact replica of the relationships within the League of Communists. It is therefore certain that the important (closed) debate in the supreme quarters of the League was about these matters, and that it was there where some divergence of opinion emerged, denounced as "unacceptable" by Mijalko Todorovic, who introduced the draft as president of the Constitutional Commission but failed to identify the relevant controversies (Todorovic)²⁰.

The principal message was that, in spite of class oratory, the federal state was based on national arrangement, where even nations, originally not considered to be the "titular nations" of Yugoslavia, came to play a full role. The Slavic Moslems, principally inhabiting Bosnia and Herzegovina, had been promoted into a fully fledged Yugoslav people under a religious name in 1971, which was not only a misnomer for the non-religious majority among them, but proved later to have dreadful consequences. Others, like the most numerous Albanians and Hungarians, got a better status under another new euphemism for national minorities, "narodnost", meaningless in Serbo-Croat and poorly translatable into English as "nationality"²¹.

Art. 1 defined the Socialist Federal Republic of Yugoslavia as:

... a federal state having the form of a state community of voluntarily united nations and their Socialist Republics, and of the Socialist Autonomous Provinces of Vojvodina and Kosovo, which are constituent parts of the Socialist Republic of Serbia, based on the power of and self-

²⁰ Todorovic is a Serb.

²¹ The intended meaning was probably closest to the German "Völkerschaft".

management by the working class and all working people; it is at the same time a socialist self-management democratic community of working people and citizens and of nations and nationalities, having equal rights.

Self-determination and secession.- In Art. 3 the republics were referred to as states, based on the "sovereignty of the people" and "... communities of the working people and citizens, and of nations and nationalities having equal rights".

This was a clear indication of a drift to a confederate structure of the Yugoslav federation. The republics were states, but the federation was a "state community", in the context of which, unlike the republics, the term "sovereignty" was not used.

All this was accompanied by an ominous statement, in the Introductory Part of the Constitution:

The nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their will freely expressed in the common struggle of all nations and nationalities in the National Liberation War and Socialist Revolution, and in conformity with their historic aspirations, aware that further consolidation of their brotherhood and unity is in the common interest, have, together with the nationalities with which they live, united in a federal republic of free and equal nations and nationalities and founded a socialist federal community of working people - the Socialist Federal Republic of Yugoslavia... (Basic Principles, I).

Without referring to legalistic squabbles whether the rights to self-determination and secession were or were not "consummated" by the creation of Yugoslavia or by the adoption of this or some other constitution, it should be noted that not only self-determination and secession were legitimised in this, albeit inoperative, part of the Constitution, but that it remained unclear whether the subjects of this right were ethnic nations or peoples in the sense of inhabitants of a state or territory²². Furthermore, did it apply also to "nationalities" (minorities)? The procedure by which these rights were to be materialised was not regulated by

²² The word "narod" conveys both meanings in many Slavonic languages.

the Constitution, nor anywhere else. After 1989, this was a complicating factor of extreme importance. The remaining federal authorities tried to declare the decisions of some republics to secede unconstitutional, but the latter opposed it with the argument that Yugoslavia was dissolving²³. The seceding republics, claimed, however, all the territory which had been theirs as constituent parts of Yugoslavia thus indicating in this respect that they believed "people" to be understood in the territorial sense. This was generally opposed by the Serbs, who maintained that the right to self-determination belonged to ethnic nations, encompassing Serbs in Croatia and Bosnia and Herzegovina²⁴. The mention of "nationalities" was used by some Albanians in Kosovo for claims for a separate republic, independent state or even unification with Albania. The vagueness and incompleteness of the Constitution made the process of secession (or dissolution) even more disorderly, to say the least.

Autonomous provinces and minorities.- The indication that the autonomous provinces were parts of Serbia was meant to appease some Serbian Communists, as was the definition, in Art. 4, of the former not as states, but as "socio-political communities", but this could not conceal the fact that the autonomous provinces were for all practical purposes promoted to the status of fully fledged federal units. According to the same Article, this was the place where nations and nationalities realised their sovereign rights. Furthermore, the Constitution gave a clear indication of the autonomous provinces' participation in federal affairs and their own affairs, while their role within Serbia was envisaged as their facultative participation in the affairs of Serbia without mentioning their subordination to the republic of which they were to be constituent parts. In Art. 3 the autonomous provinces were listed, together with the republics, as constituent parts of Yugoslavia. All this led to the widely accepted designation, by the masters of the jargon, of the autonomous provinces as "elements of the federation" (Fira, 4).

Parity in the federation.- The already existing tendency toward

²³ Cf. the Decisions of the Federal Constitutional Court regarding the constitutions and declarations of independence of some republics adopted in 1991. *Borba*, specijalno izdanje, November 1991, p. 21.

²⁴ Some of these disputes were later brought before the Arbitration Commission of the Conference of Peace in Yugoslavia (the Badinter Commission), which advised that Yugoslavia was engaged in a "process of dissolution" and that Serbs in Bosnia and Herzegovina and Croatia were minorities without the right to self-determination. Opinions No. 1 (1991) and 2 (1992).

confederation was cemented in the provisions of the 1974 Constitution relating to the set-up of the organs of the federation, the decision-making in them and the hierarchy of legislative acts. As in most federations, the federal parliament (the Assembly of SFRY) was bicameral. The chamber representing federal units (Chamber of Republics and Provinces) was composed, as usual in federate states, of an equal number (12) of "delegates" of all republics, elected by their respective assemblies, with the important addition that the autonomous provinces would also be represented, although by a lesser number of representatives (8) (Art. 292). The "lower" chamber (Federal Chamber), which, in federations, normally reflects the size of the populations of the federal units, was constituted according to the same principle: it was to be composed of an equal number (30) of "delegates" from each republic and of 20 representatives from each autonomous province. They were not directly elected by the population, but were the result of the previously mentioned cumbersome "delegation" system, the nominations being controlled by the Socialist Alliance of the Working People (i.e. the local League of Communists (Art. 291)²⁵). This arrangement was criticised both by liberals, who objected to discrimination against more populous federal units, and by most Serbs, who found it to be detrimental to Serbia, as a state in the federation, and to Serbs, the most numerous nation. Fear of Serb domination, traditionally shared by Communists and non-Serb nationalists, was undoubtedly the principal concern²⁶.

Consensus and paralysis in the federal parliament.- The essentially unequal composition of the Federal Chamber had only symbolical significance. The real and fatal flaw of the Constitution was that it prevented any decisions from being adopted if opposed by one federal unit (including the autonomous provinces). The size of its "delegation" was irrelevant in this respect. To begin with, the Chamber of Republics and Provinces was unable to conduct business unless all republican and provincial "delegations", as well as the majority of delegates, were present (Art. 295), which enabled one delegation to formally paralyse the Chamber. Furthermore, highly important statutes and other decisions, such as the adoption of the social plans, regulating the monetary system, the total volume of the budgetary expenditure, ratification of international treaties, and even the Chamber's own rules

²⁵ On the role of the Socialist Alliance see: Rozic.

²⁶ That this was a complaint of the Serbian leadership was demonstrated by the proposals for constitutional amendments stemming from them in 1990 and 1991. A compromise, which would make the number of deputies correspond to the size of the population but within a maximum of 30 and minimum of 10, was however flatly rejected. *Borba*, Specijalno izdanje, November 1991, p. 34.

of its procedure, could be adopted by that Chamber only after it had ensured the "adjustment of stands" of the assemblies of the republics and autonomous provinces (Art. 286), which not only meant long delays but also that, in such cases, the vote in the Chamber was by delegation, and not individual members. This meant that each delegation, including the smaller ones of autonomous provinces, could prevent the decision from being taken (Art. 295). This was a step further from the "distributed majority", which had been introduced by the 1971 amendments, and which had required majorities *within* each delegation (Dimitrijevic 1971). Consequently, in this house of 88 members the only majority possible was 8:0! The grip of the republican and provincial party elites was thus made even stronger: by instructing the whole delegation they destroyed the individuality of the "delegates" and were fully insured against federalist and liberal mavericks or supra-republican alliances.

The result was that in the Chamber of Republics and Provinces there was gradually less and less deliberation. The "delegates" were waiting in the corridors or in the quasi ex-territorial premises of their delegations for the republican and provincial powers to send in their agreements and, if there was no objection, proceeded to confirm them by delegational vote. Debate took place only if some of the less rigid republican or provincial authority had given conditional consent to a decision, allowing for some liberty to its delegation to compromise with others. Even to a casual visitor to the parliament it became abundantly clear that things happened elsewhere.

In Part IV, Chapter I, 3 the Constitution provided for some rules relating to an impasse caused by the lack of consensus of the republics and provinces. It involved new consultations with the federal units, whereupon the Federal Executive Council (the government) could propose to the Presidency to pass a decree on temporary measures, which had to be confirmed by the Chamber of Republics and Provinces, this time by a two-thirds majority of all "delegates" (Art. 301, 302). If such a majority could not be mustered, a simple majority was sufficient for the Presidency itself to adopt a temporary measure, pending the final approval of the statute (Art. 302). Given the composition of the Presidency²⁷ any majorisation by a single nation was excluded.

The Chamber of Republics and Provinces was the more important house of the parliament and was becoming more so as time passed by. Most matters of relevance were either decided by it or with its consent (Art. 286, 288). To be sure, the Federal Chamber had a number of formal competencies that looked important,

²⁷ See *infra*.

such as its right to adopt amendments to the federal constitution, to decide on the alterations of the (external) boundaries of Yugoslavia, to adopt the federal budget or to decide on war and peace. Its other assignments were either outright premisses, such as to "lay down the foundations of the internal and foreign policy" or to "formulate the policy of enforcement of federal statutes or other regulations enacted by it", or trivial items, such as to "discuss reports, opinions and proposals of the Federal Social Attorney of Self-Management" (Art. 285). Even then,

if a bill, draft regulation or draft enactment or any other issue concerning the general issues of a Republic or Autonomous Province, or *the equality of the nations and nationalities* is on the agenda of the Federal Chamber, and if so requested by the majority of delegates from one Republic or Autonomous Province, resort shall be made to a special procedure to consider and adopt such a bill, draft enactment or issue... (Art. 294).

This special procedure was laid down by the rules of procedure and again involved seeking consensus from powers in the republics and provinces. Thus each federal unit or "element of the federation" was at liberty to claim that the issue on the agenda was nationally sensitive and again reduce the lower chamber to a forum for negotiation of practically sovereign states. In the Federal Chamber, consisting of 220 deputies, eleven votes (the majority of the delegates from an autonomous province) were sufficient for that purpose. Nobody had any doubts as to whether the majority of the delegates of one republic or province (there were no formal "delegations", as in the other house) would in fact present the views and attitudes of their mentors who, it should again be stressed, until 1990 belonged to the politburos and central committees of the only existing political parties, that is, the relevant leagues of Communists.

In this light, the whole palaver about the number of deputies was irrelevant, since the true members of both chambers of the Federal Assembly were republican and provincial delegations, each of them, irrespective of its size, able to obstruct work or prevent a decision from being taken. On the other hand, there was no chance for any majority to play a meaningful role: even a larger number of delegations could not outvote a minority therefrom. It was even less likely that this could be achieved by a majority of individual "delegates", who by definition were not independent but fully controlled either by their assemblies or by their

"delegation base" (Art. 291, 296). The only exception was the temporary measures, where a two-thirds majority, or even a simple majority, could play a role, but this was only a theoretical possibility, made dependant on the attitude of the Presidency, which was again constituted on the basis of strict parity.

The Presidency as a negotiating place of constituent states (parties).

There were in fact two versions of the Presidency incorporated in the 1974 Constitution. One was with Tito, another without him. It was fairly obvious that the post of the President of the Republic was created only for Tito who was to be elected "for an unlimited term of office" (Art. 333)²⁸ Given the whole logic of this Constitution, it was inconceivable for a significant federal office to be exercised by an individual, there being no "delegate", or even person, not belonging to a federal unit. People who declared themselves as "Yugoslavs" were not represented anywhere as a group, although, in 1981, they constituted some six percent of the whole population²⁹. The only trusted Yugoslav was Tito, in spite of his Croat and Slovene ethnic origins. While the President of the Republic was there, he was at the same time president of the Presidency (Art. 335). Curiously enough, there was no provision making him a member of that body: in the case of Tito that problem was solved by the fact that the president of the League of Communists of Yugoslavia was an *ex officio* member of the state Presidency (Art. 321) and this was, of course, Josip Broz Tito. Otherwise, the Presidency was equipped to act without the President of the Republic, and this is the only instance in which the Constitution implied that Tito was mortal and that he could not be replaced by anyone. In fact, the relevant Article 321 determined the composition of the Presidency without mentioning the President: in addition to the President of the League of Communists, it consisted of one member from each republic and autonomous province, elected

²⁸ This wording has been sarcastically interpreted to mean that Tito remained President even after having deceased. One of the reasons was that in Slovene, the language of Edvard Kardelj, the notion of a "life term" cannot be expressed without referring to death ("dosmrtni" meaning "until death"). In the 1970's the cult of Tito's personality reached its peak and he was treated as immortal.

²⁹ **Statistički godisnjak Jugoslavije 1988**, Beograd: Savezni zavod za statistiku, 1988, p. 122. Contrary to the prevailing opinion that "Yugoslavism" was promoted by the Communists (e.g. Schöpflin, 186) such allegiance has been discouraged since the late 1960s, which was evidenced from the instructions given to the census-takers (Liebich, 36). Yugoslavs were not a nation, even not a "nationality". It is often forgotten that the first Yugoslavia of 1918 was not created, but opposed, by the Communists. The greatest promotor of supra-national Yugoslavism was King Alexander, a staunch anti-Communist (D. Djordjevic, 316).

by the respective assemblies. After Tito's death Art. 321 was amended to accommodate the abolition of the post of the president of the Party. Amendment IV of 1981 stipulated that the League of Communists would be represented by the president of its organ "specified by the by-laws of the League...", which was a unique case of a constitution of a state explicitly depending on the statutes of a supposedly non-governmental organisation and brought Yugoslavia closer to the African model of one-party state with the important difference that, in Africa, the party has been wider than the state.

Members of the Presidency were not independent. They, as everyone else in the organs of the Federation, were "delegates" of the federal units. This was clear from Art. 324, which implied a very easy way for the assemblies of the federal units to remove "their" representatives from the Presidency, as well as from the provision, in the same article, that members of the Presidency would, in case of incapacity, be deputised by the presidents of the collective heads (presidencies) of the republics or autonomous provinces. On the other hand, there was no control by the organs of the federation over the composition of the Presidency. Its members could not be impeached in any manner. This became fully clear at the height of the crisis, when the Serbian-controlled group of the members of that body tried unsuccessfully to prevent the new member, Stipe Mesic, delegated by the non-Communist and nationalist majority in the Assembly of Croatia, from becoming its chairman according to annual rotation. Members of that body rotated as chairmen not on the basis of any personal criteria but, as in the Security Council, depending on the alphabetical order of the republics and provinces (Art. 327 in conjunction with the Rules of Procedure of the Presidency of 1975³⁰).

In the context of the Presidency there was not even token differentiation within the republics and the autonomous provinces: each had one full member, with automatic entitlement to be Chairman. This went further in making Serbia equal with the autonomous provinces, nominally its constituent parts. Sinan Hasani, member of the Albanian minority, representing Kosovo in the Presidency, thus acted as its Chairman in 1986-1987, a phenomenon experienced in already nationally agitated Serbia as humiliation.

Autonomous but ineffective executive: the Federal Executive Council (government).- The only federal organ which was not based on strict parity was the government, i.e. the Federal Executive Council. Its President, elected jointly by both chambers of the Federal Assembly, was by necessity an individual from a

³⁰ Sluzbeni list SFRJ, 6/1975.

federal unit and he was under the obligation to observe "the principle of equal representation of the Republics and corresponding representation of the Autonomous Provinces" in nominating members of the Council, who had to be approved by the Assembly (Art. 348). For a long period, the candidate for the President of the Council had been determined by the top of the hierarchy of the federal League of Communists and was known long before the indirect elections for the Federal Assembly even started. As a rule, the new "prime minister" was not from the same republic as the preceding one, but the rotation was not rigid as in other bodies, and was free of ethnic considerations³¹. After the adoption of the 1974 Constitution the Presidents of the Federal Executive Council were Dzemal Bijedic, a Moslem from Bosnia-Herzegovina, Veselin Djuranovic, a Montenegrin, Milka Planinc, a Croat from Croatia, Branko Mikulic, a Croat from Bosnia and Herzegovina, and Ante Markovic, a Croat from Croatia.

The Federal Executive Council was heavily constrained by other federal bodies and the republics and autonomous provinces (Art. 352-362), as witnessed by its frequent failure, especially in the last years of the existence of Yugoslavia, to have its draft statutes adopted by the Assembly or to effect meaningful change. Constitutional limitations were compounded by the unwritten rule of every Communist system whereby it is the task of the government is to deal predominantly with the economy, leaving essential political matters, including foreign policy, to the party or the head of state. Nevertheless, some opportunities for initiative and action were there, which paradoxically have increased with the intensification of inter-republican and inter-national squabbling. The last "prime minister", assisted by a number of federally minded colleagues in his cabinet, was probably the most enterprising: mainly through government decrees an important economic reform was successfully introduced in 1989. He was soon to realise that he had no true political backing in the existing set-up: his unsuccessful attempts to create an independent political basis amongst the population do not belong to constitutional history, except as a reminder that federal units (Serbia and Slovenia, in the first place) refused to back a constitutional amendment, proposed by the Federal Executive Council and adopted by the existing Assembly on 8 October 1990, which would have permitted direct elections for the Federal Chamber of the

³¹ In practice, special attention was given to the distribution of the posts of greatest political significance. Thus, as a rule, the Presidents of the Presidium of the League of Communists, of the Federal Assembly, the Presidency and the Federal Executive Council should not have been of the same nationality at the same time.

Federal Assembly³².

The allegedly crucial question: which nation was the most disadvantaged? There is a general impression that it was the Serbs who have been most frustrated by the symmetrical consensual set-up described above. This belief is based on the prevailing assumption that the Serbs identified themselves with the federal state in order to dominate it, as they did before 1941, and due to vociferous complaints of the Serb nationalist elite³³. Closer scrutiny of the legal terms of the 1974 Constitution reveal that, *per se*, it further weakened the federation through its confederate elements, but that it was not necessary disadvantageous to the Serbs under all circumstances. This rather depended on the play of political forces, which gave substance to constitutional provisions. The best example was the partition of the Serb people into several federal units with the over-representation of the autonomous provinces. In the original Titoist political climate, which prevailed for quite some time after Tito's death, this in fact meant that only Serbia proper would be represented by "true" Serbs, and Montenegro by those who believed to be more Montenegrin than Serb, Kosovo by the Albanian majority and Vojvodina, if not by Hungarians or members of another minority, by an "autonomist", nationally unreliable Serb³⁴.

From another perspective, the proliferation of "Serb" federal units offered a chance to the Serbs, or the leagues of Communists dominated by them, to appear in the organs of the federation under various hats. This opportunity was in fact seized by the populists around Slobodan Milosevic, who, in the wake of their "anti-bureaucratic revolution" deposed the leadership of the leagues of Communists in Montenegro, Vojvodina and Kosovo and replaced them with persons loyal to the League of Communists of Serbia and its paramount leader (Pestic, 49). This had happened before political pluralism was gradually introduced in 1990 and, as a matter of course, resulted in changes in the supreme state organs of Montenegro and

³² Proposed Amendment LXV. *Borba*, specijalno izdanje, November 1991, p. 29.

³³ The text to which most authors refer is the controversial "Memorandum of the Serbian Academy of Sciences and Arts" of 1985. It cannot be quoted, however, since it has never been published by the Academy itself and has repeatedly been disowned by its officers, who have maintained that it was only a leaked draft of a working group. Several versions are in circulation, some of them published in periodicals.

³⁴ Autonomist ("autonomas") became a frequently used invective in the late 1980s for those Serbs favouring strong autonomy of the Province of Vojvodina.

the autonomous provinces and in the replacement of their representatives in federal organs. At the peak of the crisis, the regime of Milosevic thus controlled four out of eight members of the federal Presidency, 100 deputies in the 220 member Federal Chamber and 40 "delegates" in the Chamber of Republics and Provinces of 88 members (four of eight delegations).

This was not sufficient for a majority, but it resulted in deadlock. Because of the built-in consensual decision-making, even the majority would not be sufficient for any kind of domination. Nevertheless, this was another reason or excuse for the (now mostly non-Communist) regimes in Croatia and Slovenia to opt out of the federation, after which other non-Serb entities reluctantly followed suit, not from fear of Serb constitutional domination but disturbed by the fierce nationalist rhetoric of the recycled dogmatic Communists who came to represent Serbia and the Serbs.

The constitutional arrangement in Serbia.- This is not to deny that Serbia, according to its own Constitution, adopted in accordance with the federal Constitution, was not itself in an abnormal constitutional situation. Suffice it to say that Serbia proper ("Serbia outside the autonomous provinces"³⁵) had no organs of its own but was governed by the all-Serbian Assembly, Presidency and Executive Council and Court, where both autonomous provinces were guaranteed influential representation. These organs had no jurisdiction in the autonomous provinces, which had their assemblies, presidencies and governments and supreme courts. In some important matters, such as social planning, defence and education, legislation was possible only on the basis of the consensus of the supposedly Serbian legislator and the legislatures of the autonomous provinces with the result that some indispensable Serbian statutes have not been enacted until the very end of Yugoslavia or, to be more precise, until the League of Communists of Serbia under the new populist leadership removed the party elite in the provinces and then proceeded to abolish their autonomy by unilateral acts of the all-Serbian legislature, which they now controlled.

Liberal and dogmatic "Yugoslavism": the government and the army.- Only the Federal Executive Council remained basically unchanged, creating the illusion that the crisis could be overcome by the actions of this only truly remaining Yugoslav body. It soon became clear that the government was powerless without the loyalty of the army. But the Yugoslav People's Army was never able to forget

³⁵ Commonly ridiculed as "Serbia beside itself".

its late Commander-in-Chief, and was never comfortable with his replacement by a collective Presidency, which after 1990 came to include non-Communists. The "technocratic" reformers in the Federal Executive Council, bent on privatisation and pluralism, looked utterly unreliable. The military used the constitutional stalemate to elevate its "Staff of the Supreme Command", a body neither recognised by the Constitution nor laws, to the position whereby it applied their own criteria as to the trustworthiness and "political correctness" of individual members of the Presidency and the Federal Executive Council (Kadijevic, 6, 109). In fact, this was a natural attempt of the army to make the formal constitution correspond to the reality of the party state. Namely, in the real centres of power the army had been the "ninth federal unit": its personnel was organised in a separate system of the League of Communists, not submitted to any republican party but corresponding directly with the federal League, in the organs of which the organisation of the League in JNA had its independent representation.

As the last bastion of Titoism and conservative Communist orthodoxy, the army top brass eventually joined Milosevic and his clients, not because, as has often been suggested, the majority of the officer corps were Serbs and Montenegrins, but for reasons of ideological propinquity. The leading generals in 1990 to 1992 were later retired by the now openly nationalist authorities of the new Federal Republic of Yugoslavia. None of them is now active as a declared Serb nationalist while most deplore the fall of Communism, in the USSR and elsewhere. Their extreme distaste of the leaders of Serbian non-Communist nationalist political parties is indicative: somewhat simplified here, it could be said that they did not side with the Serb leadership because they were Serbs, and because the glory or the interests of the Serb nation were their supreme considerations, but because the Serbs "objectively" (to use a favourite Communist expression) were on the side of socialism. Had the Communist party prevailed in some other republic, and not in Serbia, it is quite conceivable that many of them would have led the Army in another direction³⁶.

³⁶ For a considerable period Milosevic was actively protecting the cult of Tito's personality primarily to please the Army (Pestic, 48-49). The memoirs of the last federal Minister of Defence, Veljko Kadijevic (born in Croatia of mixed Serbo-Croat parenthood), who was also the Head of the Staff of the Supreme Command in 1990 and 1991, are extremely revealing (Kadijevic). In 1993 he still remains convinced that the collapse of Yugoslavia was the result of a devilish plot of the "actors of the new international order ... Bush's administration and Germany" (p. 7), that "the destruction of the regime in Yugoslavia was only a segment of the unified plan to topple all 'Communist' regimes in the world, above all the Soviet Union" (p. 31), Gorbachev was a traitor who led the way to "classical restoration of capitalism" in all former socialist countries, with

The hierarchy of federal and state norms.- Inherent confederalism was to be observed in the 1974 Constitution in many other areas, the most important of them being the hierarchy of federal and republican (provincial) norms. There was an interesting message to be gleaned from the wording of the Constitution, insofar as Article 207 states that the acts of the federal authorities had to be "in conformity" with the federal Constitution and federal statutes, which applied also to "socio-political communities" and "organisations of associated labour" (Art. 206), but not to constitutions and other acts of the republics and provinces, which should only "not be contrary" to the federal Constitution and statutes (Art. 206, 207). This distinction which had wide implications, since it made it possible to argue about the extent to which departure from federal norms without crossing the threshold of "contrariness" was tolerable.

However, even if a republican or provincial statute was contrary to the federal law, the inferior, republican statute had to be temporarily applied pending decision by the constitutional court (Art. 207). According to Art. 384, in such cases the Federal Constitutional Court could rule that the inferior statute was contrary to the federal one, but this ruling was without immediate effect: it had to be submitted to the relevant assembly, which had up to one year to remove what was contradictory in the statute. Failing this, the Constitutional Court had to declare that the contested statute ceased to be valid.

Another growing problem was related to the administrative action necessary for implementing federal statutes (Kambovski, 3). Except in the limited field of the competencies of the federal administration, this was to be done by the administrations of the federal units, which frequently failed to act. The problem gained such proportions that in 1990 a constitutional amendment was introduced to deal with such cases: the Federal Executive Council was to be empowered to undertake necessary action, after the republican or provincial executive had been alerted but again had failed to act. The amendment was not approved by the federal units³⁷.

The misery of human rights.- Republics and autonomous provinces thus became very powerful states. If it was not the federation, what was their counterweight? For the drafters of the Constitution, this was the dim experiment

China remaining the only hope (p. 55). In the Federal Executive Council, of which he was formally a member, Kadrijevic trusted only the minister of the interior, a retired general (p. 109).

³⁷ Amendment LXX. *Borba*, specijalno izdanje, November 1991, p. 30.

with decentralised "associated labour". Their Marxist-Leninist upbringing forbade them from looking toward the individual and his/her rights. Chapter III of the Constitution, devoted to "the freedoms, rights and duties of the citizen" mostly repeated the unsatisfactory provisions of the 1963 Constitution, together with its inherent repugnance towards "bourgeois individualism", reflected in the incessant reminders of duties, solidarity, socialist community etc. and in unusual order of the rights, with the economic rights close to self-management at the top. The only novelty was the "inalienable right to self-management", which was defined in terms of the new *langue de bois*:

(It) enables each individual to decide on his personal and common interests in an organisation of associated labour, local community, self-managing communities of interest or other self-managing organisation or community and socio-political community, and in all other forms of their self-management integration and mutual linkage.

Each individual shall be responsible for self-management decision making and the implementation of decisions (Art. 155).

Even this inspired vagueness had to be coupled with a "socialist" duty:

Everyone shall be bound conscientiously and in the interest of socialist society based on self-management to exercise self-management, public and other social functions vested in him (Art. 158).

As in other "socialist" constitutions, traditional human rights were granted only grudgingly and generally submitted to a restrictive socialist *ordre public* (Dimitrijevic 1990, 73). Thus, for instance, the freedoms of the press, of public expression, of association, of speech, of gathering and of public assembly were lumped together in a short sentence of Art. 167, coupled immediately with the duty of the media "to inform the public truthfully and objectively" (Art. 168), which was then the "constitutional basis" of criminal law and practice prosecuting "false information", "the disquieting of the public", and, most famous of all them,

"inimical propaganda"³⁸ All rights listed in the Constitution were, in spite of the use of the word, "guaranteed" only conditionally and were made wholly dependent on simple statutes and haunted by the typically "socialist" obsession with the prevention of "abuse" of human rights:

No one may use the freedoms and rights established by the present Constitution in order to disrupt the foundations of the socialist self-management democratic order established by present Constitution, to endanger the independence of the country, violate the freedoms and rights of men and the citizen guaranteed by the present Constitution, endanger peace and equality in international co-operation, stir up national, racial or religious hatred or intolerance or abet the commission of criminal offences, nor may these freedoms be used in a way which offends public morals. It shall be specified by statute in what cases and under what conditions the use of these freedoms in a way contrary to the present Constitution will entail restriction or a ban on their use (Art. 203).

The most disquieting feature of this part of the Constitution was in what it failed to provide, in spite of the fact that in 1974 Yugoslavia was a party to both International Covenants on Human Rights and an impressive number of other international treaties (Dimitrijevic 1987). The best testimony to what was missing and incomplete in the 1974 Constitution's "bill of rights" was to be found in the draft Amendment LX thereto, adopted by the Federal Assembly in October 1990, but never ratified by the republics and provinces. Its drafters found it necessary to suggest improvements to the principle of non-discrimination (which conspicuously allowed for discrimination on the basis of political opinion), to ban torture, to safeguard privacy and protect personal data, to fully guarantee the freedom of conscience and religion, to establish the right to organise in political parties, to safeguard trade union rights, including the right to strike and collective bargaining and to secure just income from work for "everyone", and not only to "working people"³⁹.

³⁸ On this see the symposium volume *Misao, rec, kazna* (Thought, Word, Punishment), Beograd: Institut za kriminoloska i socioloska istrazivanja, 1989.

³⁹ *Borba*, specijalno izdanje, November 1991, p. 29.

Conclusion: the 1974 Constitution as a piece of constitution-making.- If the 1974 Constitution was to be taken seriously, as a transparent normative act reflecting reality and being truly and conscientiously implemented and implementable, the following observations would have to be made about its main characteristics:

- it further weakened the federation by paralysing the decision-making process and removing real authority of federal decisions;
- it promoted the federal units into sovereign states and the only real centres of power: the federation was run by their consensus;
- in the form of autonomous provinces, it tolerated a duality of two federal units, which at the same time were constituent parts of another federal unit (equal and subordinate);
- as a check on state power, concentrated in the federal units, it attempted to create a parallel social system of autonomous self-management, atomised and incomprehensible, and as such unable to influence political decision-making;
- it created an artificial division of the population into "working people" and "citizens" and deprived all of them of a right to vote, except at the lowest level of government and "self-management";
- it totally neglected the individual by denying and restricting his/her rights and allowing him/her to act only within the framework of a collectivity, as a part thereof and fully controlled by it;
- it did not leave room for political pluralism⁴⁰ by preventing the creation of any political organisation which was not a "socio-political organisation" controlled by the League of Communists, the leading role of which, together with its transmission, the Socialist Alliance, was constitutionally recognised;
- in addition to its inherently illiberal spirit, manifested in some of the previously mentioned features, it was openly undemocratic in that it allowed political discrimination and assured the League of Communists the right to nominate all candidates for office and to appoint its own representatives as members of the Federal Assembly and Presidency;
- it included the provision for a president-for-life, applicable only to one person;
- in the sensitive field of inter-national relationship, it provided for the right to self-determination and secession without however envisaging the corresponding procedure;

⁴⁰ According to Kardelj, this was to be substituted by the depoliticized "pluralism of self-management interests" (Kardelj, 112).

- it made constitutional changes impossible, except by some kind of international (confederate) agreement.

True conclusion: the 1974 Constitution as a monument to pseudo-ideology, false legitimacy and bombast mediocrity.- To rest on the above conclusions would be highly unrealistic and naive and would fail to make the most important point, namely that the 1974 SFRY Constitution was an ornamental peace of rhetoric, a justification for dictatorial (largely totalitarian) rule and that its main deficiency, which became quite apparent in the late 1980s, was that it was not meant as a supreme legal and political text and not intended to be seriously put to practice in the political sphere and impossible to implement in other fields. The incisive remarks of Lidija Basta-Posavec, made in regard to the new Constitution of Serbia (1990) remain pertinent in relation to the 1974 Yugoslav Constitution and, for that matter, to any Communist-inspired constitution:

... the powerholders ... have consciously foregone their own constitutional legitimacy, remaining consistent in the instrumentalisation of law, that is in an a priori disparaging attitude to institutions from the standpoint of real political decisions, the people who made them and their content. Institutions are irrelevant as the constitutional area of the decision-making process. Their role amounts merely to achieving subsequent legalisation for decisions (...) Therefore, constitutional principles and institutions are important insofar as they will allow political decisions of the first rank concerning constitutional matters to be made outside of the constitutional system (Basta-Posavec, 110).

A proper description of the "outside" can be provided only by detailed analysis of the real structure of power in Yugoslavia and its evolution after 1974, which went on independent of the Constitution but gave it political meaning at any given time or exposed it as a totally irrelevant document. Such an analysis is outside the limits of this chapter, but some essential indications should nevertheless be made.

In spite of its official styles Yugoslavia has in fact never been a true federation. Even with the 1974 Constitution it was, until the death of Tito a unitary state governed by its centralised Communist Party. Top party officials, and above

all Tito, were able to make the most important decisions and enforce them, regardless of the statutes of the party, not to speak of the constitution. Party members were submitted to the strict discipline of "democratic centralism" and were removable by the decision of the superior party organs, which was obeyed even if it violated the constitution and laws and could always take the shape of "resignation". This is not to say that the party itself was devoid of inner infighting and struggle for positions (and the ear of the supreme leader), but this took place according to the murky rules of the game, which had nothing to do with the constitution and laws.

The 1974 Constitution came at a moment when the party structures, cadres and morale started to decay owing to prolonged possession of absolute power. The majority of members and functionaries belonged to opportunist careerists, who gradually forgot the Marxist origin of their philosophy and, faced with the lack of enthusiasm in the population, started to seek for sources of support and legitimacy which for them were more comprehensible and natural. By necessity, these sources were parochial and provincial with an easy tendency to become nationalist. This was to be countered by the largely artificial constructions of integral self-management, but they were not supportive of any broader unity, relying as they were on minuscule "basic associations of associated labour", which could not resist the meddling of party committees and secretaries, from the municipal to the highest levels.

In respect of its handling of ethnic matters, the political system in Yugoslavia, behind its constitutional *façade*, was that of consociationalism, to use the taxonomy of McGarry and O'Leary (McGarry and O'Leary, 35). However, as correctly observed by Schöpflin, "consociational arrangements were never formalised, and with the demise of the party there were no institutional mechanisms to establish democratic consociationalism" (Schöpflin, 182). The 1974 Constitution, as well as all others, failed to provide them, even as a fall-back position.

When Tito disappeared, both as commander and arbitrator, the system of "necrocracy" (Prodanovic, 56) continued to function for an amazingly long time, even morbidly pretending that he was still alive (Schöpflin, 190). Inertia was strong enough to overshadow serious economic problems (when the bill for the borrowed life of luxury in the 1970s had to be footed) and ethnic unrest (especially in Kosovo). With the departure of the few stronger Partisan personalities⁴¹ the party was governed by conservative non-entities who had been recalled by Tito from retirement, in conjunction with the obedient apparatchiks who had replaced the

⁴¹ Apart from Kardelj, the most important was Vladimir Bakarić, a Croat.

liberals and technocrats ten years before and had been promoted on the basis of the criteria of obedience and faithful repetition of current slogans. This "negative" selection produced power hungry but insecure personalities, who, in search of legitimation, became the first converts to populist nationalism, in fact its leaders (Denitch, XV). Even the politically and administratively gifted party cadres, especially if they were young, realised then that they had no future outside the nationalist context.

"Perestroika" and "glasnost" in the Soviet Union and the collapse of the Communist empire came too late to boost the reformers in the Yugoslav League of Communists who believed that democracy and pluralism was the solution. By then, nationalism had become the only conceivable remedy to Communism in Yugoslavia: being a "Communist creation", roared the nationalists, this state had to disappear⁴².

One can only speculate as to what extent the 1974 Constitution was responsible for the collapse of the federal state and the non-viability of the democratic option. The safest answer is that it could not save something that did not exist. The Constitution itself had made it possible for the real government to change directly from a unitary party state to the confederation of party states. As for democracy, the 1974 Constitution did not contain any, neither did it pay any respect to human rights, which made it easier for most of the successor states to start their life with problematic human rights law and still more problematic human rights practice.

The 1974 Constitution was a reflection of its time. Given the internal and international situation and the background of its drafters, it could not have been different. The saddest conclusion, however, must be that these factors combined to produce a genre of constitutional experts, political scientists and jurists who do not seem to have made any effort to provide constitutional solutions for real political difficulties, to secure alternative decision-making in the case of the failure of the party system and thus, not to save Yugoslavia if it was not wanted, but provide for reasonable transition into explicitly confederate arrangements, peaceful dissolution or separation of the constituent units. For the creators of the 1974 Constitution, real difficulties were not the worst case scenario: they were unthinkable. They were whistling in the oblivion of self-management.

⁴² This seems to have become common knowledge amongst foreign instant experts on Yugoslavia, too. It disregards the existence of pre-World War II non-Communist Yugoslavia and fails to provide a convincing criterion, apart from multi-nationality, for the alleged artificiality of the Yugoslav state. For a critique, see Anderson, 386 and Ramet, 80.

At the same time, several years after Tito's death, the Yugoslav, "milder" version of totalitarian rule was decaying. The Constitution was possibly an unconscious regulation of that decay, but its natural consequences could not be averted. Alexander Motyl's diagnosis of the dissolution of the Soviet Union can be applied to Yugoslavia:

Das Funktionieren des Systems hing aber von der langfristigen Lebensfähigkeit des Totalitarismus ab; sobald er zu zerbröckeln begann, betätigten sich die nationalen Kader als national gesinnte Führungsschichten und begannen ihre Bürger für die Interessen der Republiken und gegen das Zentrum zu mobilisieren. Klugerweise verwendeten sie die Argumentation und die Logik des Selbstbestimmungsrechtes, ein schon lange Jahre vom Westen zelebriertes Prinzip, wodurch natürlich sowohl der Nationalismus als auch der Chauvinismus gefördert wurden (Motyl, 236).

Communist rule in Yugoslavia proved not only to be self-destructive but in that process it also destroyed the Yugoslav state. It had been retained against the odds until the Nazi occupation in 1941. Hence, it is not surprising, after all, that a fragile experiment on multinationality in Europe could not stand up to the onslaughts of two great totalitarian ideologies.

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