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THE PUZZLE OF YUGOSLAVIA

1. INTRODUCTION

Yugoslavia has always been a puzzle composed of various parts. The country of the South Slavs emerged after World War I under the name Kingdom of Serbs, Croats and Slovenes, forged in those days to fit the requirement of the post-war world order—based on the nationality principle. This principle prescribes that each and every nation should form a nation-state. To comply with the rule, the crucial assumption in those days was that Serbs, Croats and Slovenes were one and the same nation. Such a stance left room for doubt, which made uncertain the prospects of the newly created state. Slobodan Jovanović wrote in 1924, in the introduction to his book on the constitutional law of the Kingdom of Serbs, Croats and Slovenes, "The merging of the Serbs and Yugoslavs has just started, so we shall not be able to realise before the elapse of a good number of years whether the process of assimilation will end up in a victory of the Serbdom, or in its fusion with Croatianness and Slovenianness into Yugoslavism" (Jovanović [1924] 1995, 39, translated by author).

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Forty years later French President de Gaulle tackled the same issue talking to his ministers, Louis Joxe and Alain Peyrefitte. The latter recorded the conversation. De Gaulle commented the foundations of Yugoslavia, saying, "Should there be a Yugoslav nation? There is none. There are just pieces of wood that are held together by string" (Branca 2020, 181, translated by author). Considering the two abovementioned stances, an impartial observer would today conclude that on the one hand Jovanović somewhat optimistically envisaged two outcomes of the merger, both of which would preserve the country. On the other hand, de Gaulle spoke of a third possibility, which Jovanović failed to take into account back in 1924: the dismantling of Yugoslavia, which indeed occurred some thirty years after de Gaulle's prophecy. Already in 1964 the French president expressed the view that Tito was the only string holding the pieces together; in his opinion the country could not survive without Tito. (Branca 2020, 181)

Under one name or another Yugoslavia existed for around seventy years, with an interruption during World War II, when the country disappeared as an entity from 1941 to 1944. Historians usually label the two periods—the one preceding and the other following the interruption—as the first and the second Yugoslavia. Throughout the first period the country was a monarchy, while during the second it was a republic. There were remarkable differences in the political regimes during the two periods of Yugoslavia's history. The political elite of the second period and its ideology insisted on these differences and they always wished to emphasize them. For instance, already at the time of formation of the second Yugoslavia, in December 1944, Ivan Ribar, a pre-war democratic politician who had joined the Titoist national liberation movement, claimed that old Yugoslavia was no more (see Konstantinović 1998, 485). Such a resolute stance—which was subsequently adopted by the political regime and its official ideology in the second Yugoslavia—was exaggerated in many aspects. There were considerable elements of continuity between the social situation in Yugoslavia before and after World War II. Above all, the multi-ethnic character of the country strongly influenced the political settlements and the decisive moves of its authorities and political elites. One could even claim that the country could not survive due to the problems and deficiencies it had faced from its very beginning and foundation.

The editors of the volume that is reviewed in this article took a realistic stance towards Yugoslavia as an object of scientific study. In their opinion the lapse of a century since its foundation provided solid grounds for an impartial study of its history ("*sine ira et studio*", page 7). To this main stance the editors added a limit, by restricting the scope of study to the period of

the first Yugoslavia, and more precisely to the period from 1918 to 1939, thus excluding the last two years of its existence (page 12).

The volume is composed of fifteen articles presented by fifteen authors. One of the authors has two contributions, while one of the articles was co-authored. The editors did not want to group contributors' papers in sections and introduce titles of sections in the book. Each article represents a separate chapter. That is why it is the task for reader to identify parts of the volume focusing on different topics. It seems to this reviewer that two main themes have been treated in the book. One could be labelled as institutions (Section 2), whereas the other concerned the formation of the state and its fundamental structure (Section 3).

2. INSTITUTIONS

2.1. The Approach to the Issue

The first state of South Slavs comprised territories that had previously belonged to three independent states and been subject to different legal regimes. Their institutions were varied, so the unification of law was the primordial task of the government of the newly founded state. The need for unification was present in crucial areas of law—private, criminal, administrative—and the endeavour to provide unification of law encompassed all these areas, without being limited to them. The unification of law was not distinguished only by the task to introduce institutions that would enable equality before the law and prosperity of the citizens, but also by its method. It was combined with the idea of modernisation and in fact represented an effort to achieve unification of law while modernising the institutions that the state inherited in its constituent parts. Sources of inspiration and institutional models in such an ambitious enterprise were sought in comparative law and in the latest legal theory. This should be pointed out in order to underline the difference in approach to the issue by the elites during the two periods of Yugoslavia's history. In its second period the institutions were for the most part subject to experiments conducted by the government. That was especially the case in the 1950s (Popović 2003, 43–45).

The huge and quite complex activity undertaken by the authorities of the new state, since its foundation, yielded fruits of different kinds. In certain areas of law, as shown by the contributors to this volume, it resulted in success. In others the efforts failed, while in others still—the outcome was between success and failure.

2.2. Successful Modernisation

Successful modernisation was achieved in many fields, concurrently with the unification of law. The authors who contributed to this volume treated the examples of administrative law, monetary union, tax law, criminal procedure, as well as the area of law of negotiable instruments.

The unification of administrative law was one of the greatest achievements of the entire process of modernisation, by way of adopting uniform legislation for the country. This included the administrative jurisdiction, for which new legislation was adopted in the 1920s and the General Administrative Procedure Act of 1930 (Davinić, 152–153).[1] There were solid grounds for such an outcome of the unification efforts: on the one hand the Austrian administrative law had applied in the western parts of the newly created kingdom, and on the other, the Serbian pre-war administrative law had been influenced by Austrian and French administrative law, both of which were among the most developed in Europe.

The monetary union was established already in 1923, because the authorities were urged to do so by the requirements of businesspeople and commerce. It was based on the dinar, the currency of the pre-war Kingdom of Serbia and the exchange of the former Austro-Hungarian currency was carried out at a rate laid down in legislation. The focal point of the reform was the exchange rate. It favoured the dinar and was subject to criticism by Croatian politicians and economic experts. The author of the paper in this volume undertook to demonstrate that the exchange rate was fairly balanced (Begović, 465–469). The author also insisted on the fact that the monetary union was a pattern followed by nation-states in Europe at the time when such a union was introduced in the Kingdom of Serbs, Croats and Slovenes (Begović, 482). In other words, the model that was adopted stemmed from comparative law.

The unification of the tax law of the newly created state was by no means an easy task. Four different systems of direct taxes existed on its territory at the moment that the state was founded (Popović, 391–392). The authorities had to resolve simultaneously the budgetary, tax and currency issues—a fact which rendered the unification of tax law complex and difficult. However, the new legislation on direct taxes was adopted in 1928 (Popović, 387 and 404). The social elite endeavoured to introduce reforms that aimed to modernise the country and bring it closer to the developed countries (Popović, 433).

[1] References to the specific contributions by the authors will be given in the text, reproducing neither the title of the book nor the one of the chapter—only the relevant pages of the volume reviewed.

The unification of the law of negotiable instruments was facilitated by existing international regulations in this area. The legislation concerning promissory notes and cheques was unified towards the end of the 1920s, following inspiration from international law (Radović, 316).

Another area of law to show a successful outcome—as far as the modernisation through uniform legislation is concerned—was the criminal procedure, which was given new legislation at the beginning of the king's dictatorship in 1929 (Ilić, 129). The author who dealt with the issue primarily paid attention to the organisation of the courts, which was regulated at the same time. The author's criticism of the organisation of the courts is based on the fact that there was insufficient independence of judges. It did not prevent him, however, from underlining the fact that the intentions of the reformers were noble and tended to follow the examples of modern European states, particularly the Austrian model (Ilić, 133–134).

It is nevertheless necessary at this point to put forward the fact that the editors of the volume failed to address the topic of the unification of criminal law, which was also an achievement within the framework of the modernisation process. That area of law was codified in 1929 and its codification was laid down on the basis of modern criminal law principles and institutions (Mirković 2017, 245). Regretfully, the editors did not find an author to contribute to the volume a paper on this important subject.

Another example of success was the formation of the joint armed forces of the newly founded state. Even before the adoption of the relevant legislation in 1923, the authorities managed to merge the officer corps of the armies that had previously been engaged in hostilities during World War I (Bjelajac, 181–182). Considering the circumstances, the formation of functional joint armed forces of the new state was a tremendous success.

2.3. Failures

It has become a commonplace to claim that the first Yugoslavia failed to codify the private law and make it uniform for the entire country. Nonetheless, two remarks to this statement are necessary. Firstly, it was by no means easy to proceed with the introduction of a uniform legislation in that area of law because of the complexity of the social circumstances. Diverse regimes of private law had existed in different parts of the territory of the new country prior to World War I. Moreover, the diversity relied to a considerable extent on different traditions, which were rooted in religion. Christians lived together with Muslims in many parts of the country, and the religious laws applied to the adherents of respective denominations in some areas, e.g. matrimonial and inheritance law. Secondly, even after World War

II and the socialist revolution—which abolished the religious influence in civil matters—the second Yugoslavia also failed to codify the area of private law. Notably, the second period of the history of Yugoslavia was considerably longer than the first: it lasted more than forty-five years, whereas the first lasted less than twenty-three.

The efforts aimed at codification of private law almost coincided with the formation of the Kingdom of Serbs, Croats and Slovenes. As early as 1919, the Ministry of Justice formed a permanent council composed of experts whose task was to prepare a civil code (Mirković, 271). The experts were from Belgrade, Zagreb and Ljubljana, representing the three constituent ethnic groups in the country. Their work went slowly and ended up in producing a draft civil code (Predosnova Građanskog Zakonika) only in 1934 (Mirković, 280). The draft was predominantly based on the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB), which in the nineteenth century had been the model for the Serbian Civil Code (Srpski gradjanski zakonik – SGZ). Such similarity of sources however was insufficient to speed up the drafting process. Discussions of the 1934 draft civil code were still ongoing in 1941, when Yugoslavia was occupied by Germany and its allies.

Apart from the efforts made in the area of private law, two other attempts at unification of law can ultimately be labeled as failures, although they indeed incorporated elements of success. They concern the areas of commercial law (except for the negotiable instruments), and the land registry law.

The destiny of the commercial law is similar to that of the draft civil code. A commercial code consisting of three parts was envisaged by experts and of private law in general. At the moment of country's unification different real estate registry systems were in effect in its different parts. There were huge discrepancies between the land registry that existed in what had been Austria-Hungary, on one side, and the old Turkish title deed system that was still in use in Serbia, on the other. The drafters of the reform legislation were unanimous in the opinion that the land registry system, based on the Austrian model, should be applied in the whole country. Two statutes were adopted in 1930, both of which followed the main idea to apply the land registries as a model throughout Yugoslavia (Kršljanin, 335–336). The greatest problem consisted of carrying out the reform legislation, since it required technical skills, additional field work, and budgetary funding of the relevant activities. Organisational and financial issues occurred in regard to the implementation of the new legislation. The latter for its part was of high quality and neatly adapted to the needs of the citizens and requirements of legal security. The author of the chapter on the reform of the land registries reproached the political elites for their neglect of the issues they considered merely technical in terms of law. She nevertheless praised the quality of the

reform legislation, recommending it as a source of inspiration for future regulations, because the problem persists in Serbia to date (Kršljanin, 376–377).

2.4. Between Success and Failure

There were areas of law in which the efforts to modernise the country by way of introducing new legislation produced an outcome that stood between a success and failure. The examples treated in the book concern the education system, the church state law, and the law regulating the internal conflict of laws.

As for the education system, the author of the relevant chapter pointed out the huge increase in the number of schools and students in the 1930s. In the author's view, this demonstrated a considerable outreach of education to the general population. However, the relevant budgetary investments in this field did not conform with the developments (Dimić, 246). The author also reproached the authorities for the introduction of Yugoslavism by decree, which occurred through the educational system (Dimić, 240).

The chapter in the book dedicated to the church state law during the time of monarchy in Yugoslavia was the only one that was co-authored. Its authors clearly presented the characteristic features of the model chosen for the relations between the state and the religious communities. It relied on the state's religious neutrality, the autonomy of religious denominations and the state's co-operation with them (Rakitić, Đukić, 200). The leading ideas for materialising such notions were that each religious denomination should be regulated by a separate piece of legislation, which would include influence of laymen within the religious community of adherents and clergy (Rakitić, Đukić, 203–206). The legislation that was adopted was inspired by such a general approach to the issue. However, the concordat with the Roman Catholic Church was not adopted in Parliament. The authors of the chapter also provided an overview of the rather complicated system of religious jurisdiction in the country, which existed throughout the period of the first Yugoslavia (Rakitić, Đukić, 208–225). The whole system of the church state law was envisaged to fit the requirement of impartiality in respect of different religions and appropriate balance in religious matters. It was functional and mostly fair, despite the fact that it remained incomplete to a certain extent.

The phenomenon of the internal conflict of laws existed in the first Yugoslavia because of the fragmented legislation in the areas of law in which the unification had failed. This was for the most part the case in private, and especially in marital law. For the sake of specific circumstances, i.e.

fragmented legislation and the application of religious laws, the internal conflict of laws appeared as interregional and also interpersonal. The issue was rather complex because different parts of the country not only had their own private law regulations, but at the same time their own provisions on conflict of laws (Pavić, 262–263). Moreover, the Yugoslav Parliament never passed a piece of legislation in the area of conflict of laws. Judges and practising lawyers dealt with the provisions that were applicable and managed to enable the legal system to function, despite its complexity. This led the author of the chapter to conclude that the existing legal particularism rendered the everyday life of the citizens more difficult, but nevertheless did not provoke the decay and final decline of the first Yugoslavia (Pavić, 264). The reasons for that were related to the country's structural issues.

3. THE ESTABLISHMENT AND FUNDAMENTAL STRUCTURE OF THE STATE

3.1. A Prelude

The country that was established after World War I to encompass all Serbs, Croats and Slovenes was a monarchy, and it was officially named Yugoslavia in 1929. The name was kept on after World War II, when the state was transformed into a republic, and it remained in use till the end, i.e. the breakup of Yugoslavia in the 1990s. The authors who contributed to the volume predominantly treated the formation of the state, and to a lesser extent its structure and territorial organisation. The authors' approach is remarkable because the state structure and territorial organisation were contested from the very beginning. This is due to the specific aspects chosen by the authors to treat their topics and the way that they dealt with the issues discussed in their respective papers. Two main themes can nevertheless be distilled from the contributions presented in the volume; one concerns the formation of the state, and the other, although not outright, its fundamental structure.

3.2. Formation of the State

The formation of the first state of South Slavs, as presented by the authors of the relevant chapters in the book, has at the outset an overall statement that the unity of the South Slavs relied on the wishes of the fragmented Serbian people and subjugated Slavs in an intellectual atmosphere of Yugoslav cultural unity (Dimić, 24). Such a stance has been widespread among Serbs, presented in scholarly papers, as well as an approach in teaching and schoolbooks, and last but not least—among the people at large.

The authors who dealt with the topic of formation of the first Yugoslavia, however, displayed controversies regarding this issue and criticism towards some of the stances that they discussed. The social situation was more complex than it appears at first glance, in the widespread view mentioned above. Notably, on the side of the Croats and Slovenes who lived in Austria-Hungary, one of the motives for embracing the idea of the unity of the South Slavs was the fear of Italian government's claims, aimed at the readjustment of the borders after the war. Such claims backed by U.S. President Wilson's Fourteen Points and they threatened to run counter to Croatian and Slovene interests. On the Serbian side, despite official declarations of war goals, there were hesitations regarding post-war national policy. The all-Serbian unity coincided with the idea of the unity of all South Slavs. Russian politicians and allegedly the Emperor himself, advised the Serbian government to give up the latter and stick to the former, in order to satisfy the Serbian national interests (Milisavljević, 52). The hesitations of the Serbian politicians became accentuated when the October Revolution broke out in Russia. Serbia seemed to have abandoned the idea of South Slavic unity towards the end of 1917 (Dimić, 38; Milisavljević, 52).

The concept of South Slav unity nevertheless prevailed at the end of World War I, and the unification of the country and the formation of the Kingdom of Serbs, Croats and Slovenes took place on 1 December 1918. The new kingdom emerged by way of proclamation of the union made by the Serbian regent, who was the crown prince. To meet the requirements of the political mainstream in international relations, the act of unification was performed as an expression of national self-determination. The Serbs, Croats and Slovenes were assumed to represent three tribes of one and the same nation of South Slavs (Dimić, 42; Zdravković, 77; Marinković, 106).

3.3. State Structure

The assumption of national unity of the South Slavs eventually led to the creation of a unitary state. Its foundations were laid down by the 1921 Constitution (Zdravković, 85–86). The unitary form of state was mostly favoured by the Serbian politicians and provoked discontent among the Croatian intellectual and political elite (Milisavljević, 54). However, the territorial organisation and structure of the newly created Kingdom of Serbs, Croats and Slovenes led to controversy and discussions on the Serbian side too. Before the adoption of the 1921 Constitution there voices could be heard among the Serbs advocating a complex and more sophisticated structure for the new born state. Politicians such as Stojan Protić and Lazar Marković suggested federalism that would accommodate traditional differences that existed between the component parts of the country (Zdravković, 84).

The implementation of the 1921 Constitution faced tumultuous events. In 1929 the king suspended the Constitution and promulgated a new one in 1931. The latter preserved the unitary form of government, but nevertheless altered the territorial organisation of the country, so as to introduce a smaller number of larger territorial units. The king was assassinated in 1934, while on a state visit, in Marseille, and the regency was introduced to rule the country because the heir to the throne was still a minor. In August 1939, under the regency regime, the Serbian and Croatian political elites agreed to take the path of federalism and launch a new political settlement, based on their agreement (Marinković, 108), but it was too late for proper constitutional reforms. In April 1941 Yugoslavia was attacked by Germany and its allies, defeated in a short war and torn apart by the victorious Axis powers. The monarchy did not survive after World War II, when Yugoslavia was restored. However, the republican regime introduced after the war, which was laid down on the concept of ethnic federalism, also could not preserve the country as a whole. De Gaulle was right. There was never a Yugoslav nation. Almost seven decades of living together under the same sovereignty of one or the other Yugoslav regime were insufficient to overcome the heterogeneity of the population and particular sentiments of different ethnic groups. Yugoslavism was only a political ideology and a state project. It was not a national identity (Marinković, 117).

4. CONCLUSIONS

The book Sto godina od ujedinjenja – formiranje države i prava is a highly valuable contribution to the study of Yugoslav legal and constitutional history. The editors aimed to provide a new, fresh and impartial approach to the research of legal developments between 1918 and 1939 (Begović, Mirković, 12). Notably, they did not include the last two years of the period of the first Yugoslavia, which were marked by the beginning of federalism under the regime of Serbo-Croatian political agreement and the national unity government.[2] The authors contributing to the volume mostly respected the framework recommended by the editors. However, there were some exceptions and deviations from the methodological approach that had been suggested. On certain points it was indispensable to widen the scope of study and take into account the whole period of existence of Yugoslavia (Zdravković, 66; Marinković 108–109). The exceptions prove the

[2] For more on the beginning of federalism, the negotiating the Serbo-Croatian agreement of 1939 and its implementation see Konstantinović 1998, 13–85.

necessity of a comprehensive approach to the study of Yugoslavia, which would encompass both periods of the country's history, i.e. the time before and after World War II.

The two periods represent inseparable parts of a single historical process. Despite the catastrophe in World War II, when Yugoslavia shortly disappeared from the map and the civil war broke out in the occupied country, there was, from a historical standpoint, an uninterrupted process of social development. The sentiments, policies, cultural patterns of behaviour and the whole experience of living together in the time between the two world wars left traces on all Yugoslavs in respect of their views and opinions. On many occasions these phaenomena profoundly influenced the social actors and their decisions in the second period of Yugoslavia's history.

Advocating a comprehensive approach to Yugoslav studies in general calls for another methodological remark. To reproduce the editors' irreproachable standpoint, the research of the Yugoslav state and legal system should be performed *sine ira et studio*. However, a study that aims to attain that level should preferably include contributions by researchers from different parts of former Yugoslavia. Regretfully, that has not been the case in this volume. It is only through the fruitful exchange of views and confrontation of different opinions that we may get closer to the truth and become knowledgeable about the history of the country that has disappeared. For the researchers at least, it still remains a puzzle.

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