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## Drafting the Constitution of the Kingdom of Serbs, Croats and Slovenes (1920)

**Abstract:** The Kingdom of Serbs, Croats and Slovenes was internationally recognized during the Paris Peace Conference in 1919–20. Even though there was neither a provisional nor a permanent constitution of the newly-formed state, factually there was a state as well as a system of governance, represented by supreme bodies, the King and the Parliament. Many draft constitutions were prepared by different political parties and notable individuals. We shall focus on the official Draft Constitution prepared during the premiership of Stojan Protić. He appointed the Drafting Committee as a governmental (multi-ethnic) advisory team of prominent legal experts from different parts of the new state consisting of Professors Slobodan Jovanović (President), Kosta Kumanudi and Lazar Marković (Serbia), Professor Ladislav Polić (Croatia) and Dr Bogumil Vošnjak (Slovenia). After two months of work, the Committee submitted its draft to the Prime Minister. The leading Serbian legal scholar and president of the committee, Slobodan Jovanović (1869–1958), was well-acquainted with the details of Austro-Hungarian and German legal traditions. Since he was an active participant and witness of the events that led to the creation of the new state, while also being an objective and critical historian, it is important to shed light on his firsthand account of the emergence of the state of Serbs, Croats and Slovenes.

**Keywords:** Kingdom of Serbs, Croats and Slovenes, Vidovdan Constitution, Drafting (Constitutional) Committee, Serbo-Croat relations, Yugoslavia

**T**he Kingdom of Serbs, Croats and Slovenes was declared on 1 December 1918. The declaration of the unification of the three peoples into one state was preceded by several events which had occurred towards the very end of the First World War.<sup>1</sup> The process of setting up a central representative body of the South-Slav (Yugoslav) lands of Austria-Hungary ended with the creation of the

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<sup>1</sup> For more detail see Dušan T. Bataković, *Srbija i Balkan. Albanija, Bugarska i Grčka 1914–1918* (Novi Sad: Prometej; Belgrade: RTS, 2016); Mira Radojević and Ljubodrag Dimić, *Srbija u Velikom ratu 1914–1918: kratka istorija* (Belgrade: SKZ & Beogradski forum za svet ravnopravnih, 2014), 274; *Gradja o stvaranju jugoslovenske države (1. I – 20. XII 1918)*, eds. Dragoslav Janković and Bogdan Krizman (Belgrade 1964), 674–676; Branko Petranović and Momčilo Zečević, *Jugoslavija 1918–1984. Zbirka dokumenata* (Belgrade: IRO Rad, 1985); Branko Petranović, *Istorija Jugoslavije 1918–1978* (Belgrade: Nolit, 1981).

National Council of Slovenes, Croats and Serbs (*Narodno vijeće Slovenaca, Hrvata i Srba*) on 8 October 1918. Initially a political body which sought to coordinate political action in the context of upcoming events and decisions in world politics, the Council stated ten days after its foundation that it would from now on pursue the interests of the people it represented. It declared a polity, the State of Slovenes, Croats and Serbs, but the latter was not internationally recognized. On 24 November 1918 the Council authorized twenty-eight of its members to take steps towards the creation of a common state in agreement with the government of the Kingdom of Serbia and representatives of all political parties in Serbia and Montenegro. The assembly of Serbs, Croats, Bunjevci, Slovaks, Ruthenians and other peoples from Banat, Bačka and Baranja decided to join the Kingdom of Serbia on 25 November 1918. At its meeting of 24 November 1918 the National Council of Srem called for a common state of Serbs, Croats and Slovenes under the Karadjordjević dynasty. The Great National Assembly of Montenegro held in Podgorica on 26 November 1918 decided that Montenegro should unite with Serbia into one state.

Negotiations between the delegation of the Council of Slovenes, Croats and Serbs and the Serbian government started at the end of November 1918. It was agreed that the act of unification would take the form of a declaration of the Council expressing the will for unification and the acceptance of their will by Prince Regent Alexander Karadjordjević of Serbia. Regent Alexander declared the Kingdom of Serbs, Croats and Slovenes on 1 December 1918 at Krsmanović House on Terazije Square in Belgrade.

As the “constituent act”, the declarations of 1 December 1918 served as the basis of state and legal organisation in the newly-created Kingdom of Serbs, Croats and Slovenes from the moment of unification to the adoption of the *Vidovdan* (St. Vitus Day) Constitution in 1921. In this interim period, the highest authorities in the Kingdom were Regent (from 1921 King) Alexander, the Government and the Provisional Assembly of the Peoples of the Kingdom of Serbs, Croats and Slovenes (*Privremeno narodno predstavništvo Kraljevstva Srba, Hrvata i Slovenaca*).<sup>2</sup> The first government of the Kingdom was created on 20 December 1918 and the Provisional Assembly first met in session on 1 March 1919. Both declarations used the word “state”, but it was actually questionable

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<sup>2</sup> This provisional body was composed of representatives elected by the Serbian National Assembly representing the Kingdom of Serbia, on the one hand, and the National Council of Slovenes, Croats and Serbs, on the other. There was 296 representatives. The composition of those representing the State of Slovenes, Croats and Serbs was as follows: Triune Kingdom of Croatia, Slavonia, and Dalmatia (with Rijeka, Medjimurje and part of Istria): 62; Slovene lands: 32; Kingdom of Dalmatia: 16; Bosnia and Herzegovina: 42. Those representing the Kingdom of Serbia (including those that merged into it – Montenegro and the Banat, Bačka, Baranja regions): Kingdom of Serbia: 108; Banat, Bačka and Baranja: 24; Kingdom of Montenegro: 12.

whether there were states except the Kingdom of Serbia. The delegation of the Kingdom of Serbs, Croats and Slovenes at the Paris Peace Conference was at first officially recognized as the delegation of the Kingdom of Serbia.

The leading Serbian legal scholar Slobodan Jovanović (1869–1958),<sup>3</sup> who served as president of the committee that drafted the first constitution of the new state, pointed out that the new state was not created legally, on the basis of a treaty, but rather *de facto*. This did not imply that the new state did not yet exist legally, but rather that it came into existence in reality. The fact that it was created *de facto* did not mean that it could not exist legally: “The state is a legal institution, but its coming into existence is not a legal act, but rather a historical fact.”<sup>4</sup> Had it been created in a legal manner, it would have been founded on a treaty between the polities that had preceded it. However, its predecessors were two sovereign states, Serbia and Montenegro, on the one hand, and the provinces of a former state, Austria-Hungary, on the other. Since the new state of Serbs, Croats and Slovenes was created *de facto*, and not on the basis of a treaty among several states, it was, from the internal standpoint, a new state. On the other hand, the fact that it continued the legal existence of the Kingdom of Serbia in foreign affairs was not contradictory. The new polity was a new state internally, and an old one externally. Jovanović stressed that one and the same state might look like a new state on the outside, and as the old state on the inside. It was also possible for a state to look like an old one on the outside, and on the inside, to be a brand new one (when the system of government is destroyed by revolution, but international treaties remain in force): “It solely depends on whether its system of government would be perceived as a historical or an autochthonous institu-

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<sup>3</sup> On Slobodan Jovanović see D. Djordjević, “Historians in politics: Slobodan Jovanović”, *Journal of Contemporary History* 3/1 (Jan. 1973), 2–40; M. B. Petrovich, “Slobodan Jovanović (1869–1958): The career and fate of a Serbian historian”, *Serbian Studies* 3/1-2 (1984/85), 3–26; Aleksandar Pavković, *Slobodan Jovanović: An Unsentimental Approach to Politics* (New York: Columbia University Press, 1993); D. T. Bataković, Preface to S. Jovanović (Slobodan Jovanovitch), “Sur l’idée yougoslave: passé et avenir (1939)”, *Balkanica* XXXIX (2009), 285–290; Boris Milosavljević, “Liberal and Conservative Political Thought in Nineteenth-century Serbia: Vladimir Jovanović and Slobodan Jovanović”, *Balkanica* XLI (2010), 131–153; Boris Milosavljević, “An Early Critique of Kelsen’s Pure Theory of Law: Slobodan Jovanović on the Basic Norm and Primacy of International Law”, *Annals of the Faculty of Law in Belgrade – Belgrade Law Review* LXI/3 (2013), 151–167; Danilo N. Basta, *Pet likova Slobodana Jovanovića* (Belgrade: Službeni list SCG, 2003).

<sup>4</sup> Slobodan Jovanović, “O postanku i karakteru naše države” [Jedno objašnjenje g. Slobodana Jovanovića povodom članka Lazara Markovića “Ustav pred Ustavnim odborom”, *Novi život* 4 (1921), 210–211], republished in Slobodan Jovanović’s collected works: *Sabrana dela Slobodana Jovanovića* [hereafter SD], 12 vols, eds. R. Samardžić and Ž. Stojković (Belgrade: BIGZ, Jugoslavijapublik and SKZ, 1991), vol. XI, 382.

tion. Foreign states cannot interfere in this matter, since it is its domestic affair.”<sup>5</sup> Therefore, it is possible for one and the same country to be new externally and old internally. Under international law, the state of Serbs, Croats and Slovenes was not a new one, but rather the old one, given that it inherited the entire system of international treaties signed by the Kingdom of Serbia. Nevertheless, internally, the state of Serbs, Croats and Slovenes was not a continuation of Serbia, but rather a completely new state.

Having discussed the creation of the new state, Jovanović embarked on examining the issue whether there had been some kind of a provisional constitution prior to the adoption of the St. Vitus Day Constitution (28 June 1921). He also discussed whether the Constituent Assembly was sovereign or not. He did not deny that the National Council of Slovenes, Croats and Serbs and the Prince-Regent (Alexander) were recognized authorities; however, their declarations of 1 December (1918), which had great political significance, exceeded their legal powers. Therefore, these declarations could not be seen as a provisional constitution. It was possible for the new state to continue operating under the existing constitution of the Kingdom of Serbia, but that required its formal adoption, which, despite several attempts, never happened in 1919. Even though there was neither a provisional nor a permanent constitution, factually there was a state as well as a system of governance, represented by the supreme bodies, the King and the Parliament. Their operation was not constitutionally regulated, and yet a state can exist without a written constitution.<sup>6</sup> Jovanović mentioned the example of the United Kingdom. There is no written constitution regulating the work of the supreme bodies, and yet their operation is regulated. He suggested that relations between King and Parliament could be regulated in accordance with English experience, “through practice, on their own accord, based on precedent”.<sup>7</sup> For the same reasons, there was no need for a Constituent assembly, and there was no need for discussion whether it was sovereign or not. The state of the Serbs, Croats and Slovenes had already existed with all its supreme bodies (the King and the Parliament), and it only needed rules for regulating their mutual relations. Jovanović stressed that those rules could be set out without a Constituent assembly. The existing supreme bodies could enact the constitution on their own, and it would be the result of the work of the bodies that were

<sup>5</sup> Slobodan Jovanović, “Kraljevina Srba, Hrvata i Slovenaca” [*Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca*] (Belgrade: Izdavačka knjižarnica Gece Kona, 1924), 35–36], in *SD*, vol. II, 389.

<sup>6</sup> Slobodan Jovanović, “Parlamentarna hronika Ustavotvorne skupštine”, *Arhiv za pravne i društvene nauke* 10 (1920), 1(18)/1 [Uvod [1. Postanak države Srba, Hrvata i Slovenaca; 2. Da li do donošenja novog ustava postoji bar jedan privremeni ustav?; 3. Kakav će biti pravni položaj Ustavotvorne skupštine?]; Izborni zakon za Ustavotvornu skupštinu; Privremeni poslovnik za Ustavotvornu skupštinu], 51–62; 3, 208–215; 6, 446–451.

<sup>7</sup> Jovanović, “Parlamentarna hronika”, *Arhiv za pravne i društvene nauke* 1/27 (1920), 51–62.

already set up. If it lasted for some time, there would be no objections from the legal point of view: "As for political institutions, time heals all legal shortcomings, slowly but surely."<sup>8</sup> He meant to say that corrections were still possible, including the abolition of the then formalized constitutional order by the unlimited will of the legislature. The state was sovereign, and given that it was created *de facto*, the best thing to do was to build its legal framework gradually, based on experience, rather than on abstract principles. Jovanović obviously held to his basic theoretical views in forming his position on the creation of the new state. The current political situation favoured his theoretical conclusions. He was well aware of how the majority of Croats viewed the new state and of their aspiration to be a *corpus separatum*. The Croats wanted to retain the rights they had been granted in Austria-Hungary. Croat jurists even went a step further by claiming that Croatia had been a state within Austria-Hungary. In their view Croatia had existed as an independent state for centuries. Jovanović summed up their view as follows: "Even though the relationship that had existed between Croatia and Austria-Hungary until the collapse of the Austro-Hungarian Monarchy could undermine the state independence of Croatia, it could not destroy it. Following the collapse of the Austro-Hungarian Monarchy this relationship was terminated, and Croatia, given its undeniable historical rights, emerged as a fully independent state."<sup>9</sup> The Croats interpreted the December 1918 declaration of unification as a compromise. They were ready to sacrifice what they saw as their independent state for the sake of the creation of the common state of Serbs, Croats and Slovenes, but demanded that the constitution of the new state be passed by a Constituent assembly, which would not make decisions by outvoting the "tribes", since it was the Serbs that made up the majority. That is why the Croats did not want to accept the St. Vitus Day Constitution, which was passed by the freely elected Assembly, in which, however, the Serbs had a majority. Jovanović refuted as ungrounded the claim that Croatia had been a state, as it was not a sovereign state, but a province of the sovereign Habsburg Monarchy which, in its long legal history, sometimes gave it more and sometimes less autonomy.<sup>10</sup> Besides, even if it had been an independent state, the National Council was recognized as the supreme authority by the Croatian Diet's decision of 29 October 1918, endorsed by its *Ban* (viceroy): "Many believed that the old Croatian state merged into the new state of Austro-Hungarian Yugoslavs, which was represented by the National Council."<sup>11</sup> However, the December declarations did not have the character of an international treaty.

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<sup>8</sup> Ibid.

<sup>9</sup> Jovanović, "Kraljevina Srba, Hrvata i Slovenaca", SD, vol. II, 394.

<sup>10</sup> Slobodan Jovanović, "Je li federalizam kod nas mogućan" [1920], SD, vol. XI, 364.

<sup>11</sup> Jovanović, "Kraljevina Srba, Hrvata i Slovenaca" [1924], SD, vol. II, 396; Mirjana Stefanovski, *Ideja hrvatskog državnog prava i stvaranje Jugoslavije*, 2nd ed. (Belgrade: Pravni fakultet, Izdavački centar, Dosijske, 2008).



Having predicted the course of events, Slobodan Jovanović advised Pašić as early as 1918 to have a study prepared in which the terms “federalism,” “federal state,” “state union” and “autonomous region” should be clearly defined. He wrote to his friend Mihailo Gavrilović, the then deputy foreign minister, suggesting he should discuss this study with Stojan Protić. He was well aware that politicians and jurists in Serbia were not too familiar with the legal terms that the Croatian side would use, since “all of that is terra incognita for us” and nobody in Serbia except him had dealt with the matter ever before. He held that Serbian politicians should be prepared to address the issues concerning federalization and decentralization after the war in the Constituent Assembly.<sup>12</sup> But such a study was never published. Stojan Protić, in his foreword to the booklet on the Draft Constitution (1920), would admit that the intellectual elite in Serbia was ill-equipped and unprepared for many of the questions that needed to be dealt with after the “liberation and unification.”<sup>13</sup>

Many questions were raised at the very beginning of the formation of the new state. For example, the governmental delegate (from Serbia) Matija Mata Bošković consistently advocated the use of the official name of the new state, which is more than evident from the minutes of the Delegation’s meeting of 2 March 1919: “Dr Smodlaka protested against Mr Bošković’s editorial interventions in the *Dalmacija*, when he was erasing the term ‘Yugoslav’ and replacing it with the expression ‘Serbs, Croats and Slovenes.’ He holds that he is entitled to use in official documents, too, the expression ‘Yugoslavia’ to refer to our state, and the expression ‘Yugoslav’ to refer to our people. In the unification resolution that was presented to the Prince-Regent, the National Council in Zagreb used the term ‘Yugoslavia’; the Prince-Regent also used the term ‘Yugoslavia’ in his reply. Dr Smodlaka further implies that we have united with Serbia on that basis and we are rightfully entitled to call the state ‘Yugoslavia’ and our people ‘Yugoslav’ people. Mr Bošković holds that the official name of our state is only ‘The Kingdom of Serbs, Croats and Slovenes’; we are not entitled to change it, especially given the fact that these expressions were discussed for a long time and the term ‘Yugoslavia’ was not adopted in the end. The Serbian people has not accepted this name yet, and you cannot impose your opinion on the majority. [...] The president, Mr Pašić, says that the delegation cannot and is not entitled to resolve such issues [...] This issue was long discussed in Corfu and the name

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<sup>12</sup> Arhiv Srpske akademije nauka i umetnosti [Archives of the Serbian Academy of Sciences and Arts; hereafter ASANU], 10403/1, Slobodan Jovanović to Mihailo Gavrilović, Beaulieu, 20 July [2 August] 1918.

<sup>13</sup> *Nacrt ustava po predlogu Stojana M. Protića, ministra pripreme za Ustavotvornu skupštinu (definitivni tekst posle diskusije sa Komisijom, sa dodatkom: Nacrt ustava izradjen od Ustavne komisije* (Belgrade: G. Kon, 1920), VII.

‘Yugoslavia’ was not adopted in the end [...] Dr Trumbić shares the opinion of Dr Smodlaka”.<sup>14</sup>

There was also a debate over the issue of war reparations. It was suggested that if the members of the Delegation adopted the view that war reparations should be demanded from Austria-Hungary as a whole, then they would actually adopt the Italian position, thereby implying that “we regard our territories, which are parts of the former Austro-Hungarian monarchy, as enemy countries”.<sup>15</sup> They passed the decision, by majority vote, that war reparations concerning Austria-Hungary as a whole should be claimed only from Austria and Hungary (Vesnić, Bošković, Ribarž, Smodlaka). Pašić, on the other hand, maintained that war reparations were to be paid by the former Austria-Hungary as a whole.<sup>16</sup>

The citizens of the new country came from very different, sometimes quite opposite backgrounds. For example, there were, on the one hand, officers and soldiers of the victorious Serbian Army and, on the other, former officers and soldiers of the defeated Austro-Hungarian Army. They had been enemies in various Balkan battlefields. One fighter pilot, K. u. k. Air Force officer from a very prominent Serb family from Vojvodina (then part of Hungary) was praised during the war as a Hungarian “hero of the sky”. Almost all Austro-Hungarian general staff officers who applied were accepted in the new Royal Army of the Kingdom of Serbs, Croats and Slovenes. The first commander-in-chief of the Royal Air Force of the new state had been the last commander-in-chief of the Austro-Hungarian Air Force, General Milan Uzelac (aka Emilo Uzelac) of Serb origin. Former Austro-Hungarian officers tended to speak German among themselves and even in front of their soldiers. The wartime governor of occupied Serbia (1915–1918) retired as an army general of the Kingdom of Serbs, Croats and Slovenes.<sup>17</sup> Some Serbian officers decorated for bravery resigned from the Army in protest. It was quite an experiment to create a state with such a diverse population, including three different religious communities, Orthodox Christian, Roman Catholic Christian and Muslim (speaking Serbian or Croatian [Serbo-Croatian] in Bosnia, Herzegovina, Novi Pazar and parts of Monte-

<sup>14</sup> *Zapisnici sa sednica delegacije Kraljevine SHS na Mirovnoj konferenciji u Parizu 1919–1920*, eds. Bogdan Krizman and Bogumil Hrabak (Belgrade: Institut društvenih nauka, Odeljenje za istorijske nauke; Kultura, 1960), 65 – minutes of 2 March 1919.

<sup>15</sup> *Ibid.* 126, minutes of 11 May 1919.

<sup>16</sup> *Ibid.* 127.

<sup>17</sup> Radojević and Dimić, *Srbija u Velikom ratu*; Dimitrije Djordjević, “The Austro-Hungarian Occupation Regime in Serbia and Its Break-Down in 1918”, *Balkanica* XLVI (2015), 107–133; Luka Lazarević, *Beleške iz okupiranog Beograda 1915–1918*, 2nd ed. (Belgrade: Jasen, 2010); Andrej Mitrović, *Srbija u I svetskom ratu* (Belgrade: Stubovi kulture, 2004).



negro, predominantly Albanian-speaking Muslim population in the south of the country, and a Turkish-speaking minority).

The first prime minister of the newly-proclaimed Kingdom of Serbs, Croats and Slovenes was Stojan Protić (20 December – 16 August 1919), from the People's Radical Party. The second prime minister was Ljubomir Davidović (16 August 1919 – 19 February 1920) from the newly-founded Democratic Party, followed by Stojan Protić's second term (19 February 1920 – 17 May 1920).<sup>18</sup> Milenko Vesnić was the next prime minister (17 May 1920 – 1 January 1921), also from the People's Radical Party. The long-standing leader of the Radicals, Nikola Pašić, became prime minister again on 1 January 1921. After many difficulties during his term, the constitution of the newly-created state was finally adopted on 28 June 1921 – the St. Vitus Day Constitution.

There were many draft constitutions drawn up by different political parties and distinguished individuals. We shall focus on the official Draft Constitution prepared during the second term of Stojan Protić as prime minister. Since 18 February 1920 Stojan Protić also acted as minister in charge of organizing a constituent assembly and the alignment of laws.

The declaration of 5 March 1920, in which Protić's government presented its programme to the Parliament, highlighted the work on a draft constitution and on the law on the election of the constituent assembly as the most urgent tasks, which should by all means be completed before the dissolution of the provisional representative body in order for the fundamental principles of constitutionality to be safeguarded.

Protić appointed a drafting committee as a governmental (multi-ethnic) advisory team of prominent legal experts from different parts of the new state: Professor Slobodan Jovanović (President), Professor Kosta Kumanudi, Dr Bogumil Vošnjak, Professor Ladislav Polić and Professor Lazar Marković.

<sup>18</sup> Arhiv Jugoslavije [Archives of Yugoslavia; hereafter AJ] –138, Ministarski savet Kraljevine Jugoslavije (1918–1941); *Službene novine Kraljevine SHS* 1 (12 Oct. 1919); "Proklamacija regenta Aleksandra povodom obrazovanja prve vlade Kraljevine Srba, Hrvata i Slovenaca", *Službene novine Kraljevine SHS* 2 (28 Jan. 1919); "Ukaz o postavljenju vlade Stojana Protića", *Službene novine Kraljevine SHS* 1 (12 Jan. 1919); "Ukaz o postavljenju vlade Lj. Davidovića", *Službene novine Kraljevine SHS* 117 (19 Oct. 1919). See Petranović and Zečević, *Jugoslavija 1918–1984; Stenografske beleške Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca*, vol. 1: *od I prethodnog do XXXVII redovnog sastanka*, and vol. 2: *od XXXVIII do LXVIII redovnog sastanka* (Belgrade: Državna štamparija Kraljevine SHS, 1921); *Nacrt ustava vlade Milenka Vesnića* (Belgrade 1920); *Nacrt ustava vlade Nikole Pašića* (Belgrade 1921); Ladislav Polić, "O nacrtima ustava", II, *Nacrt g. Protića. Mjesečnik* 2 (1921), 57–79; *Stenografske beleške Privremenog narodnog predstavništva Kraljevstva Srba, Hrvata i Slovenaca* (Belgrade 1920); *Stenografske beleške. Rad Ustavnog odbora Ustavotvorne skupštine Kraljevine Srba, Hrvata i Slovenaca, I–IV* (Belgrade 1921); *Ustav Kraljevine Srba, Hrvata i Slovenaca* (Novi Sad 1921); Mirjana Stefanovski, "Pravo disolucije u nacrtu ustava komisije jugoslovenskih profesora iz 1920. godine", *Anali Pravnog fakulteta u Beogradu* 67/3 (2019), 34–58.

Three members were from Serbia (Jovanović, Kumanudi and Marković), one from Croatia (Polić), and one from Slovenia (Vošnjak). After two months of work, the Committee submitted its draft to Prime Minister Protić.

The Draft Constitution sought to be a neutral, purely legal document.<sup>19</sup> It should be noted that there was no major divergence of opinion among the Committee members. It is clear from the text what their recommendations were and what their reasonable fears were in view of the composition of the government and the intentions of political parties that would sit in the Constituent Assembly. The Committee's Draft Constitution envisaged a bicameral parliament consisting of the House of Representatives and the Senate. The chapters of the Draft Constitution published in 1920 were as follows: 1) Report of the Drafting Committee; 2) Draft Constitution of the Drafting Committee; 3) Conclusions of the Drafting Committee concerning the Upper House; 4) Separate Opinion of Mr Bošnjak on the Organisation of Provincial Governments.<sup>20</sup> The fact that the title "The Draft Constitution of the Drafting Committee" occurs twice – as the title of the whole document and as the heading of one its chapters – may be the source of some confusion. If the whole document with this title is taken into account, then the Drafting Committee's intentions and recommendations are quite clear. If, however, only the chapter with this title is taken into account, disregarding the whole document, it would seem that the body of experts headed by Slobodan Jovanović recommended a unicameral proportional system. This latter misreading has become widespread because the later editors of large collections of constitutional proposals and important acts concerning the creation of the new Yugoslav state tended to include only the chapter titled "The Draft Constitution of the Drafting Committee" rather than the whole document. A careful reading of the published proposal of the Drafting Committee shows that the Committee indeed wrote a chapter in which there is no bicameral system, only to draw attention to the necessity of bicameralism in the next chapter: "Conclusions of the Drafting Committee concerning the Upper House". The "Conclusions" is an integral and unanimously agreed part of the Draft Constitution of the Drafting Committee. Members of the Drafting Committee had separate opinions on several issues and all of these were included in the published version. But, their conclusion concerning the Upper House was unanimous. All experts headed by Slobodan Jovanović advocated the bicameral system:

#### Article 1

The Legislative power is exercised by the body of popular representatives.

The body of popular representatives consists of the House of Deputies [MPs] and the Senate.

No person can be a member of both the House of Deputies and the Senate.

<sup>19</sup> Different opinions on various formulations were included in its final version.

<sup>20</sup> *Nacrt ustava po predlogu Stojana M. Protića.*

## Article 2

The House of Deputies [MPs] and the Senate hold meetings and make decisions independently from one another, except in cases where joint action is expressly prescribed by the Constitution.

In line with what then was established practice, the Lower House was supposed to have a predominant position. The Upper House (Senate) had (Article 5) one hundred seats, most of which (62) were distributed on a provincial basis, proportionate to the population of each province, whereas a smaller part (38) of the seats were taken by representatives of different organizations and institutions (a) industrial, trade, craft and workers' chambers and agricultural cooperatives; b) universities of Belgrade, Zagreb and Ljubljana. The inclusion of representatives of different confessions was proposed by Ladislav Polić and Lazar Marković ("organised religious communities – Orthodox, Roman Catholic, Protestant, Muslim and Jewish, one senator for each").<sup>21</sup>

Senators were not to be younger than forty, and those elected by the provinces had to be university graduates. Article 12 discusses in detail the case of divergent decisions by the two houses and the ways to resolve them.

The legislative power was exercised by the Parliament. The position of the monarch was parliamentary, on the model of the Westminster system. He exercised executive power through the ministers who were held accountable to the Parliament. Particular attention was devoted to the independence of the judicial power, as the weakest point in the separation of powers. It was envisaged therefore that judges would be appointed and promoted by decree, at the request of the minister of justice, by choosing between two candidates, who were selected, for every place and position, by special councils composed of representatives of judicial bodies and bar associations.

Protić endorsed the Draft after making minor, predominantly political, additions and alterations (Protić's Proposal). He added the number and names of provinces of the new state (Serbia; Old Serbia and Macedonia; Montenegro and Herzegovina, the Gulf of Kotor and the Littoral; Banat; Srem and Bačka; Bosnia; Dalmatia; Croatia and Slavonia with Rijeka, Istria and Medjmurje; Slovenia with Prekomurje).<sup>22</sup> The boundaries of the provinces were to be determined in more detail by a separate law. The fundamental and continuous problem of the internal territorial organization of the Kingdom of Serbs, Croats and Slovenes, and later Yugoslavia, was the issue of ethnically mixed Serbo-Croat areas. The usually proposed solution to this issue was the formation of mixed

<sup>21</sup> *Nacrt ustava po predlogu Stojana M. Protića*; "Pitanje ustava i ustavnih nacrtā", *Novi život* III/5 (1920), 159.

<sup>22</sup> Branko Petranović and Momčilo Zečević, *Jugoslovenski federalizam. Ideje i stvarnost 1914–1943. Tematska zbirka dokumenata* (Belgrade: Prosveta, 1987), vol. I, 98–102.

Serbo-Croat territorial units. As for the internal organization of the provinces, the Draft Constitution envisaged a provincial governor, assembly, standing committee and administrative court of the first instance for each. A provincial governor would be appointed by the king at the proposal of the prime minister, who had selected one of the three candidates nominated by the provincial assembly.

The issue of the bicameral system as dealt with in the two draft constitutions, those of the Drafting Committee and Prime Minister Protić, was inseparable from the issue of provincial self-government. The question of provincial self-government (*samouprava*) was very delicate and difficult to deal with, as admitted by Protić himself in his foreword to the booklet on draft constitutions:

This issue of provinces and provincial self-government is, regrettably, surrounded by much prejudice and much misunderstanding, which makes it very difficult to discuss it objectively and properly. It is therefore the duty of all serious public figures to rid this issue of such prejudice and misunderstanding and to call for nothing less than cool-headed reasoning, serious examination and study in addressing it.<sup>23</sup>

The Drafts defined the province as a unit of local self-government, not as a federal unit. The supreme authority in the state was entitled to abolish self-governments. Therefore, it was a devolution of powers, but it was not irrevocable. It was different from federalism or from the autonomous provinces in socialist Yugoslavia (Kosovo and Metohija, and Vojvodina).

To better understand what the problem was we can simplify the issue of self-government. From the very beginning of the discussion on the constitution of the new state Croats favoured (con)federalism, and Serbs, habituated to a centralised state and fearing that federalism was just another name for confederalism or a real or a personal union, in fact leading to the disintegration of the state, favoured a more unified state. This fear was deeply rooted since Serbia was “a country that fought five wars over the last forty years, of which almost each was a war for survival”.<sup>24</sup> The idea of creating more or less historic provinces proposed in Protić’s Draft meant to mark out the undoubtedly Serbian, Croatian and Slovenian lands within the new common country, and then to proceed to solving the most difficult issues of ethnically mixed Serbo-Croat areas.

Slobodan Jovanović published an analysis of Smodlaka’s draft constitution in 1920,<sup>25</sup> showing that it was a federalist project. In his article devoted to the question of whether federalism was possible in the new country, he endeavours to explain that federalism might be successful if there are strong political

<sup>23</sup> *Nacrt ustava po predlogu Stojana M. Protića*, p. VII.

<sup>24</sup> Slobodan Jovanović, “Univerzitetsko pitanje” [1914], SD, vol. XI, 352.

<sup>25</sup> Slobodan Jovanović, “Jedan nacrt ustava (Dr. Josip Smodlaka: *Nacrt jugoslavenskog ustava*, Zagreb 1920)”, *Jugoslavenska obnova – Njiva* 13 [I. Pokrajine. II. Kralj. Narodno predstavništvo. Državni savet] (Zagreb 1920), 273–276.

parties that can unify the state, as in the case of the United States of America, or, if there is hegemony of a military state, as in the case of Prussia in the German Empire: "Just recently, in my presence, a Serb and a Croat discussed the state organization of our new country, and the Serb said the following to the Croat: 'You want to have the status of Bavaria in our new state!?' All right then, you can be Bavaria, and we'll be Prussia!"<sup>26</sup> Great federal states have proved successful owing either to strong centralized political parties or to the hegemony of a strong military state; but in the new state, as Jovanović concluded, "there is neither of the two and, therefore, the outcome of this experiment with federalism is quite uncertain".<sup>27</sup>

The originally English model of devolution of power through local self-government was Jovanović's idea supported by Stojan Protić, the best connoisseur of the British political system among the Serbian Radicals. This understanding between Slobodan Jovanović and Stojan Protić did not mean that the rest of Serbian actors actually understood what their basic position was. In an article devoted to federalism, Slobodan Jovanović pointed to the shallowness and ignorance of the Belgrade press which failed to distinguish between federalism and the organisation of self-governing provinces: "There was a considerable anxiety in the Belgrade press over whether self-government, which was to be granted to some provinces, would eventually lead to federalism. [...] We find that in these discussions about federalism it is of the utmost importance to focus on making a distinction between federalism and self-government. If these two things are mixed up, it can easily happen that by rejecting federalism, we also reject self-governance, which we believe not even the greatest opponents of federalism want."<sup>28</sup>

Self-government (*Samouprava*) was also the name of the Radical Party's newspaper which entered into a polemic with Slobodan Jovanović. Jovanović did not advocate federalism, but provinces with a certain degree of self-government, as proposed in the Drafts of both Protić and the Drafting Committee. According to Protić's Draft, Serb and Croat populations had their separate provinces, except in the case of mixed-population provinces. Twenty years later Jovanović looked back at the polemic: "Twenty years ago, when the focus was on the St. Vitus Day Constitution, we were convinced that centralism was not only the best but the only way to secure national and state unity. This then led us to the idea that the provinces that had already existed should be broken up, whereas new provinces should not be given the opportunity to become hotbeds

<sup>26</sup> Slobodan Jovanović, "Je li federalizam kod nas mogućan", *Srpski književni glasnik*, NS, 1/1 (1920), 435–441.

<sup>27</sup> *Ibid.*

<sup>28</sup> Slobodan Jovanović, "O federalizmu" [*Srpski književni glasnik*, 1 (1920), 356–361], SD, vol. XI, 361.

of separatism over time. Consequently, the provinces were not supposed to be very large, and they were not to have any legislative powers in addition to their administrative powers. We could put up with self-governance, but not with autonomy. ... At the time of the St.Vitus Day Constitution, federalism was out of the question: if one was a federalist, it meant that one was an opponent of national and state unity. Even Trumbić himself renounced federalism at the time [...] Federalism, which had long been ill-reputed among the Serbs, nowadays has among them most vehement supporters, as a middle-ground solution that would satisfy both the Croatian aspirations for autonomy and the Serbian aspirations for state unity.”<sup>29</sup>

The Draft Constitution developed by the Drafting Committee he chaired (1920), along with the critique of other drafts and solutions developed by the Constitutional Committee of the Assembly (1921), as well as suggestions concerning state reorganization developed by a group of Zagreb intellectuals (1934–1936), all of them shed light on Jovanović’s views concerning the system of government of the state of Serbs, Croats and Slovenes.<sup>30</sup> Jovanović was in favour of neither a confederation, nor a federation, nor a unitary state. He was strongly in favour of the Drafting Committee’s Draft Constitution as modified by Stojan Protić (1920), according to which the historic provinces were to be kept with a certain degree of self-government (halfway between centralism and federalism). He explained several times the difference between a federal unit and a province, likening provinces to the existing municipalities, and provincial assemblies to municipal assemblies. The ethnically mixed Serbo-Croat provinces were a separate issue that he pointed to.

As for the proposal of the Zagreb group that was put to Belgrade following the parliamentary election held in May 1935, it was evident to him that ethnically mixed Serbo-Croat areas should be organized differently from the ethnically homogeneous ones. Jovanović held that the best thing to do, given the circumstances and the existence of the common state, was to draw a clear-cut demarcation line between Serbs and Croats. In an interview to the *Politika* in 1937 he offered his view on the 1935 Zagreb proposal: “We argued [Slobodan Jovanović, Božidar Marković, Nikola Stojanović and Mihailo Ilić] that we should point to all those elements in their draft that fell into the category of a confederate state, since, as is already known, a confederation is incompatible with state unity. [...] As for the number of *banovinas* [provinces], the Zagreb draft envisaged their demarcation according to the tribal principle. In our view,

<sup>29</sup> Slobodan Jovanović, “Ustavno pitanje” [*Srpski glas* 2 (25 April 1940)], SD, vol. XI, 576.

<sup>30</sup> On the memorandum drawn up by intellectuals from Belgrade and Zagreb upon the assassination of King Alexander in 1934 and the Draft Constitution of 1935, i.e. 1936, see Mira Radojević, *Naučnik i političar. Politička biografija Božidara V. Markovića (1874–1946)* (Belgrade: Filozofski fakultet Univerziteta u Beogradu, 2007), 353–361.



the tribal principle, if eventually adopted, had to be implemented consistently – for instance, if all Croats were united into one *banovina*, then, consequently, all Serbs should be united into one *banovina* as well. Having taken into account the difficulties involved in drawing a demarcation line between tribal territories held by Croats and Serbs, the Zagreb draft included the option of forming one ethnically mixed Serbo-Croat *banovina*. In this regard, we pointed out that if political parties accepted such a *banovina*, it would be impossible, given its tribal heterogeneity, to apply the same political system to it as the one applied to tribally homogeneous *banovinas*.<sup>31</sup>

Protić presented the Drafting Committee's Draft Constitution and his own to the government. Neither of them was adopted.<sup>32</sup>

The minister in charge of organizing the Constituent Assembly in the Milenko Vesnić government was a former member of the Drafting Committee, Lazar Marković. His own draft constitution was a revised and substantially shortened version of Protić's draft. Slobodan Jovanović, who was still president of the Drafting Committee at the time, gave a negative opinion on Marković's proposal, listing a number of its weaknesses.<sup>33</sup> The draft constitutions of Vesnić's and Pašić's government were two versions of the same draft.

Following the election for the Constituent Assembly, the Radical-led government proposed its own draft constitution, which was then submitted to the Constitutional Committee of the Assembly (1921). Jovanović offered a critique of this draft in the daily *Politika*.<sup>34</sup> He pointed to some fortunate solutions contained in Protić's draft in which particular attention was paid to the

<sup>31</sup> "G. Slobodan Jovanović o ustavnom nacrtu zagrebačke grupe intelektualaca", *Politika*, Belgrade, 26 May 1937; Živorad Stojković, "Slobodan Jovanović, 1869–1958. Biografski podaci i prilozi. Kalendarski pregled", in *SD*, vol. XII, 758.

<sup>32</sup> In the government session of 31 December 1941, Slobodan Jovanović supported the project of Stojan Protić. See the note of 31 December 1941 by Milan Grol, *Londonski dnevnik 1941–1945*, 1st ed. (Belgrade: Filip Višnjić, 1990), 84.

<sup>33</sup> Slobodan Jovanović, *Mišljenje o Nacrtu Ustava upućeno Lazaru Markoviću, ministru pripreme za Ustavotvornu skupštinu i izjednačenje zakona* (Belgrade 1920); "O postanku i karakteru naše države. Jedno objašnjenje g. Slobodana Jovanovića", *Novi život* 4 (1921), 210–211; Slobodan Jovanović, "Povodom članka Lazara Markovića, *Ustav pred Ustavnim odborom* objavljenog u ovom časopisu od 12. februara 1921. god.,"; L[azar] Marković, "Pred Ustavotvornu skupštinu", *Novi život* III/4 (1920), 97–101. [Sa osvrtom na članak Slobodana Jovanovića o karakteru novostvorene države objavljenom u časopisu *Arhiv za pravne i društvene nauke* (knj. I, 1)]; Lazar Marković, "Ustav pred ustavnim odborom", *Novi život* IV/3 (1921), 65–69. Sa osvrtom na shvatanja Slobodana Jovanovića izložena u časopisu *Arhiv za pravne i društvene nauke* od 25. 8. 1920. o novoj državi kao "faktičkoj zajednici"; Lazar Marković, "Jedno objašnjenje g. Slobodana Jovanovića", *Novi život* IV/7 (1921), 210.

<sup>34</sup> "Nacrt novoga ustava", *Politika* no. 466417, 17 April 1921, p. 1. See also "Ustav Narodnog kluba", *Srpski književni glasnik*, NS 2/6 (1921), 424–430.

harmonization of the parliamentary system and self-government on the English model. However, the Radicals' draft rejected self-government for the historic provinces, placing emphasis on state centralism instead. Jovanović stressed that the government's proposal rendered many constitutional guarantees of the rights of individuals useless and that the constitution was drafted hastily under the pretext that the state was in danger.<sup>35</sup> The Radical government's draft did not reject the bicameral system cited in the Drafting Committee's and Protić's drafts, but it eventually was rejected by the Constitutional Committee of the Assembly. Slobodan Jovanović highlighted that there was no need to insist on a unicameral parliament modelled on the one in pre-war Serbia (Constitutional Committee, 1921).<sup>36</sup> The former citizens of pre-war Austria-Hungary did not share the negative prejudices concerning a bicameral system. Ten years later a bicameral national legislature (the Senate and the Parliament) replaced the unicameral parliament (1931).

The Constituent Assembly (1921), which began with disagreements over the oath of allegiance to the King, ended in Croatian withdrawal, and so its decisions were passed without almost a single Croatian representative.<sup>37</sup> Jovanović held that the Radicals' unitarism, that is centralism, was wrong and that insisting on a constituent assembly in part was an expression of Radical theoreticians' abstract views, a result of projecting their pre-war political and legal concepts onto the understanding of politics and law of an entirely new state, and in part of their wish to find a solution to the question of the organization of the newly-created state quickly and in one go.

<sup>35</sup> "G. Slobodan Jovanović i strategija. Osporavanje utemeljenosti stavova Slobodana Jovanovića o predloženim ustavnim promenama", *Samouprava*, 25 June 1921, p. 1.

<sup>36</sup> S. Jovanović analysed the work of the Constituent Assembly on a daily basis. See Slobodan Jovanović, "Pokrajinsko uređenje", *Politika* no. 4671, 24 Apr. 1921, p. 1; Slobodan Jovanović, "Trumbićev govor", *Politika* no. 4677, 30 Apr. – 2 May 1921, p. 1; Slobodan Jovanović, "Štampa", *Politika* no. 4683, 8 May 1921, p. 1; Slobodan Jovanović, "Budžetsko pravo", *Politika* no. 4690, 15 May 1921, p. 1; Slobodan Jovanović, "Uredbe", *Politika* no. 4697, 22 May 1921, p. 1; Slobodan Jovanović, "Vladalački dom", *Politika* no. 4704, 29 May 1921; Slobodan Jovanović, "Vrhovna komanda", *Politika* no. 4711, 5 June 1921, p. 1; Slobodan Jovanović, "Krivična odgovornost ministara", *Politika* no. 4718, 12 June 1921, p. 1; Slobodan Jovanović, "Oblasti", *Politika* no. 4722, 16 June 1921, p. 1; "Predustavne uredbe", *Politika* no. 4727, 23 June 1921, p. 1; Jovanović, "Parlamentarna hronika Ustavotvorne skupštine (nastavak)" [Overavanje punočestava u Ustavotvornoj skupštini (s napomenom); zakletva članova Ustavotvorne Skupštine], *Arhiv za pravne i društvene nauke XI* (1921), 1, 56–61; 2, 126–129; "Ministarska odgovornost. Povodom kritike Slobodana Jovanovića", *Samouprava*, 26 June 1921, p. 1; Ladislav Polić, "O nacrtima Ustava", *Mjesečnik* 47 (1921), 1, 4–16; 2, 57–75; 3, 105–122; 4–5, 154–169; "Slobodan Jovanović kao politički kritičar", *Samouprava*, 24 Apr. 1921; "Ustavne odredbe o štampi. (Povodom kritike g. Slobodana Jovanovića)", *Samouprava*, 10 May 1921, 1.

<sup>37</sup> Petranović and Zečević, *Jugoslovenski federalizam*, vol. I, 103, 127–140.

Despite much uncertainty, the St. Vitus Day Constitution was eventually adopted on 28 June 1921. The Croatian political parties walked out of the Constituent Assembly in protest, and so did the Communist Party of Yugoslavia and the Yugoslav Club. The Radicals were supported by small Slovenian and Muslim parties (Yugoslav Muslim Organization, Peasants' Party/*Kmetijska stranka* and *Džemijet* – a Muslim MP club from Southern Serbia, modern-day North Macedonia). The constitution was voted for by 223 MPs (out of 419).

As it turned out later, Croatian politics in the interwar period pursued Croatian interests, which did not predominantly involve abstract issues such as popular sovereignty or the introduction of a parliamentary system, but rather was focused on the status of Croatia itself. The leaders of the Croatian Peasant Party (HSS) negotiated directly with the monarch when addressing this issue. Jovanović stresses in his analysis of the draft constitution proposed by the (Croatian) National Club that it was the loosest (con)federalist version of a union between two independent states under a common ruler (1921), modelled on the Dual Monarchy, Austria-Hungary. The leader of the Croatian Peasant Party Vladimir Vlatko Maček submitted the same proposal to King Alexander in 1929, who consulted Slobodan Jovanović about it.

After three years of King Alexander's personal regime, the King issued a new constitution of the Kingdom of Yugoslavia in 1931. Under this Constitution, Yugoslavia was a constitutional rather than a parliamentary monarchy. Contrary to the St. Vitus Day Constitution, a bicameral system was introduced, which had existed in Serbia from 1901 to 1903. Under the Constitution, the MPs were elected only from the lists of the nation-wide parties: "Unlike the St. Vitus Day Constitution, the 1931 Constitution put much less emphasis on centralized government and focused on, if we may say so, party centralism instead."<sup>38</sup>

Under the Constitution, one half of the members of the Senate (Upper House) were elected by a special electoral body composed of provincial [*banovina*] MPs, provincial councillors and presidents of provincial municipalities, while the other half were appointed by the King: "In comparison with the Assembly, the members of which were elected from party lists, the Senate, as it appeared, was supposed to be a body composed of distinguished people, who were appointed as its members either by the King or by their *banovina* on the basis of personal merit."<sup>39</sup>

Contrary to integral Yugoslavism, Slobodan Jovanović and the Serbian Cultural Club pushed for integral Serbianism within the existing Yugoslav state framework. The Croatian Peasant Party was a broad national movement supported by the vast majority of the Croatian people. The 6 January Dictatorship (1929–1931) could not substantially "destabilize" the Croatian movement,

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<sup>38</sup> Slobodan Jovanović, "Dvodomni sistem u našem ustavu" [1933], SD, vol. XI, 500.

<sup>39</sup> Ibid.

whereas, on the other hand, it had seriously weakened and disorganized Serbian political parties, which were not national movements, but simply parliamentary parties. The Serbian Cultural Club criticized in particular the 1939 Cvetković-Maček Agreement.<sup>40</sup> The Club did not deny Croats the right to organize themselves into their own ethnic unit (*Banovina* of Croatia), but the same right was demanded for the Serbs. The political developments in Europe and the consequences of the Second World War took the question of the organisation of the Yugoslav state in a new direction.

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<sup>40</sup> Jovanović revisited the issue of a federal state and a state union in his book on the state. After the formation of the Banovina of Croatia in 1939, he published later that year, in the series *Politika i društvo* (Politics and Society), a study on American federalism. In a special notice the editorial board composed of professors of the Belgrade Law School stressed the connection between the subject of the study and the actual political situation in the Kingdom of Yugoslavia: "Now that in reference to the resolution of the Croatian question, which has been officially put on the agenda, a lot of discussion has been generated concerning our internal organization, our editorial board considered it particularly useful to publish this discussion on American federalism by Slobodan Jovanović. The board will do its best to offer its readership articles on other types of political systems, convinced that it is the best way to help clarify concepts and arrive at necessary understanding in our midst." Slobodan Jovanović, *Američki federalizam* (Belgrade: Stamparija Soko, 1939), 117.

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