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# FEDERALISM IN YUGOSLAVIA

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## I

Yugoslav federalism does not begin with the federal constitution adopted eight years ago. Federal ideas among the South Slavs followed the stirrings of nationalism and the struggle for independence at the end of the eighteenth and early in the nineteenth century as the logical solution for a situation in which the various tribes wished to be united but not unitary.

With the exception of the Serbian Highlanders in Montenegro, who had been enjoying a precarious independence since 1697, the South Slav tribes were divided between the multi-national Ottoman and Hapsburg Empires. They generally showed little political consciousness either as separate tribes or as members of the Slav family. The first integrating movement among them began in the last three decades of the eighteenth century in the shape of vague Pan-Slav ideas stimulated by the Russian advance towards the Balkans. Pan-Slavism appealed both to many South Slav intellectuals and to the illiterate masses, but was too vague and too weak to counteract the various religious, linguistic, political, and historical differences among the tribes. Moreover, the relations between the three major tribes were disturbed by violent territorial disputes: Macedonia was the bone of contention between the Serbs and the Bulgarians, while Bosnia and Herzegovina were disputed by the Serbs and the Croats.<sup>1</sup>

Consequently, the South Slavs did not follow the clarion call of the French Revolution or respond to Napoleon's short-lived experiment of establishing an "Illyrian" language and nation. Their political consciousness as Slavs gradually developed in the first half of the nineteenth century, but the simultaneous development of tribal particularisms prevented integration. The Serbs and the Croats established at least a common literary language, although it was written in two different alphabets, but the Bulgarians and the Slovenes developed separate languages. Some Serbs and Croats did, indeed, think of the unification of all South Slavs, but they generally did so in terms of a Great Serbia or a Great Croatia, which were clearly unacceptable to the other tribes.<sup>2</sup>

The Serbian Karadjordjević dynasty, having liberated the Serbs from Turkish rule and leaning heavily on Russian support, aimed at dynastic aggrandizement and sought for Serbia the role of a Piedmont among the South Slavs. The Croats, however, generally remained legitimists and aspired to autonomy within the Austro-Hungarian Empire. Already at the first Pan-Slav Congress held

<sup>1</sup> Hans Kohn, *Pan-Slavism, Its History and Ideology* (Notre Dame, Indiana, 1953), pp. 50-52.

<sup>2</sup> *Ibid.*, pp. 52-57. These Great Serbian and Great Croatian movements before unification must be distinguished from similarly-named movements after it. The former envisaged integration, while the latter were separatist. Cf. Ferdo Čulinović, *Razvitak Jugoslavenskog Federalizma* [The Development of Yugoslav Federalism] (Zagreb, 1953), pp. 3-5.

in Prague in 1848 they formulated vague federal plans for the Empire; later they developed the idea of trialism, in its narrow sense meaning the unification of all the Hapsburg Slavs in a separate unit of the Empire, but in its broad sense including also the Slavs from outside the Empire.<sup>3</sup>

Federalism as a solution of the great practical difficulties impeding the unification of the westernized Catholic Hapsburg Slavs and the Oriental Orthodox Serbs and Montenegrins, appealed to many of the best brains on both sides. The eminent Croatian Bishop Strossmayer (1815–1905) was ready to place the Croats under the political rule of the Serbian dukes on the basis of a federal union. The Vojvodina Serbs, attracted to Serbia by their national sentiments but tied to the Hapsburg Empire by their cultural traditions and economic interests, strongly favored a federation.<sup>4</sup> Also the radical Serbian thinker, Svetozar Marković, advocated a federation, in the first instance with the Bulgarians but later also with the other tribes.<sup>5</sup> These first advocates of Yugoslav federalism were not political theoreticians. They did not study *The Federalist*, but they knew of the United States and, from closer quarters, of Switzerland.

## II

The early stages of the First World War boded ill for the South Slavs: an Allied victory would have spelled Russian domination, while a victory for the Central Powers would have strengthened German and Magyar preponderance in the Balkans. However, the political situation in 1915 was sufficiently fluid to encourage secret talks of unification between the representatives of the Serbian King and those of the Yugoslav Council, which represented the Croats and the Slovenes living under Hapsburg rule. Despite these, the views remained divergent—the Serbs were thinking in terms of other South Slav lands being joined to Serbia and of a centralist government, while the Hapsburg Slavs desired a union based on the principle of the preservation of the identity of the historical units. Some of them, as well as a few Montenegrin emigrés, supported the federal idea.<sup>6</sup>

This tug of war between the opposed concepts of unification continued throughout the war. At first the Serbs were in the stronger position, since Serbia was a recognized state fighting on the side of the Allies and enjoying strong Tsarist support. The fall of the Tsars weakened their insistence on their own terms and induced them to meet again the representatives of the Hapsburg South Slavs at the prolonged Corfu Conference in the summer of 1917, but the ensuing Declaration was ambiguous and left to the future the determination of the political system of a unified Yugoslavia. It accepted only the basic idea of Yugoslavia as distinct from an enlarged Serbia.

No further developments took place until October 26, 1918, when the Na-

<sup>3</sup> Čulinović, pp. 17–23; Kohn, pp. 70–73 and 191.

<sup>4</sup> Svetozar Pribičević, *Diktatura Kralja Aleksandra* [The Dictatorship of King Alexander] (Belgrade, 1952), p. 153; Kohn, p. 55.

<sup>5</sup> Pribičević, p. 153; Čulinović, p. 31.

<sup>6</sup> Čulinović, pp. 42–52.

tional Council of the Serbs, Croats, and Slovenes, representing the South Slavs living within the Austro-Hungarian Empire, severed its relations with the Empire and constituted what may be legitimately considered a state. This forced the Serbs to meet the delegates of the Council at another Conference. The resulting Geneva Declaration of November 6, 1918 agreed to the unification of three historical units—Serbia, the lands previously within the Austro-Hungarian Empire, and Montenegro—and to the retention of separate governments and systems of law in the three units until the final determination of the constitution. Owing to strong Serbian opposition, however, this seemingly federal plan for the transitional period was not adhered to. Outside political pressure, namely, the danger of Italian encroachments and the necessity of a united stand at the Peace Conference, strengthened the centralist forces and resulted in the Declaration of Union on December 1, 1918. This Declaration provided no safeguards for the preservation of separate institutions but established a unitary provisional coalition government, leaving the determination of the system of government to the future Constituent Assembly.<sup>7</sup>

The unification of the South Slavs was not only imperfect but also incomplete. The Bulgarians, who did not participate in the negotiations and remained outside the new state, had great cultural and religious affinities with the Serbs, although the two nations were divided by historical conflicts and had developed separate languages. The relations between the Serbs and the Croats were even more difficult: the common Serbo-Croat language scarcely compensated for the conflicts between the Roman Catholic and the Orthodox Churches, between the Western and the Oriental cultural heritages, or for the feud over Bosnia and Herzegovina.

Considerable difficulties arose out of the vague agreement of December 1, 1918. The provisional Government persecuted all the opponents of a unitary, centralist system as separatists and traitors, but despite its pressure the centralist bloc obtained little more than half the votes in the elections to the Constituent Assembly, eventually held on November 28, 1920.

The Constituent Assembly had before it six draft constitutions, ranging from a rigidly centralist governmental draft, through proposals involving varying degrees of devolution, to one advocating a true federation. The newly-formed Communist Party of Yugoslavia (CPY), profiting by the discontent of the various Yugoslav nationalities with the oppressive Serbian-dominated Government, had obtained 58 mandates to the Constituent Assembly and ranked as the third-largest party. It was, however, unable to follow up this electoral success, owing to lack of a political program and to inefficient leadership. The Communists did not present a draft of their own; on May 11, 1921, they withdrew from the Constituent Assembly in protest against the governmental terror. After some further withdrawals, the Government supporters prevailed and adopted on June 28, 1921 the Vidovdan Constitution, establishing Yugoslavia as a strictly unitary state.

<sup>7</sup> *Ibid.*, pp. 52–67.

The centralist Constitution failed to meet the requirements of the multinational society, but the King was unwilling to compromise with the demands of the non-Serbian nationalities. To outside political pressures endangering the very existence of the new state, the King responded by increasing the severity of the police-regime. Eventually, on January 6, 1929, he suspended the Constitution and established a dictatorship. Even the Yugoslavs themselves did not take the stability and the frontiers of their state for granted. The Croat peasant leader, Stjepan Radić, who advocated the transformation of Yugoslavia into a federation, wanted to include the Bulgarians.<sup>8</sup> The Yugoslav Communists, under Comintern pressure, reluctantly decided to support a Communist Balkan Federation, which would have involved the disintegration of Yugoslavia.<sup>9</sup>

Dissatisfaction with Serbian oppression grew stronger among all the Yugoslav nationalists, particularly among the Croats. Confronted with the growing German menace, the Government, in August, 1939, made a last-minute attempt to meet the Croatian grievances and, by the so-called Maček-Cvetković Agreement, granted the Croats part of Bosnia and Herzegovina and a special constitutional position in the Kingdom involving broad autonomy but not statehood. The Croats were not satisfied. Some claimed the inclusion of more Croat-inhabited lands within their territory; others demanded complete separation. Moreover, no attempt was made to meet the grievances of the smaller nationalities. In the face of the German onslaught in April, 1941, Yugoslavia rapidly disintegrated.

Thus ended the first chapter in the history of the unification of the South Slavs. Forced union under Serbian domination had ended in bankruptcy and the unitary state was replaced by three political units: the German and the Italian Occupation Zones and the nominally independent puppet state of Croatia.

### III

The disintegration of the Kingdom of Yugoslavia created favorable conditions for the rise to power of the CPY, which, after its initial success in 1920, had led an uncomfortable underground existence, rent by violent struggles among its factions and their leaders. The party had accepted reluctantly and only under Comintern pressure the slogans of national equality and of the right of self-determination, including that of separation, for all the Yugoslav nationalities, but these slogans remained the only stable element in a rapidly changing program. At the outbreak of the war, the CPY was numerically small but consolidated under the leadership of Tito, installed as its Secretary from 1937; it was well prepared to make good use of its national program and to attract adherents for the Partisans, a guerrilla organization which the CPY

<sup>8</sup> *Ibid.*, p. 104.

<sup>9</sup> *Istorijski Arhiv Komunističke Partije Jugoslavije [Historical Archives of the CPY]*, Vol. 2 (Belgrade, 1950), pp. 110–12. See also Elizabeth Barker, *Macedonia—Its Place in Balkan Power Politics* (London, 1950).

called into being after the German invasion of the Soviet Union on June 22, 1941.

Having entered the war without a clear plan for the final solution of the national question<sup>10</sup> and being preoccupied with fighting for their survival, the Partisans naturally were not at first concerned with constitutional problems. Wartime conditions imposed on them a loose, quasi-federal organization, since the Partisan detachments were hard-pressed and could not maintain a close liaison. National Liberation bodies, vaguely resembling the Soviets in Russia during the civil war, were formed in the various parts of Yugoslavia and were co-ordinated by the Council of National Liberation (AVNOJ). The first session of this Council, held in November, 1942, stressed as its goal the establishment of conditions for the "full freedom and equality in the liberated brotherly union" not only for the Serbs, Croats, and Slovenes, but also for the Macedonians, Montenegrins, and others.<sup>11</sup> A year later, in September, 1943, the Second Session of the AVNOJ proclaimed the federal principle:

On the basis of the right of all nations to self-determination, including the union with or the secession from other nations, and in accordance with the true will of all the nations of Yugoslavia, the Anti-Fascist Council of National Liberation of Yugoslavia passes the following decisions: . . .

2. . . . Yugoslavia is being built on the federal principle, which will ensure full equality to the nations of Serbia, Croatia, Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina.

3. In accordance with the federal organization of Yugoslavia . . . organs of the people's authorities have been established in different lands of Yugoslavia in the form of National Liberation Committees and Provincial Anti-Fascist Councils of National Liberation.

4. National minorities of Yugoslavia will be secured all their rights.<sup>12</sup>

The proposed federation was thus based on the principle of nationality: the Serbs, Croats, Slovenes, Macedonians, and Montenegrins were each given a separate Republic. In order to solve the age-long conflict between the Serbs and the Croats over Bosnia and Herzegovina, this territory was constituted as the sixth Republic, the only one that was not the expression of a separate nationality. In this case the fact that Bosnia and Herzegovina were an historical unit was utilized, but the identity of other important historical units, such as Vojvodina or Dalmatia, was not recognized and they were not granted the status of separate Republics.

During the war, the Partisan movement spread beyond the frontiers of pre-war Yugoslavia; Yugoslav organizers were busy in Albania and in Bulgaria. Undoubtedly the Yugoslav leaders worked for the eventual incorporation of these two countries into the Yugoslav Federation, although they were to be frustrated in their plans. Anticipating developments in Yugoslavia proper, the

<sup>10</sup> Milovan Djilas, "O rešenju nacionalnog pitanja u Jugoslaviji" [On the Solution of the National Problem], *Clanci 1941-1946* [Articles 1941-1946] (Belgrade, 1947), pp. 233-34.

<sup>11</sup> Quoted in Culinović, p. 133.

<sup>12</sup> Text in *New Yugoslavia*, published by the United Slav Committee (London, 1944), pp. 12-13.

facts may be here briefly stated. After the war, the Yugoslavs extended considerable economic aid to Albania and sent to that country numbers of technical personnel, thus achieving an advanced degree of economic and political integration. They also dangled before the Albanians the bait of unification with their compatriots living within the confines of Yugoslavia, and organized the latter in readiness for a union in an Autonomous District. The incorporation plans were not, however, openly discussed or officially admitted.<sup>13</sup> By contrast, the project for the inclusion of Bulgaria as the seventh Federal Republic was officially formulated in November, 1944 by the Serbian Jewish leader, Moša Pijade, and was pursued in subsequent years. The Bulgarians, however, insisted on a federation on terms of equality with the whole of Yugoslavia.<sup>14</sup> The Russians opposed the establishment of a strong Balkan *bloc*, and both the Albanian and the Bulgarian schemes were finally destroyed by the Cominform ban on Yugoslavia declared in June, 1948.

As might have been expected from Partisan-organized and controlled bodies, the local assemblies throughout Yugoslavia voted for unification on the basis of the AVNOJ resolution and none utilized the right of separation. They constituted themselves as the governmental organs of the new Republics. Also, two autonomous units were formed—the multi-national Autonomous Province of Vojvodina and the predominantly Shipetar (Albanian) Autonomous District of Kosovo-Metohija (KOSMET). Thus, before the final liberation of Yugoslavia and a long time before the adoption of a formal constitution, the system of government was determined in fair detail. Unlike the first Yugoslav federalists, the Communist leaders did not study Western federations, but several of them, including Tito, had first-hand knowledge of the Soviet Union. Moreover, as the Yugoslavs themselves admit at present, they were at the time under the “hegemonist pressure of Soviet ideology,”<sup>15</sup> and there is no doubt that the federal framework, complete with the autonomous units, closely followed the Soviet pattern.

The Interim Assembly, a body consisting of the members of the AVNOJ with the “uncompromised” individual members of the last Yugoslav National Assembly, amounting to about one-third of their numbers, met in the summer of 1945 and decided on a two-house Constituent Assembly. The Second House, the Assembly of the Peoples, consisting of 25 representatives of each Republic, 15 of the Autonomous Province, and 10 of the Autonomous District, was given complete equality with the Lower House, ensuring that the rights of the nationalities would be adequately protected and the federal structure preserved.<sup>16</sup>

<sup>13</sup> Cf. Vladimir Dedijer, *Jugoslovensko-Albanski odnosi, 1939–1948* [Yugoslav-Albanian Relations 1939–48] (Belgrade, 1949).

<sup>14</sup> Cf. Čulinović, p. 165 and Lazar Mojsov, *Bugarska Radnička Partija (Komunisti) i Makedonsko nacionalno pitanje* [The Bulgarian Workers' Party (Communist) and the Macedonian National Question] (Belgrade, 1948).

<sup>15</sup> Edvard Kardelj, “The New Social and Political System of the Federal Peoples' Republic of Yugoslavia,” in *New Fundamental Law of Yugoslavia* (Belgrade, 1953), p. 5.

<sup>16</sup> Dr. Jovan Djordjević, *Ustarno pravo Federativne Narodne Republike Jugoslavije*

## IV

The Constitution proclaimed on January 31, 1946 really registered, then, the existing state of government. Eight years later the Vice-President of the Federation, Edvard Kardelj, freely admitted that this Constitution was burdened with the "mechanical transplantation of some forms from the Soviet system,"<sup>17</sup> but to a certain extent it undoubtedly gave expression to peculiarly Yugoslav conditions.<sup>18</sup>

Article 1 of the Constitution defined the system of government in general terms and based it on the principles of equality and voluntariness:

The Federal People's Republic of Yugoslavia is a federal people's State of republican form, a community of peoples equal in rights who, basing themselves on the right to self-determination, which includes the right to separation, have expressed a will to live together in a federal State.<sup>19</sup>

The right of separation, theoretically open to the local assemblies after the second session of the AVNOJ but not used by any of them, had scarcely been more real in Yugoslavia than its prototype in Communist Russia. In any case, its mention in the Constitution was no more than an historical reminiscence, but it is interesting to note that some Croatian scholars attributed to it a real meaning.<sup>20</sup>

According to the Constitution, all authority is derived from the people, who realize it through organs of State authority ranging from the People's Committees (the Yugoslav equivalent of the Russian Soviets) through Republican to Federal organs. The Constitution vested original sovereignty in the Republics and limited their competence only by the powers transferred to the Federation, leaving them residual powers (Articles 6 and 9). Professor Djordjević, one of the authors of the 1946 Constitution, warns us, however, that "sovereignty" here did not have the meaning usual in constitutional or international law in the West. He stresses that the terminology was used "not in confirmation of the scientific validity of definitions," but in order to express "the voluntary character of the union, the sovereignty and equality of the peoples, and the state character of their legal position within the union."<sup>21</sup> In fact the "sovereignty" of the Republics amounted to very little, since the Federation was given an extremely wide competence—"to protect the security as well as the social and political order of the People's Republics"—and its jurisdiction in-

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[Constitutional Law of the Federal People's Republic of Yugoslavia] (Belgrade, 1953), p. 269.

<sup>17</sup> Kardelj, p. 6.

<sup>18</sup> Professor Djordjević (*op. cit.*, p. 31) goes so far as to claim that the Constitution was in considerable measure independent of the Soviet pattern.

<sup>19</sup> The principle of voluntariness was confirmed in Republican Constitutions, as in the *Constitution of the Peoples' Republic of Serbia*, Article 2.

<sup>20</sup> Cf. Čulinović, p. 151 n, quoting Professor Jovan Stefanović.

<sup>21</sup> Djordjević, p. 201.

cluded such a wide range of activities that very little scope remained for the exercise of the federal principle.<sup>22</sup>

There were provided the outer paraphernalia of sovereignty for the Republics, namely separate flags and separate coats of arms.<sup>23</sup> The Law of Nationality of the Federal People's Republic of Yugoslavia introduced a system of dual citizenship under which every citizen of Yugoslavia was "as a rule" a citizen of one of the People's Republics.<sup>24</sup> This, however, did not affect in the slightest his position in the other Republics.

The constitutions of the People's Republics, although made by the Republics themselves, were to conform with the Federal Constitution (Article 11). They did, in fact, follow it closely, but there was no procedure to deal with a breach of this provision.<sup>25</sup>

Full expression was given to the federal principle only in the composition of the Federal legislative bodies. The second house, the House of Nationalities, consisting of 30 representatives of each Republic, 20 of the Autonomous Province, and 15 of the Autonomous District, received equal powers with the lower house. Bills could be introduced in either House and had to be passed by both (Articles 54, 57, and 63).

The organization of the executive, however, clearly revealed the predominance of the Federation. General Federal Ministries were put in charge of Foreign Affairs, Defense, Communications, and Foreign Trade, while "Federal-Republican" Ministries commanded Finance, Interior, Justice, Industry, Mining, Commerce and Supply, Agriculture, and Labor and Building. Parallel Republican Ministries were to work on the basis of "regulations, instructions, orders, and decisions" of their Federal counterparts; in other words, they were little more than subordinate organs.<sup>26</sup> In order to administer the relatively unimportant affairs exclusively within their competence, the Republics were given also exclusively Republican Ministries (Article 101). Finally, within the wide bounds of Federal jurisdiction, the Federal Government obtained the power to suspend any act of a Republican Government and to annul any act of a Republican Minister not in conformity with Federal or Republican legislation (Article 131).

The judicial system included separate Republican systems of courts and the

<sup>22</sup> Articles 9 and 44 (*Cf. the Stalin Constitution*, Article 14). Moreover, Article 44 spoke of the powers "comprised" within the Federal jurisdiction and the enumeration was not, apparently, exhaustive. At present the Yugoslavs themselves freely admit that the 1946 Constitution was strongly centralist, e.g. Kardelj, pp. 7-8 or Djordjević, p. 192.

<sup>23</sup> See, for instance, the *Constitution of Serbia*, Articles 3-5.

<sup>24</sup> *Collected Yugoslav Laws*, 2 (Belgrade, 1952), p. 37.

<sup>25</sup> This, of course, confirms the view that the Republics were so subordinate that lack of compliance was unthinkable.

<sup>26</sup> Article 100. *Cf. the Stalin Constitution*, Articles 76 and 85. Professor Djordjević admits the principle of hierarchial subjection but claims that, in contrast to the Soviet example, the Yugoslavs endeavored to delimit the Federal and Republican spheres of competence.

Supreme Court of the Federal Republic as the court of highest instance in matters concerning the application of Federal laws.<sup>27</sup> However, following the Russian example, the important office of Public Prosecution was fully centralized and Public Prosecutors and their Deputies were appointed by the Federal Legislature.<sup>28</sup>

The Yugoslav Army was also established as an exclusively Federal institution. In this instance the Yugoslavs ignored the 1944 amendment to the Stalin Constitution allowing the Union Republics to maintain their own military formations.<sup>29</sup>

Thus, according to the criteria prevalent among Western scholars, the Yugoslav Constitution of 1946 was not of a true federal type where "the general and regional governments are each, within a sphere, coordinate and independent": following the Stalin Constitution, it established a system termed "quasi-federal" by Professor Wheare.<sup>30</sup> Moreover, it must be stressed that in Communist Yugoslavia, no less than in Communist Russia, constitutional forms had and still have much less importance than in Western democracies, since real power is concentrated in the strictly centralized machinery of the Communist party, which remains outside the constitutional framework.

Furthermore, the Yugoslavs adopted from Russian practice the institution of autonomous units. Since the establishment of these units, their boundaries, and their very existence in the Soviet Union have been quite arbitrary,<sup>31</sup> it is not surprising that their theoretical basis has not been properly analyzed.<sup>32</sup> The Yugoslavs applied the system to two territories only. In Vojvodina, inhabited by Serbs and by two-thirds of the Shipetars living in Yugoslavia, and differing from Serbia through its economic and cultural backwardness, autonomy was also a preparatory step for the expected incorporation of Albania into the Federation.<sup>33</sup>

<sup>27</sup> Chapter 13. Cf. the *Stalin Constitution*, Articles 102-12.

<sup>28</sup> Chapter 14. Cf. the *Stalin Constitution*, Article 147.

<sup>29</sup> Chapter 16. Cf. the *Stalin Constitution*, Article 16b. The authorization in the Soviet Union was not utilized in practice and Western scholars generally agree that the amendment was only part of the window-dressing calculated to obtain separate United Nations membership for the Union Republics. The fact that the provision was not imitated by the Yugoslavs seems to confirm this view.

<sup>30</sup> Kenneth C. Wheare, *Federal Government* (London, 1947), pp. 11 and 27-28. Reference of Yugoslav institutions to the authoritative definitions of Professor Wheare is necessary in order to couch the analysis in terms generally understood in the West and the statement that they are not "true" to them does not involve a value judgment.

It may be noted that "federalism" has become one of those emotionally charged political terms, like "democracy" or "freedom," which are understood differently by Western and by Communist scholars. Both sides agree that the absence of coercion of the federal units by the central government is desirable and disagree only in their estimate of the actual conditions. E.g. Professor Djordjević (*op. cit.*, pp. 185 ff.) condemns Western Federations because essential powers have been usurped by the center.

<sup>31</sup> Cf. Walter Kolarz, *Russia and Her Colonies* (London, 1952).

<sup>32</sup> See the complaint of Professor Djordjević, p. 204.

<sup>33</sup> See above, pp. 420-21. There is no documentary confirmation for this view and it is denied by Dedijer, *op. cit.*, but the writer heard it generally expressed by the inhabitants of KOSMET in 1953 and found it fully convincing.

Vojvodina, being the more advanced unit, received the more exalted status of an Autonomous Province, while KOSMET became an Autonomous District. Both were governed by statutes enacted by their own legislatures and confirmed by the People's Assembly of Serbia. The Vojvodina legislature received the name of the "People's Assembly," while the KOSMET legislature was more humbly called the "Regional People's Committee." Both units were given separate executives, Regional Executive Committees, and separate judicial systems—in Vojvodina culminating in a Supreme Court, but in KOSMET subject to appeals to the Supreme Court of Serbia (Chapter XI).

Finally, the Constitution confirmed the People's Committees as the organs of state authority in villages, districts, towns, counties, and regions (Chapter XII).

## V

Political life in Yugoslavia differed from that in the Soviet Union in one fundamental respect: there was no equivalent of the "leading nation." The Serbs, amounting to over 40 per cent of the total population, had been the dominant element in prewar Yugoslavia, but the Communist tradition was to reject Serbian hegemony emphatically. Moreover, the next-largest ethnic group, the Croats, numbered over 30 per cent of the total and were in a position to dispute Serbian domination. This is the major reason why in postwar Yugoslavia the backward nationalities have been subsidized and developed with a genuine goal of equalization with the more advanced and have not been subject to the economic exploitation and cultural subjection prevalent in the Soviet Union and thinly disguised by ideological proclamations.

Although Yugoslav writers at present tend to exaggerate the differences in Yugoslav and Soviet constitutional developments in order to stress the independence and originality of Yugoslavia, their views are justified to a certain extent. The 1946 Constitution has indeed been a slavish copy of the Stalin Constitution, but Yugoslav institutions developed independently and were much more a political reality than their Russian prototypes. The People's Committees as local organs of government, drawing on their wartime tradition, exceeded the importance of the local soviets in the Soviet Union, and were ready to play a greatly enhanced role after the reforms which started in 1951. The statutes of the autonomous units were passed in 1947 and the units functioned much more effectively than their Russian counterparts.<sup>34</sup> In contrast to the frequent alterations of boundaries and to the cases of complete abolition in the Soviet Union, the two Yugoslav autonomous units remained constant.

On the other hand, as in the Soviet Union, bureaucracy grew in numbers and in power, and central organs gradually enlarged their competence and eventually controlled rigidly the whole of Yugoslavia's political and economic life. The number of Federal and Federal-Republican Ministries increased and various Federal committees, going beyond the constitutional framework, gradually assumed full control over the Republican organs operating within their spheres. The legal status of these committees was consolidated in 1950, when

<sup>34</sup> Cf. Djordjević, pp. 33 and 204-7.

they were transformed into General Directorates. Undoubtedly Yugoslavia until then had been true to the Russian example in developing a centralized reign of bureaucracy.

From 1950, after the break with the Cominform had become final, the Yugoslav leaders began to grope towards a system which, without reversion to Western constitutional forms, would become more efficient and less oppressive and would eliminate excessive centralization. This process of breaking down centralism has not, however, resulted in the transformation of Yugoslavia into a federation closer to Western concepts of federalism or in the transfer of real powers to the People's Republics. While in 1946 the six People's Republics representing the Yugoslav nationalities were the foundation of the constitutional structure, in 1953 the Yugoslav leaders considered that the federal system had fulfilled its aims: it had secured the advance towards cultural and economic equality of the People's Republics during the transitional phase. They felt that the economic and social integration of Yugoslavia had proceeded so far that division by nationalities and Republics had lost most, though not yet all, of its importance. In Kardelj's opinion, the Federation has become "no longer only a union of *nationalities* and of their *states*, but has above all become a bearer of the *social functions* of a unified *socialist community of Yugoslav working people*."<sup>35</sup> Both the Federation and the People's Republics were, in a certain sense, regarded as "superstructure" over the self-government of the working people and therefore their relations could not be reduced, even nominally, to the level of constitutional relations in classical federations. The Yugoslav rulers acknowledged that the age of national forms had not yet completely passed, and therefore they did not wish to discard the nominal state character of the Republics, but they considered that the notion of the "sovereignty" of the People's Republic, even in the restricted sense of the 1946 Constitution, had become untenable.<sup>36</sup>

Consequently, the devolution of central powers during the constitutional reform was less favorable to the Republics than to the newly established Producers' Councils, governing economic life, and to the People's Committees, greatly enhanced in their importance and status. The "federation" no longer applied to the national Republics but to the new forms of social life. As Kardelj expressed it:

Moreover, a Federation of Republics equal in rights is indispensable in our country not only because of the national composition of our country. It stems also from our social system as such, from our concept of the people's sovereignty and social self-government. Our country would be a "Federation" in that new sense, i.e., as a system founded on social self-government,—even if it were not multi-national.<sup>37</sup>

The Republics are now clearly considered only one of the several links in the chain of authority of the "working people." They have functions and powers

<sup>35</sup> Kardelj, p. 27.

<sup>36</sup> Cf. Djordjević, pp. 201–2.

<sup>37</sup> Kardelj, p. 25

wider in scope than those of the People's Committees but not really different in nature from them.

Admittedly, the Yugoslavs have been successful with their nationalities policy: they have eliminated postwar reprisals and have been able to develop politically, economically, and culturally the backward areas, particularly Macedonia and Bosnia. The official opinion that the national problem has been finally solved<sup>38</sup> does not, however, fully square with the complicated situation. The process of integration has not advanced sufficiently to be declared decisive. Traditional antagonisms are no longer in evidence, but they are by no means dead and, given an opportunity, they could break out again. In all likelihood the major division lines among the Yugoslavs are still national. If devolution has not been more in favor of the People's Republics, this may be due not so much to their relative unimportance, as, on the contrary, to the still real danger of strengthening the rallying points for the separate national loyalties.

Since 1951 the process of devolution has advanced considerably, but it again clearly demonstrates that the Yugoslav federation differs from the classical Western type. The Republics are not co-ordinate and all decisions concerning the division of power are made at the center.

The ideological basis of the recent constitutional changes is not clear. The Yugoslav Communists claim that they are the legitimate heirs of Marx and Engels and, less emphatically, of Lenin, and that they are developing the original ideas of these thinkers after having removed the distorting Stalinist glosses. They strongly stress the fundamental differences between their system and both the Russian and the Western systems. On the other hand, they have lately evinced some interest in the indigenous sources of federalism<sup>39</sup> and the recent edition of the treatise on constitutional law by Professor Djordjević discusses in some detail federal institutions in the West. In fact, the present Yugoslav system seems to incorporate some ideas of the early socialists, especially Proudhon, but the Yugoslav theoreticians dismiss Proudhon as "petit-bourgeois." It is likely that in their difficult endeavor to find an alternative both to Russian communism and to Western capitalism they have developed their solutions in an empirical way without studying Proudhon.

## VI

Constitutional changes have been expressed in the Fundamental Law Pertaining to the Bases of the Social and Political Organization of the Federal People's Republic of Yugoslavia and of the Federal Organs of the State Authority of January 13, 1953.<sup>40</sup> The form adopted is original, since the 1946 Constitution has been retained despite the basic alterations in the system, and the

<sup>38</sup> Cf. Josip Broz [Tito], *Sur le nationalisme et l'internationalisme* (Belgrade, 1948), p. 7: "The problem of nationalities has been regulated, and even very well regulated, to the general satisfaction of all the peoples."

<sup>39</sup> E.g., the books by Čulinović and Pribičević, both published in 1952.

<sup>40</sup> The English translation has been published by the Union of Jurists Associations of Yugoslavia under the title *New Fundamental Law of Yugoslavia* (Belgrade, 1953).

Fundamental Law has replaced and supplemented only some of its provisions. Similar Fundamental Laws have been passed by all the People's Republics.

The Fundamental Law reveals clearly the changed status of the People's Republics. In Article I, it vaguely refers to the "sovereign peoples equal in rights," but it eschews any reference to the sovereignty or the sovereign powers of the Republics. It also omits the concept of the original competence of the Republics and of the transfer of part of their powers to the Federation. The unitary element of the Yugoslav "working people" is emphasized at the beginning of both the Federal and Republican Fundamental Laws.<sup>41</sup>

The Republics are no longer the original bearers of sovereignty but are reduced to one of the several channels through which the sovereignty of the "working people" is expressed. Although the Republics exercise a degree of control over the lower organs of State authority on their territories, the competence of the latter is not delegated but original, deriving directly from the Constitution, and the residual powers are vested in them and no longer in the Republics.<sup>42</sup>

In Yugoslav constitutional theory the Federal organs now fulfill all the central social functions without limiting any sovereign rights of the Republics, since none are inherent in the latter. Although the People's Republics are still described as states, the relations between them and the Federation cannot be considered as relations between states and governments. The Republican organs remain, however, the necessary intermediaries between the Federal organs and the various state organs on the territories of the Republics; Federal organs do not, as a rule, maintain direct contact with them.<sup>43</sup>

Three types of legislation are provided for by the Fundamental Law: (1) exclusively Federal laws; (2) basic Federal laws to which the Republics may introduce supplementary laws; and (3) general laws laying down only the principles for related Republican laws and applied directly only where no Republican laws have been passed in the field. Federal laws prevail over Republican laws but, as in the 1946 Constitution, there is no procedure for enforcing this provision; there is, however, a procedure open to the People's Republics: they may initiate proceedings for determining the conformity of the Federal and the Republican laws with the Federal Constitution (Article 11).

Executive functions are distributed between the Federal and the Republican Administration and the People's Committees. The Fundamental Law abolishes the previous system of dual responsibility under which executive organs were responsible not only to the appropriate legislative body but also to the higher administrative organs in the same branch.<sup>44</sup> This strengthens the position of the Republics vis-à-vis the Federation, and also the position of the People's Committees vis-à-vis the Republics.

<sup>41</sup> *Fundamental Law of Yugoslavia*, Article 2, and *Fundamental Law of Serbia*, Articles 1 and 2.

<sup>42</sup> *Fundamental Law*, Article 3; Djordjević, p. 194.

<sup>43</sup> Djordjević, p. 232-33.

<sup>44</sup> Kardelj, pp. 21-22.

The Fundamental Law includes a formal guarantee of the equality of the rights of the People's Republics in the form of the Council of Nationalities. This Council has been retained despite the diminished status of the Republics, but its place as the second house has been taken by the newly established Council of Producers. The representative bodies of the six Republics and of the Autonomous units elect, as previously, members to the Federal Legislature, but these normally sit in the Federal Council, together with the members elected in general elections. They are constituted as a separate Council of Nationalities when proposals concerning constitutional reform or the draft of the Federal economic plan are on the agenda. Moreover, on the proposal of the majority of the deputies elected by the representative body of any one Republic and adopted by the majority of the members of the Council of Nationalities, the Council meets separately also when a law or other act concerning the relations between the Republics and the Federation comes on the agenda. When separately constituted, the Council of Nationalities has full rights as a separate house. There is a provision for reaching agreement if the Federal Council disagrees with its proposals. If this fails, the proposed measure is put aside for one year and then apparently the same procedure is repeated. If disagreement relates to the terms of the Federal economic plan, discussion is postponed for two months and if agreement is not reached within this period the Federal Council is dissolved. Finally, the Council of Nationalities meets separately to render an opinion on the necessity of passing general Federal laws and has the power to prevent the placing of bills proposing them on the agenda of the Federal Council (Articles 44–48).

Elaborate as these provisions are, they have only a purely formal significance. It is now officially admitted that even as a full-fledged second house, the Council of Nationalities did not fulfill, until 1953, any functions connected with the defense of the rights of the Republics and did not even endeavor to hamper the gradual accumulation of power in the center.<sup>45</sup> It cannot be expected that it would be more effective in its new, humbler guise. In fact, as Kardelj himself admits, the provisions are unlikely to be utilized, since social interests in Yugoslavia are coordinated by many other, apparently more effective instruments. The Council of Nationalities has been retained for purely formal reasons—as “the ultimate legal consequence” and a renewed declaration of the Yugoslav system of national equality.<sup>46</sup>

It is difficult to ascertain the powers exercised by the Republics in the economic sphere, where the basic reforms have not yet fully crystallized. The Republics adopt their own economic plans within the framework of the Federal economic plan. This could, of course, mean simply filling in the details in a centrally determined framework. On the other hand, it could and to a certain extent does involve initiative by the Republics on important matters. Economic decentralization in Yugoslavia has been pursued with great vigor and not only

<sup>45</sup> *Borba* [Belgrade newspaper], September 3, 1953.

<sup>46</sup> Kardelj, pp. 25–26.

the new Producers' Councils but also the People's Committees and the Republics have received some share of the previously centralized powers. Nevertheless, there is no real analogy with the all-important control of finances in Western federations. If, as is likely, the Republics actually exercise important economic powers, they are still not coordinate with the Federation and may forfeit these powers through a decision at the center.

So the second phase of constitutional development in Yugoslavia is nearing its end. After the first period of centralism, federal institutions of the Communist type, although not exactly of the Russian pattern, have been tried. The present trend is towards complete unitarianism, but it differs from that prevailing in the interwar period, since it is based on the unity of the "working people" and is not a mask for Serbian predominance. If the process of consolidation continues, national divisions may, in time, disappear from the political scene and remain only in the form of localisms within an all-embracing Yugoslav patriotism; the remnants of federal forms would then naturally disappear. On the other hand, it is possible that national divisions may persist beyond the expectations of the Yugoslav rulers and that the existing constitutional forms may still be adapted for really federal institutions.<sup>47</sup>

<sup>47</sup> For a more detailed analysis of nationalism in Yugoslavia, see J. Frankel, "Communism and the National Question in Yugoslavia," *Journal of Central European Affairs*, Vol. 15, pp. 49-65 (April, 1955).