

# /BOOK REVIEWS

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**Popović, Dragoljub. 2021. *Constitutional History of Serbia*.  
Balkan Studies Library, Volume 30. Paderborn: Brill  
Schöningh, XIII + 249.**

At the beginning, a few words about the author of the book. Dragoljub Popović was a longtime professor at the Faculty of Law, University of Belgrade. He taught General Legal History (Comparative Legal Tradition, as it is called today), and was also habilitated for Constitutional Law. His brilliant university career was interrupted due to his disagreement with the repressive University Act of 1998. He continued his career first as a lawyer, then as the Ambassador of the Federal Republic of Yugoslavia to Switzerland (2001–2004). From 2005 to 2015 Popović was a judge of the European Court of Human Rights. The author of the book is a professor, diplomat and judge.

In the preface, the author explains why, apart from Jaša Prodanović's 1936 book *Ustavni razvitak i ustavne borbe u Srbiji* (Constitutional development and the constitutional struggle in Serbia), there is no book with the same title. First of all, there was the influence of Slobodan Jovanović on writing the constitutional history of Serbia, although he did not call it that. His voluminous books were not only dedicated to the constitutional history, but also to the political, economic and general social history of Serbia in the "long nineteenth century," i.e. from the First Serbian Uprising of 1804 to the outbreak of the First World War in 1914. The second reason, according to the author, is that constitutional history did not exist as a separate discipline at law schools in Serbia and Yugoslavia, but was taught as part of the national legal history and courses in constitutional law.

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The author singles out the rule of law and human rights and examines their significance for the development of Serbian constitutionalism. Which of these two elements was more important? The author says that it was not human rights and explains why: “Human rights have never become a pillar of the Serbian nation state. They were present as a concept with other ideas during the nation building, but were nevertheless unable to prevail. The reason for their weakness originated in the lack of social and political forces which could promote them and impose the respective narrative on the political agenda (...) Human rights were proclaimed in constitutional texts, but remained mostly ineffective.” He emphasizes the importance of the rule of law: “The concept of the rule of law was much more widely discussed and was one of the levers of the developments. This was rather complex and showed specific traits of the Serbian society. That is why (...) an overarching principle as a source of the legitimacy of the ultimate power (...) would not be found in the protection of human rights, but rather in the rule of law.”

The author reminds of Dositej Obradović’s insightful words, that the local people in the Balkans, once they free themselves from foreign rule, can continue to rule by terrorizing the people – just as the foreigners had. Unfortunately, these words, have been confirmed in reality numerous times. The transfer of power from foreigners to local people has by no means guaranteed good and fair government.

The author shows the difficulties with the rule of law in practice on the example of the rule of Prince Mihailo: “The prince, stern, rigid and reserved in communication, different from his environment and unable to get support from the masses, was at the same time very much inclined to make use of his prerogative. He enjoyed his princely power to the full, and sometimes even overstepped the law.” When he ascended the throne in 1860, the core stance of Mihailo’s proclamation was legality: “Let each and everyone know that while Prince Mihailo is in power, the law is the supreme will in Serbia.” Four years later, in 1864, Prince Mihailo sentenced five justices of the Supreme Court to imprisonment, on the basis of a subsequently passed law that enabled judges to be tried. The general impression was that the justices had been convicted illegally and without their guilt being proven, and that the principle of legality and judicial independence had been violated. There is nothing or almost nothing left of Prince Mihailo’s promise that “the law is the supreme will in Serbia.” The author concludes the description of Mihailo’s rule with the words: “He was intolerant towards the opinions of others, which made his rule difficult to bear.”

The 1888 Constitution deserved a high mark. The constitutional provisions on the organization of government on democratic foundations, the rule of law based on law, freedoms and the rights of citizens followed

in the steps of the high standards of European constitutionality of the time. The implementation of these constitutional provisions, which required much good will, patience and subtlety in acting, encountered almost insurmountable obstacles. The People's Radical Party, thanks to which most of the mentioned provisions were included in the 1888 Constitution, understood parliamentary government as the government of the majority in a literal way. Its goal was to win majority in parliament, which meant not only appointing its ministers but also filling positions in the administration, even in the judiciary, with its people. The parliamentary regime, literally and absolutely understood, quickly succumbed to the party regime or the regime of the party state. Due to his dissatisfaction with the party regime, King Aleksandar Obrenović suspended the 1888 Constitution in a coup d'état in May 1894 and restored the 1869 Constitution. He replaced the party regime with his personal regime.

With the adoption of the provisions of the 1903 Constitution, Serbia became a constitutional parliamentary monarchy. The author leads the reader through this period, which some call the "golden age of Serbian parliamentarism", pointing out the obstacles that stood in front of it. He mentions that the middle class was very small and weak in number. Only six cities had populations over 10,000. The majority of the middle class consisted of craftsmen (46%), merchants (22%) and clerks (19%). A major obstacle to the functioning of the parliamentary system was the so-called conspiracy issue. The officers who had killed King Aleksandar Obrenović, to whom they had sworn an oath, over time became a factor in the political life of the Kingdom of Serbia, with all the negative consequences that such participation entails. In addition to these two, obstacles to the establishment of a parliamentary system were: poverty, illiteracy, and backwardness in educational and cultural terms, a low level of political culture, etc.

The author shows this development of parliamentary rule, from the two-party system to the system of the dominant party. He presents the story of probably the only "non-parliamentary action of King Peter," from May 1905. At that time, the king rejected the request of Prime Minister Nikola Pašić to dissolve the National Assembly and call new elections. Instead, the king entrusted the leader of the Independent Radical Party, Ljubo Stojanović, to form a new cabinet. The new prime minister immediately requested the dissolution of the National Assembly and new elections, which the king approved. With a special declaration, Stojanović promised free, fair and correct elections. That was done and probably the fairest elections were held at that time. The alleged "non-parliamentary actions of King Peter" resulted in free elections that expressed the true will of the people. However,

the two-party system did not last long: soon, from June 1906, a system of parliamentary government with a dominant party was established. It would remain so until 1914 and the beginning of the First World War.

The author begins the description of the post-war constitutionality with the fact that the general idea of the founder of communist Yugoslavia in 1943 was one ethnic federation. Serbs, Croats and Slovenes, as recognized peoples in the interwar Yugoslavia, were joined by Montenegrins and Macedonians. "Each of the constituent peoples had a republic, but the Republic of Bosnia and Herzegovina was differently conceptualized." Bosnia and Herzegovina was the homeland of the Serbs, Croats and Muslims who lived there (the Muslims were recognized as an ethnic group in the course of time). That is why the author believes that Yugoslavia was not an ethnic federation, at least not completely, and concludes: "The foundations of the federation, and its founding myth, were lacking a clear principle." Another weak point of the founding myth was that "the internal minorities in Yugoslavia, i.e. the Yugoslav ethnicities living in a large number outside of their main republic, did not enjoy minority rights."

To the major shortcomings in the original concept of the federation, the author adds the lack of legitimacy and democratic institutions, which in its entirety determined the fate of Yugoslavia. All these weak points were reflected in the constitutional texts, "whose number evidenced the instability of the whole state construction and basic constitutional settlement." In forty-six years, three constitutions, one constitutional act, and ninety (*sic*) constitutional amendments were passed. The first 1946 Constitution was a simple copy of the Soviet Union constitution of 1936. The 1946 Constitution established "one statist social and centralist state system, which excluded any form of pluralism – ideological, property, political, etc." (Ratko Marković).

Instead of a system of division of power, a system of unity of power was introduced, characteristic of the countries of the so-called people's democracy (i.e. countries from the socialist camp) for the entire duration of their existence. The system of unity of power meant that the holder of all power was the Assembly, which delegated executive and judicial power to the relevant bodies. In reality, the Assembly was not the bearer of all power, but rather the Central Committee of the Communist Party. This is another of the many contributions to the lack of legitimacy of the institutions that made crucial decisions. The author consistently and ubiquitously emphasizes this lack of legitimacy of these institutions, that there was no open debate on political issues, that there was no freedom of political organization, and that there were no free elections. This is to be commended and serves to nurture a critical spirit and scientific truth.

After the break with the Soviet Union in 1948, the Soviet model was abandoned and the search began for its own original constitutional and other solutions in building socialism. The 1953 Constitutional Act began a major Yugoslav constitutional experiment called “self-government”. According to the 1953 Constitutional Act, the basis of the entire social and political system was: 1) social ownership of the means of production, and 2) self-management of producers and working people in all areas of social life.

The last two constitutions of the Yugoslav state, from 1963 and 1974, were not written as classical constitutions but as “charters of social self-government” (Ratko Marković). A total of forty-two amendments were made to the 1963 Constitution, in three steps. The 1974 Constitution was amended twice, with a total of forty-eight amendments. Three constitutions, one constitutional act and a total of ninety amendments in the forty-six years of the existence of socialist Yugoslavia show that something was wrong. “Were these the real constitutions that establish the state order, limit power and guarantee the inviolable sphere of freedom, or did we live under constitutions that were that only by name” (Kosta Čavoški).

The 1974 Constitution is designated in the book as the gravedigger of Yugoslavia. It was the longest constitution in the world, as it is pointed out in a pejorative manner. The language of the 1974 Constitution was very burdened with political and ideological phraseology, which led to the longest constitutional text in the world, of very low legal quality. With all these shortcomings, it should be added that the 1974 Constitution introduced concepts and institutions “that have no counterparts in comparative constitutional law, so that it was almost impossible for lawyers of classical education to understand” (Ratko Marković). The author sees in the following reasons for such a constitutional text: “This was due to the attempt by the text drafters to differentiate Yugoslavia from other communist regimes, but also to cover up and conceal the real political process of power struggle between communist elites in a form of government which was not based on free elections and therefore lacked legitimacy.”

The author nicely observes on pages 214–216 that one of the key issues in the constitutional history of socialist Yugoslavia was Tito’s position in the constitutional and political system. At the end of this passage, the author concludes: “The background of the 1974 Constitution lies in the failure of the political system introduced in 1963. The latter was based on the concept of appointing a successor to Tito. It was replaced by the idea that the strong man of the regime was irreplaceable. To provide a continuation of the socialist system of governance, the introduction of collective leadership seemed to be necessary. That is exactly what the 1974 Constitution provided for.” In the 1974 Constitution some of the processes of political developments

reached their peak: “The strong man of the regime became President for life, and ruling party found its place in a constitutional provision on the organization of power.” The outstanding features of the 1974 Constitution were, according to the author, “the parity of constituent units and consensus in the decision-making process.” This mechanism at the level of Yugoslavia “was constructed in such a way that it could function only in the presence of an informal political arbiter.” “It is indeed a miracle that the whole constitutional settlement survived for a decade after Tito passed away,” concluded the author.

The author ends the book with an analysis of the Serbian constitutions of 1990 and 2006. The author first emphasizes the quality of the 1990 Constitution: a return to institutions and notions of classical constitutionality. The credit for this, the author will rightly say, belongs to the constitution’s author, Ratko Marković. The language of the text of the 1990 Constitution is also highly praised. Then the author lists what is not in the Constitution: countersignature and constitutional complaint. After that, he talks about what is confusing in the constitutional text, such as provisions on social property.

Finally, the author cites examples where application has led to the distortion of the original constitutional solutions. The 1990 Constitution provided for the right of the President of the Republic to ask the National Assembly to vote once more on the act it had voted on, before he confirmed it. This is the so-called suspensive veto of the President of the Republic. On several occasions, the President requested a second vote, but the National Assembly never put that act to a second vote. “This was due to the fact that the majority in the National Assembly was controlled by the presidential political party.” Thus, the suspensive veto of the President of the Republic turned into an absolute veto in practice, what evidenced, according to Popović, “the authoritarian character of the whole political settlement in Serbia under the 1990 Constitution.” The author states that the 2006 Constitution is almost a repeated text of the 1990 Constitution, and that it repeated the shortcomings of its predecessor.

The concluding remarks were again dedicated to the ideas of the rule of law and freedom, on the long road to return to the community of European nations. In the appendix includes *A Word on Freedom* by Božidar Grujović (translated by the author).

Concluding a short review of the excellent book by Popović, the author of these lines is impressed by two basic ideas, in two periods of Serbian constitutional history.

In the 19th and first half of the 20th century, it was a struggle for freedom and an organized state in an environment that was often disrupted and insufficiently patient in building constitutional institutions. Serbian history was accelerating to the boiling point. Prince Mihailo was killed on 29 May 1868 after eight years of his second reign, at the age of forty-five. If he had lived to the age of eighty like his father Miloš, he would have lived and ruled until 1903. It was on 29 May 1903 that the last Obrenović, King Alexander, was killed at the age of twenty-seven, and he succeeded his father, King Milan, who had abdicated in February 1889 at the age of thirty-five. The almost unbearable acceleration of history could not favorably affect the stable and proper development of Serbian constitutional history and its institutions.

Post-war constitutionality is characterized by an unsuccessful search for original solutions. After forty-five years, the only way out was to return to classical constitutionalism.

Dragoljub Popović is an author with a shrewd spirit, a sharp and light pen. His book will enable foreign readers to acquire the necessary knowledge about the constitutional history of Serbia in English, which has not been the case so far. Given its qualities, the book should be translated into Serbian and enable native readers to get acquainted with its rich content.