

*Jelena Jerinić\**

## TWO HUNDRED YEARS OF SERBIAN CONSTITUTIONAL HISTORY

Dragoljub Popović, *Constitutional History of Serbia*,  
Brill, 2021, 249 pp.

Writing about the constitutional history of a country is a brave undertaking, regardless of the country's size or legal tradition. It takes both courage and knowledge, but also a narrative talent. The book *Constitutional History of Serbia* by Professor Dragoljub Popović is a demonstration of all of the above. Besides being a diplomat and a judge of the European Court of Human Rights, for most part of his professional carrier, Dragoljub Popović was a law professor, predominantly teaching legal history and comparative law. His bibliography shows a profound interest in Serbian constitutional history, particularly of the 19<sup>th</sup> century.

The task the author took upon himself was to present and explain two hundred years of constitutional history, with over twenty constitutional texts, written, adopted and implemented in many (consecutive) turbulent times. As he himself noticed, he did that almost eighty years after a comprehensive volume on the topic had been published in Serbian and forty years after the same endeavor in English. Since the latter, Serbia has been in three unsuccessful joint states, governed by five different constitutional texts. In other words, the update on the last four decades alone would have been a worthy contribution.

Albeit separate subject-matter records of constitutional development in particular periods have been published in the meantime (as recorded by the author in a brief literature review in the Foreword), this book itself presents a noteworthy monographic synthesis. The author dedicates most of his attention to the period between the beginning of 19<sup>th</sup> century and the beginning of World War I, but he also meticulously outlines all other relevant constitutional texts passed during the 20<sup>th</sup> century, ending with the current Serbian Constitution of 2006.

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\* Professor, Union University Law School Belgrade; e-mail: jelena.jerinic@pravnofakultet.rs

Weighing between a chronological and a subject oriented approach, the author chooses to employ both and does so with a very good sense of balance. He presents the constitutional texts and important events in a chronological order (dominantly in parts one and three of the book), but also takes time to explore the main concepts of constitution building, namely human rights, sovereignty and the rule of law, from a scholarly perspective, as well as their practical aspects (mainly in the second part of the book).

Popović's *leitmotif* is referring to deficiencies of legal education in Serbia throughout its constitutional history. At the very beginning, he makes a point that constitutional history has never been an independent subject in university curricula in law schools of the former Yugoslavia, but was studied within the legal history course and, partly, within constitutional law courses. Being a scholar himself, this is an obviously important message for the author and he dedicates several chapters to analysis of constitutional history scholarship, mostly in the second part of the book, but also comes back to the topic in his closing remarks.

Part One (Developments) is dedicated to the period from the First Serbian Uprising against the Ottoman Empire until the beginning of World War I, during which Serbia passed the process of nation and constitution building, towards a constitutional monarchy and finally came to the doorway of parliamentary government. Three chapters within this part are dedicated to those particular phases. In this, in many ways text-book material, the author presents the main events and constitutional texts, and then analyses the main institutions, from the perspective of modern concepts (the head of state, assemblies, council, executive power and the judiciary). The background of these developments is subtly introduced, relying on sources from the very epoch (*e.g.* texts of Vuk Karadžić, a contemporary of Prince Miloš Obrenović and the first Serbian constitution drafters), but not without a personal point of view. Popović is obviously a passionate researcher of this period, not only from the perspective of a legal scholar; he adds interesting anecdotes, depicting the character and style of governing of Miloš Obrenović and his successors. He is extremely critical of the Prince's attitude towards learned men of the time, which we also read about in Part Two of the book.

In the first chapter, we see how the constitutional question came onto the agenda, interpreted within the notion of independent internal government in the vassal principality of Serbia; how nation and constitution building took place under conditions of Ottoman rule, in the period marked by lack of learned lawyers. Popović gives a concise and accurate description of political life – when he characterizes it as “relatively

turbulent, despite the pre-modern environment in which political struggles took place” or explains how it was possible to be a liberal and a Serbian nationalist at the same time, writing about young liberals educated in foreign universities participating in the 1858 St Andrew’s Day Assembly. During this period, which lasted until the end of the second reign of Miloš Obrenović, some efforts for modernization were successful, but a modern structure was not introduced, as separation of powers and people’s representation were still lacking. Confusion of powers prevailed as a concept at the beginning of the 19<sup>th</sup> century and remained dominant throughout the first fifty years.

Chapter 2 is dedicated to the period of constitutional monarchy, which developed in three stages: the first, under the 1861 constitutional settlement, in which monarch did not legislate, but appointed legislators; the second, under the 1869 Constitution, in which the monarch appointed one quarter of legislators; and the final under the 1888 Constitution, introducing elected legislators. The author sees the first period, under the reign of Prince Mihailo Obrenović, as modelled after German monarchies of the first half of the 19<sup>th</sup> century and provides a comparison of their institutions. The 1869 Constitution was the first Serbian constitution to introduce human rights and it was under it, during the 1870s when ministerial responsibility started emerging, heading towards parliamentary government, together with formation of political parties. The 1888 Constitution is described as a landmark, providing basis for a parliamentary government, as well as stronger guarantees of human rights. However, Popović shows that this constitution proved to be an unsuccessful attempt to introduce parliamentary government; continuing to Chapter 3 in which the period from 1903 to 1914 was marked by a pattern of King’s behavior which fulfilled minimum requirements of parliamentary government. He sees that this was a political system with dominant political parties, comparing it to Italy, Japan and India in the second half of the 20<sup>th</sup> century.

Part Two (The Evolution of Constitutionalism), the heart of the book, deals with evolution of constitutionalism and is focused on the progress of legal thought and legal scholarship in the underdeveloped, newly liberated Serbia. In the temporal context, it mostly refers to the period covered in Part One, but takes a different, subject-matter approach. Nevertheless, the author reminds us of the prominent events and historical actors, so this part can also be read as a standalone piece. The underlying themes of this part are human rights, sovereignty and the rule of law and they are analyzed from the perspective of works of prominent Serbian intellectuals. It is an *homage* to great legal minds and scholars, even beyond the legal field – from Dositej Obradović in the end of the 18<sup>th</sup> and beginning of the 19<sup>th</sup>

century to Slobodan Jovanović who retired in 1940. Popović takes time to present the work of each of them, adding biographical notes, which might be unknown even to the wider legal readership in Serbia.

Chapters Four and Five are dedicated to human rights and to sovereignty and the rule of law in Serbian nation building respectively, by exploring the ideas of several prominent figures. The concept of human rights was introduced by Dositej Obradović who connected it to the rule of law and individual rights, whereas “the masses”, whom Popović presents through the poetry of the blind epic poet Filip Višnjić, favored collective rights. For Božidar Grujović, Secretary of the Government Council, freedom was the idea which could be achieved only under a constitutional government. This view was shared by Vuk Karadžić, for whom individual rights were a foundation of a constitutional state. Even though Davidović and Radičević intended to introduce human rights in the text of the 1935 Constitution, they did not succeed, but human rights were eventually included in the texts from 1869 onwards. However, these remained proclamations and could not serve as “a functional Bill of Rights”. Popović sees three ideas regarding the relationship of the rule of law and sovereignty. The first was popular sovereignty, as a vague idea finding its place in popular poetry. Then there was the idea of the sovereign monarch or, according to Dositej Obradović, an absolute monarch enriched by some Enlightenment features. In similar vein, Lazar Vojnović, the first Serbian public law professor, represented the theory of state sovereignty. Finally, the idea of constitutional supremacy was advocated for by Grujović and Karadžić.

Chapter Six is dedicated to „two outstanding professors of law and their views on the Rule of Law and Human Rights” – Jovan Sterija Popović and Dimitrije Matić. The author finds them marking a milestone in development of ideas on the rule of law and human rights in mid-19<sup>th</sup> century. Moreover, the two learned professors educated in German, contributed to critical thinking in legal studies, while teaching at the Grand School in Belgrade and the Kragujevac Lycée. Although their views were somewhat different, both found protection of fundamental human rights to be an important feature of the rule of law.

Exploring practical aspects of the rule of law in Chapter Seven, Popović puts forward the concept of “peace and quietness” to explain how running of state affairs was only allegedly proper and to the satisfaction of the governed, based on the medieval notion of order, which was the acceptable model of social behavior. Even though this notion was gradually departed from, the competing idea of the rule of law was not fully introduced even in 1870s when Serbia came close to constitutionalism. Continuing into Chapter Eight dedicated to the rule of law doctrine, the author

explains how ideas of *Rechtstaat* and the rule of law emerged in Serbian legal thought, under foreign influence, and how they were understood and used through different periods. *Rechtstaat* was largely viewed through the lens of judicial review of administrative action, while the term rule of law gained precedence only after World War II (Popović explains this partly by Serbian lawyers' inclination to read more in English at that time).

He closes Part Two of the book with a chapter titled A Century of Teaching Constitutional Law, dedicated to written works of Dimitrije Matić, Milovan Milovanović and Slobodan Jovanović, presenting a “line of stability” in teaching and curricula, based on a common understanding of constitutional law.

In Part Three (*Serbia and Yugoslavia*), once again taking a dominantly chronological approach, the author swiftly takes us through the period during which Serbia was not an independent state, but part of the Kingdom of Serbs, Croats and Slovenes and of three Yugoslav states (Kingdom of Yugoslavia, SFRY and the Federal Republic of Yugoslavia). The reason for dedicating a comparatively smaller part of the book to these periods might be in the fact that the author wanted to focus on the constitutional history of Serbia as an independent state. Chapter 10 covers both the Kingdom of Serbs, Croats and Slovenes (later on Kingdom of Yugoslavia), which intermittently functioned as a parliamentary government, as well as an absolute monarchy (from 1928 to 1931) and the socialist Yugoslavia, followed by the so-called Rump-Yugoslavia, which was practically finally dismantled in 2006.

In similar vein, Chapter 11 deals with the “two constitutions of Serbia” – the 1990 Constitution adopted while Serbia was still a federal unit of SFRY, by a single-party parliament and the current 2006 Constitution, adopted after the final resolution of the joint state with Montenegro. The author, as he confesses, was among the authors of one of the initial drafts of the current constitution, but remains critical of its solutions, evaluating that it “does not properly meet the standards of modern constitutional settlements”. He finds the reasons for its deficiencies in the deeply rooted authoritarian heritage, which *inter alia*, has been portrayed throughout this book.

The book is published in the eve of long awaited amendments of the Serbian Constitution, which once again, comes after a flawed consultative process, disregarding opinions of the academia and other legal experts, nevertheless, presented as a necessity forced from the outside – this time not by the Ottomans, Russians or the Habsburgs, as in the 19<sup>th</sup> century, but by the European Union. In that respect, we can only agree with Professor Popović when he proposes that some inspiration may be found in

history and the hope that the fate of Božidar Grujović – a learned lawyer whose voice was not heard in 1805 – will not befall Serbian legal professionals of today. It is also a message to future constitution writers, in the time of declining trust in academia and its ousting from the policy making process.

Considering all said above, this book is a noteworthy contribution to the study of constitutional history and constitutional law in Serbia. In less than 250 pages, the author succeeds in taking the reader from the time when Serbia was establishing home-rule within the Ottoman Empire and was governed by an illiterate autocrat to present-day Serbia, still struggling with its authoritarian heritage. It is bound to be an enjoyable and insightful reading also for scholars outside of Serbia, endeavoring in comparative research, particularly those in the wider Balkan region. As such, it will be a valuable contribution to any law library in Europe.

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