

Features of federalism in unfinished political communities

The experience of Yugoslav federalism as a warning for Europe's unfinished federation

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Introduction

The European Union (EU), as a form of economic, administrative and political integration of nation states so far unprecedented in history, continues to attract great interests among researchers. Social scientists have been trying for decades to examine the nature of this supranational organization whose complex structure by no means corresponds to either of the two scientifically rigid concepts of *state* and *union of sovereign states*, the first being too narrow and the latter too wide. The process of European integration has from the very beginning been fundamentally linked to the leanings of European states to find efficient governance solutions to their common economic and political problems while safeguarding the diversity of cultural, ethnic and historical heritage of European nations. Therefore, it is not surprising at all that the process has attracted great interest among numerous scholars of law, political sciences and philosophy devoted to the research of *federalism*¹, whose ambitious concept, just like the one of the *European supranational community*, has not yet been defined precisely and undisputedly.

Up to now, researchers of federal features in the EU governance system have been dedicated mostly to comparative analyses of the already existing and well-functioning *federations*.² However, those attempts were from the beginning destined to a limited success in revealing EU's real nature. The reason for this is simple – all existing federations are above all *states*, in which aside from cultural, ethnic, historical and economic diversities, there is one *single federal political people, demos*, as the foundation stone of those *finished political communities*. It is a fact that American or Canadian *nation* in modern sense of the word had not existed before the federations of the United States and Canada were created (whereas on the other hand at the moment when Switzerland and Australia were being created, the sentimental feeling of belonging to Swiss and Australian *nation* respectively had already been developed)³; this, however, should not be confusing for today's EU observers. Even though the decision taken at European level are binding not only for the states but for the citizens as well, ***the EU is not a state*** and not for the reason that a European nation does not exist as irrational structure of European state, but because basic political prerequisites for the existence of *true European citizens* as a *pouvoir constituant* of one supranational political community is still lacking. Given the fact that the comparative analysis of successful and *finished federations* has proven to be a useful although obviously insufficient tool for defining the nature of the present day EU, it might be useful to present in the analysis the experience of one *never achieved federal state*. Hence, the idea and the main goal of this paper is to *examine federal characteristics in Yugoslavia*, the country that was once lucidly described as an “unfinished state” by an exceptionally talented philosopher.⁴

Federalism is an multifaceted political, legal, sociological, ethical and even ideological concept whose interpretation varies according to different analytical perspectives. It looks like that there lies the

¹Dušan Sidanski “The Federal Approach To The European Union Or The Quest For An Unprecedented European Federalism“, Notre Europe, Research and Policy Paper n° 14, 2001, www.notre-europe.eu/uploads/tx_publication/Etud14-en.pdf, Michael Burgess, *Federalism and European Union: the Building of Europe, 1950-2000*, Routledge, London, 2000, Weiler Joseph H. H., „Federalism and Constitutionalism: Europe's Sonderweg, in: European Integration Online Papers“, <http://www.jeanmonnetprogram.org/papers/00/001001-01.html> etc.

² Robert R. Bowie et Carl J. Friedrich, *Etudes sur le federalisme*, Mouvement Federalism Europeen, Paris, 1960, Florentina Harbo, *Towards a European Federation?*, Nomos, Baden Baden, 2005

³ On the role of federalism in the creation of nations see Kenneth C. Wheare, “Federalism and the Making of Nations“, in: Arthur W. Macmahon (ed) , *Federalism, mature and Emergent*, Doubleday & Company, New York, 1955, pp. 28-41

⁴ Zoran Đinđić, *Jugoslavija kao nedovršena država*, Književna zajednica Novog Sada, Novi Sad, 1988

explanation for the fact that in today's EU, as well as in the ex Yugoslavia, there generally is a large consensus among scholars and politicians that governance system should be based on some kind of federal principles. However, when it comes to the question of concrete institutional solutions, disagreements become tough and opinions hardly reconcilable. How so? The explanation is: *different actors led by strong will for power and political influence frequently use federalism, namely this concept's vague and multifaceted nature, as a more or less transparent shield for hiding their political ambitions*. What are the consequences regarding a predictable functioning of one compound community marked by ethnic, cultural or economic diversity of its constituent parts? If federalism is used for hiding real struggle for power during a considerable period of time, the chances for the federalism to play its role of enlarging the sphere of collective and individual freedom would be irreversibly reduced. Once the curtain of *fake federalism* falls down, **exposed power holders** promptly reject the concept of *true federalism*, together with its historically confirmed democratic potential, and opt for the *concept of absolutely sovereign nation states* as a tool for preserving their unlimited power.

The main goal of this paper is to demonstrate that the original concept of Yugoslav federalism, instead of generating unity in diversity of Yugoslav peoples, played a twin negative role. First, federalism amalgamated with the idea of society able to govern itself without the use of coercion, served as a tool for hiding real power in the sphere of non-political, what practically rendered impossible any kind of efficient control of political authority. Secondly, instead as a mechanism of vertical power control, federalism in Yugoslavia after the 1974 Constitution, became just a lame excuse for asymmetrical distribution of unrestrained power, what at the end resulted in a complete paralysis of the decision-making and eventually in the total collapse of the governance system.

This paper is composed of three main parts. The first, theoretical, part will be devoted to the ideas of some classics in the field of political philosophy that made crucial contributions to the development of two essentially different traditions of federalist thought – one that is fundamentally related to the modern state concept and its constituent elements, a sphere of sovereignty and a sphere that is free of it, and the other that represents the very negation of modern political community. These two lines of thoughts are extremely important for the understanding of the nature of federalism in the former Yugoslavia as well as in today's EU. The major part of this paper will be an analysis of federal characteristics in the Yugoslav “unfinished state”. Finally, instead of conclusion, challenges of the EU on its federalist road will be shortly presented in the light of federalist experience of Yugoslavia.

Federalism, freedom and order

“Whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force?”⁵. Depending on the answer to this fundamental question of political theory, two different lines of thinking were developed. This division in the tradition of political ideas can be traced back to the end of the 16th century when two brilliant thinkers offered contradictory theories of state and society, one of which will be left aside during the long periods of wars and hostilities in Europe to wait patiently for the twilight the post-modern era. Those two were Jean Bodin and Johannes Althusius.

⁵ Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, New American Library, 1961, no.1 (Hamilton), p.33

Federalism as an instrument for restraining the sphere of authority and expanding the sphere of freedom

For Bodin, the creation of the centralistic absolute monarchy in which the power of the sovereign is not restricted either from the inside or from the outside, was the only solution for France of his time that was falling apart in constant civil and religious wars. The essence of Bodin's theory of sovereignty becomes apparent when it comes to the question of monarch's legal obligations and his duties related to estates. Is a sovereign ruler obliged to keep his promises once the circumstances are changed? The answer of the great French thinker is perfectly clear: No!⁶ The sovereign can breach his legal duties or the promises given to estates by his own will. That precisely defines his rights. They are unrestricted and absolute. Basically it is not the content or the decision-making that matters, but the sustainable functioning of the system, namely the *order itself*. Between the horror of civic wars, which is typical for the state without sovereign power, and the *order*, where the ruler is responsible only to the Lord, there is no third solution. For Bodin, the sphere of sovereignty and the sphere that is free of it, as constitutive elements of a modern state, remain forever confronted and exposed adversaries. The primacy of one sphere over the other will be determined by historic circumstances.⁷

Some contemporary scholars hold that first steps toward federalism were made by no one else but the author of *The Leviathan*, Thomas Hobbes.⁸ The traces of federalism are perceived in the *contractual nature* of political community created voluntarily by its members. However, even though Hobbes based political community on a free *agreement* of all its members, this agreement of association is at the same time the agreement of total enchainment.⁹ On the presumption of a man's evil nature, Hobbes constructs a very precise political theory free of any humanistic and moralistic façade.¹⁰ Absolutistic state with unrestrained decisions of a sovereign ruler is an indispensable precondition of human passions control, which otherwise, if left unlimited endanger the very existence of humans themselves.¹¹ Between citizens and the state there cannot exist any kind of associations vested with power to restrain the ruler's decisions, given that the very absolutistic character of authority has the aim of preserving order as an essential requirement of human existence.

The restriction of the sphere of sovereignty, that was secularized by Hobbes, was the main task for John Locke whose work is also considered as part of federalist tradition.¹² Even though Locke harshly

⁶ Bodin writes that sovereign ruler is obliged to keep his promises until it is in the best interest of his people. "Le prince souverain est tenu aux contracts par loz faict, soit avec son subject soit avec etrangers" Bodin, *Les six livres de la Republique*, Lyons, 1558, I. VIII. But who will decide what is the interest of people in turbulent historic moments? The answer is: the sovereign ruler himself. Karl Šmit, "Politička teologija", op. cit., pp. 92–93

⁷ Frantz Neumann, *Vladavina prava*, Jagoš Đuretić, Slobodan Samardžić (eds), Filip Višnjić, Beograd, 2002, p. 108

⁸ Daniel Elazar, *Exploring federalism*, The University of Alabama Press, Tuscalosa Alabama, 1987, p.115, Michael Burgess, *Federalism and European Union: The Building of Europe, 1950-2000*, Routledge, 2000, p. 3

⁹ Thomas Hobbes, *LEVIATHAN, OR The Matter, Forme, & Power, OF A COMMON-WEALTH ECCLESIASTICAL AND CIVIL*, Green Dragon in St. Paul's Church-yard, LONDON, 1651, xviii, pp. 120- 128

¹⁰ "Hobbes did not pretend that a sovereign does not enslave: he justified this slavery, but at least did not have the effrontery to call it freedom", Isaiah Berlin, *Two Concepts of Liberty*, Clarendon Press, Oxford, 1958, p.49

¹¹ Leo Strauss, "Napomene uz pojam političkoga Karla Šmita", Jagoš Đuretić, Slobodan Samardžić (urs), *Norma i odluka, Karl Šmit i njegovi kritičari*, Filip Višnjić, Belgrade, 2001, pp. 71-75

¹² Daniel J. Elazar, *Exploring federalism*, op.cit., p.115, Florentina Harbo, *Towards a European Federation?*, Nomos Verlagsgesellschaft, Baden Baden, 2005, pp. 50-51.

criticizes Hobbes' theory of absolute state,¹³ he also declares that the existence of one exclusive sovereign sphere of authority is essential for political community's predictable functioning. As mechanisms for the restriction of the sphere of sovereignty, Locke recommends the division of authority into three branches, namely legislative, executive and federative, with the supremacy of legislative over the other two,¹⁴ and people's right to rebellion against a tyrannical ruler.¹⁵

While Locke was mainly interested in the very nature of authority, Charles Montesquieu took the necessity of sovereign authority in one state as a given fact. He completely devoted his thought to the question of how to prevent corruption of political authority and to maintain individual freedoms. Influenced mainly by Spinoza's political philosophy, Montesquieu comes to the idea of power division, based on the presumption that only power can effectively check power.¹⁶ In his writings he speaks of a federative republic that is "able to withstand an external force, may support itself without any internal corruption; the form of this society prevents all manner of inconveniences"¹⁷. Therefore, Montesquieu's main contribution to the theory of federalism is *the idea that confrontation of different power centres in one political community does not have to result in disintegration but could on the contrary enlarge the sphere of individual liberty.*

Montesquieu's idea of power division was accepted and further developed by the authors of the *Federalist Papers*. Taking humans as incapable of living in community without a government, the Federalists accepted the necessity of existence of one exclusive sphere of sovereign authority¹⁸, and did their best to find the mechanisms for the restriction of that authority.¹⁹ The solution was found in the system of "checks and balances", which means *constitutional* separation of legislative, executive and judiciary branch of authority, on the one hand, and between the authority of federation and that of federal units, on the other.²⁰ The constitutional control by the independent judiciary of the decision-making in different centres of political power is indispensable for this system's predictable functioning.²¹ The federal government and the governments of federal units, nominated by citizens, control each others in the search for balance and equilibrium, thus decreasing the chances for power corruption and protecting the individual and collective liberty of citizens. But what if the peaceful settlement of disputes is no longer achievable in one state compounded of different political communities? The answer to the ever-lasting disputes between federalist and confederalist will be

¹³ "This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions. to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions"; John Locke, *The Second Treatise of Government*, INC. PUBLISHERS, INDIANAPOLIS- NEW YORK, 1960, ch. VII, p. 53

¹⁴ John Locke, *The Second Treatise of Government*, op.cit., ch. XI, pp.75- 82

¹⁵ Guided by the thought that only force can oppose an unjust force, Locke suggest another instrument for protecting freedom in the form of the right to resistance against against tyranny which he defines as "the exercise of power beyond right" Ibid., ch. XVIII, pp. 112-118

¹⁶ "Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the very nature of things that power should be a check to power." Charles de Secondat Montesquieu, *The Spirit of Laws*, NEW YORK P. F. COLLIER & SON, 1900, ch. XI, p.175

¹⁷ Montesquieu, *The Spirit of Laws* ,op.cit., ch. IX, p.127

¹⁸ "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint" *The Federalist Papers* , op.cit., no. 15 (Hamilton), p. 110

¹⁹ "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint" *The Federalist Papers* , op.cit., no. 15 (Hamilton), p. 110

²⁰ *The Federalist Papers*, op.cit., no. 51 (Medison), pp. 320- 325

²¹ *The Federalist Papers*, op.cit, no. 78 (Hamilton) pp. 464-472

given during the American Civil War from 1861 to 1865. The existence of one exclusive sphere of authority will be determined by the victory forces. From that moment on, the American **finished** political community will be essentially marked by the *constitutional principle of checks and balances, as the key federal principle mechanism for controlling political power and enlarging citizens' liberty and the liberty of their respective communities.*

Federalism as a tool for overcoming the antinomy between freedom and order

Johannes Althusius enriched the history of political ideas with an original theoretical concept for overcoming the state of disintegration, religious, civil and ethnic conflicts that marked the transitional period between the medieval and modern epoch. Unlike political thinkers who paved the way for the creation of modern states, Machiavelli, Bodin and Hobbes, Althusius regarded the variety of medieval communities' religious, ethnic, economical and political heritage as a fortune to be safeguarded, not as a constant source of instability and conflicts.²² Therefore this thinker, that has for a long time been unfairly neglected, creates a complex political system, a commonwealth built from above, through **contract based association** of corporations, communes, cities and provinces into. It is crucial that Althusius' notion of *contract* is fundamentally different from Hobbes' social contract fictitiously concluded among individuals. That difference becomes apparent when it comes to the question of the possibility of breaking previously agreed contract that establishes a political community. What will keep together the territorial and functional consociations forming a political community once the socio-political circumstances become critically different in comparison to the period of community formation? Differently put, what will preserve the unity of economically, culturally and religiously heterogeneous communities when changed historical conditions become insurmountable obstacle of further political unity?²³ While Hobbes responds clearly that the right to break the social contract is lost for good once the political community is formed, Althusius, advocates constant rational seeking for **consensus, equilibrium, modified rules of the game accommodated to unpredictable reality, until the agreement among all consociations composing a commonwealth are reached.** That way, the question of *who* decides is replaced by the question of *how*, namely what level of government should be vested with the power to make the decisions in order to make them acceptable to all. Accordingly, sustainable functioning of political system in Althusius' theory is not based on a sovereign's decision, but on a constant deliberation in search for consensus.

Althusius' federalist approach to the question of relation between freedom and order is fundamentally different to Hobbes's, Locke's and Montesquieu's approach to that fundamental problem of political thought. Considering man at the *homo symbioticus*²⁴, this philosopher establishes the federalist theory of state and society that are built simultaneously with respect to the principles of *pluralisation of governance, consensus requirement, subsidiarity and mutual solidarity.*²⁵ In a word, Johannes Althusius enriched the political thought with a **theory of dynamic federalism as a tool for overcoming the antinomy between freedom and order.**

²² Thomas Hueglin, "Althusian Federalism for a Post-Westphalian World", in: Stephen Brooks (ed.), *The Challenge Of Cultural Pluralism*, Praeger, Westport, 2002, p. 107

²³ Karl Šmit, "Pojam političkoga", Jagoš Đuretić, Slobodan Samardžić (eds), *Norma i odluka, Karl Šmit i njegovi kritičari*, Filip Višnjić, Belgrade, 2001, pp. 25-30

²⁴ Ilija Vujačić, *Federalistička alternativa*, op. cit, str. 44-45.

²⁵ Thomas Hueglin, "Althusian Federalism for a Post-Westphalian World", op. cit., pp.107-111

A few centuries after the complete historical triumph of Bodin's and Hobbes' absolutely sovereign states over Althusius' community of communities, one French thinker bravely tried once again to reconcile freedom and authority by the means of dynamic federalism. He was Pierre Joseph Proudhon²⁶. He set a dilemma whether freedom is the daughter or mother of order; this marvellous theoretician opted for the latter claim despite the danger from moving into utopist and idealistic waters, boldly setting on an intellectual adventure. An essential part of Proudhon's concept of federalism is the idea of *contract* as a foundation stone for a voluntary association of different collectivities on the basis of *mutuality*, with the aim of finding efficient governance solutions for some common problems. Citizens that belong simultaneously to different kinds of communities, transfer freely the authority to respective institutions with precisely defined competences and only in a measure that will be compensated to them with the efficient task implementation. Accordingly, smaller communities preserve more freedom than the larger ones, and citizens preserve more freedom than they confer to the state. It is the *non-fictional* nature of the federal contract that makes key distinction from the concept of *social contract as a fundamental decision* establishing the constitutive elements of a modern state, the sphere of sovereignty and the sphere that is free of it.²⁷ As Proudhon himself put it elegantly "Entre le contrat fédératif et celui de Rousseau, il y a toute la distance de la réalité à l'hypothèse."²⁸

The battle of ideas that goes through centuries, in which the historical reality promoted the victories of Bodin and Carl Schmitt over Althusius and Proudhon, continues in the writings of contemporaneous American federalist thinker, Vincent Ostrom.²⁹ Rational integration of individuals and their respective communities that goes from the level of objectively existent communities of interest to the level that transcends national states is offered as an alternative to the modern nation state, based on Hobbes' concept of absolute sovereignty. Individuals and collectivities forming federation are engaged in a never-ending search for new and enhanced rules of political decision. The role of independent and strong judiciary is of extreme importance for the predictable functioning of this complex system of governance. This approach diminishes a necessity for coercion and augments society's self-government potentials. In one federal system of this kind, where political power is restrained by the existence of several competing centres of authority, Carl Schmitt's question of *who* makes a decision in the state of emergency, i.e. who holds sovereignty as legally independent and inherent power, becomes redundant. *The system's sustainable functioning is due to the constitutionally guaranteed principle of checks and balances, or in other words, it is due to the infinite quest for balance and equilibrium among different centres of power.*

Proudhon was most probably right when he remarked that citizens in states, whether they be monarchies or parliamentary democracies, are deprived of three quarters of their sovereignty and freedom.³⁰ In federal community advocated by Althusius, Proudhon and Ostrom, citizens preserve more freedom than they abandon. But, where would be physical frontiers of those communities based

²⁶ Pier Joseph Proudhon, "Une politique federaliste", *Oeuvres Choisies*, Gallimard, Paris, 1967,

Pierre Joseph Proudhon, *DU PRINCIPE FÉDÉRATIF*, 1863

<http://www.panarchy.org/federalism/proudhon.1863.html>

²⁷ Frantz Neumann correctly notices that Proudhon's federalism represents essential opposition to the federal state, since it is actually negation of modern state.. Neumann, L. Frantz "Federalism and Freedom: A Critique", op.cit., pp. 45-46.

²⁸ Joseph Proudhon, *DU PRINCIPE FÉDÉRATIF*, op.cit.

²⁹ Vincent Ostrom, *The Political Theory of a Compound Republic: Designing the American Experiment*, Daniel Elazar, Vincent Ostrom (eds), University of Nebraska Press, 1987

³⁰ Joseph Proudhon, *DU PRINCIPE FÉDÉRATIF*, op.cit.

on presumptions fundamentally different to those of modern nation states? What constitutes indestructible strings that bind together territorial and functional consociations during turbulent periods of history? How is attained the degree of unity that transforms an association of religious, economic or cultural collectivities into a political community? Who makes decisions once the non *fictional* federal contract becomes nothing but pure *myth*? **Where is the demarcation line between authority and freedom and who holds the political power until the moment of historical transformation of political communities into systems where polemical political decisions become unnecessary, since the system is based on harmony, equilibrium, rational and never-ending search for consensus?** Even though, Althusius, Proudhon and Ostrom created brilliant theoretical solutions for gradual overcoming of antinomy between freedom and order throughout a dynamical federal process, they completely failed in giving precise and realistic answers to these questions.³¹

Federal features in Yugoslavia as an unfinished state

In Yugoslavia federalism is formally inaugurated as country's organizational principle in 1943, in the middle of the Second World War.³² Since that moment on until the bloody disintegration of the common state, that tragically marked the last decade in the Balkans, federalism will be, in one way or another, linked to the efforts of safeguarding the unity of ethnic, cultural and economic diversity of Yugoslav peoples.

Every attempt of scholars to find inherent values of federalism at the normative level of analysis is connected with a set of logical contradictions. Differently put, the question whether federalism maximizes or diminishes freedom of individuals and their respective communities can be answered only bearing in mind a precisely defined socio-historic context.³³ The success of implementing federal principles is closely linked with different political, economic, and ideological factors that characterize a particular community. This is vividly confirmed by numerous examples of successful federations together with those of complete failure of federal idea application.³⁴

The destiny of Yugoslavia is closely connected to several different federal projects. Constitutional and institutional experiments with federalism go from the centralistic concept (1946), where federalism was present only as a rhetorical tool, the so-called "façade federalism", through the centralistic self-governance concept (1953) and the functional self-governance concept (1963), all the way to the national-self governance concept (1974).³⁵ ***Through this entire period, the Yugoslav multiethnic community, even though possessing some federal elements in its structure and in the way of functioning, never fulfilled minimum conditions to be classified as a modern federation.*** Adventurous experiments with Yugoslav federalism had very sad results. At the moment when

³¹ On the other hand Thomas Hobbs and his modern successor, Carl Schmitt, gave clear and realistic answers about the necessary prerequisites for unity of political communities, answers that were brutally confirmed by historical events

³² In a way that was a try of repairing the historical mistake made in 1918, when the unitary state organization was adopted in despite of national heterogeneity of its inclusive communities. Unitary organization of political system has shown really soon as in adequate solution for sustainable functioning of a community marked by great ethnic, cultural and socio economic differences. Miodrag Jovičić, *Putevi i stranputice jugoslovenske ustavnosti*, Naučna knjiga, Beograd, 1988, p.90

³³ Frantz Neumann, "Federalism and Freedom: A Critique", in: Arthur W. McMahon (ed.), *Federalism Mature and Emergent*, Doubleday & Company, New York, 1955

³⁴ Franck M. Thomas, Giesbet H. Flanz, Heerbert J. Spiro, Frank N. Trager (eds), *Why Federations Fail*, New York University Press, University of London Press, New York, London, 1968

³⁵ Slobodan Samardžić, *Jugoslavija pred iskušenjem federalizma*, Stručna knjiga, Beograd, 1990, pp. 62-65

Western Europe was reaching the peak of its economic, administrative and political integration, looking more and more like a supranational federation, one federation that was not destined to be failing apart in the chaos of civil wars. With no intention to go deeper into the confusing nature of factors that caused the collapse of the common state of Serbs, Croats, Bosnians, Macedonians, Slovenes and Montenegrins and to the creation of their respective mini national states, the attention will be completely devoted to clarification of nature of federal experiments in Yugoslavia after World War II.

The previous short normative analysis of theories focusing on the tension between the notions of freedom and order, has shown two rather different traditions of politico-philosophical federalist thought. In the first one, federalism is fundamentally connected to the concept of modern state with its clearly differentiated and irreconcilable spheres of freedom and order. In this conception, federalism is considered to be a mechanism of efficient control of political power and, consequently, a device of individual and collective sphere of freedom enlargement. On the contrary, the tradition of federalist thought where society and state are built simultaneously, through *the process* of territorial and functional communities association, where *political* decisions are replaced by a never-ending search for *consensus*, represents the very negation of a modern state.

Which one of those two described traditions corresponds to the case of Yugoslav federalism? In order to respond to this question, several dilemmas have to be clarified first. Was Yugoslavia a modern state defined by its constituent elements, sphere of sovereignty and sphere that is free of it? What was like the foundation stone of unity between ethnically, economically and culturally heterogeneous communities composing Yugoslavia? Who was vested with sovereign power?

According to Bodin's and Hobbes' theories, once historical circumstances become critically turbulent, an absolutistic ruler has the right to break the promises previously given to estates with the intention of safeguarding the existence of political community and of enabling *normal* functioning of political system. Seen from that perspective, the ruler jeopardizes individual and collective freedoms with the purpose of establishing a *normal situation* as indispensable for differentiation between the sphere of sovereignty and sphere that is free of it. It is of utmost importance to note that there is a sharp demarcation line between a *normal situation* and a *state of emergency*. A sovereign's decision unrestricted by positive law finds its exclusive justification in the maintenance of *order*. Once order is established, it becomes possible to think about the limitations of political decisions by *general norms*. Only in the *normal conditions* the predictable functioning of political system is based on general legal rules that safeguard and enlarge individual and collective sphere of liberty, while in the *state of emergency* order is due to the self-will of the sovereign ruler, whether they be a monarch, "working people" or a monopolistic Party.³⁶ Therefore, if the sustainable functioning of a particular community is due to the *permanent* breaking of general legal norms, the differentiation between the *normal situation* and the *state of emergency* is irrevocably lost.

That was exactly the case in Yugoslavia where the power of *a decree* was lastingly bigger than the power of *law*. Was this practice related only to the turbulent historical moments where legally unrestrained decision represented the only guarantee of order? The answer is: No! The institutional system of Yugoslavia has from the very beginning functioned on the basis of political decisions taken in the meta-constitutional and meta-legal area³⁷. Accordingly, if we accept Carl Schmitt's definition of

³⁶ Karl Šmit "Politička teologija", Jagoš Đuretić, Slobodan Samardžić (eds), Norma i odluka, Karl Šmit i njegovi kritičari, Filip Višnjić, Belgrade, 2001, pp.85-123

³⁷ Zoran Đinđić, *Jugoslavija kao nedovršena država*, op.cit., pp.81-93

a sovereign as “he who decides on the exception”³⁸ then in Yugoslavia, where it was impossible to differentiate the state of emergency from the normal situation, no one was sovereign. Therefore, the question of Yugoslav federalism should not be mystified by classical federalist discussions about sovereignty, trying to divine whether it was set at the level of federation or at the level of federal units, or, again, is it possible to constitutionally divide sovereignty so that every level of government becomes sovereign in the sphere of its own competences etc. Attaching the sovereignty to “working class and all working people³⁹” it was permanently located in the metaphysical area where the question of its restriction escapes from any kind of rational analysis. In a community of this kind where it was not possible to distinguish the demarcation line between the sphere of sovereignty and that free of it, Yugoslav society, deprived of any autonomy, was totally infiltrated by political authority. The system of a complete party control over the state and society is sustainable as long as the governing party is flexible enough to provide “incorporating authoritative elements of society into one whole”.⁴⁰

Republics and provinces within Yugoslavia were not held together by general legal norms nor, again, by a decision that breaks those norms in order to create necessary conditions to respect those norms again but by measures and decrees as products of consent within the monopolistic Party. That consent was constantly re-examined in the periods of more and more difficult historical temptations. Therefore, contrary to all modern federations that are marked by economic, ethnic, cultural and historical heterogeneity of its composing parts, where the integrative function is reserved for the *legal order*, it was exclusively reserved to monopolistic Party in Yugoslavia.

It is clear that the Socialist Federative Republic of Yugoslavia was not fulfilling the minimum requirements to be classified as *a state* in a classical sense of the word. And if Yugoslavia was not a modern state, it means that federalism could not have accomplished its *basic function of controlling and restraining political power*, since that function of federalism is exclusively connected to modern political community. But what was then the role of federalism in Yugoslavia? What was the meaning of the word *Federative* that has been the integrative part of country’s name since the end of World War II?

Functional self-government in Yugoslavia - federalism as an instrument for hiding power in the sphere of non-political

Since it is clearly shown that Yugoslavia was lacking prerequisites necessary for federalism to play its roll of widening the sphere of individual and collective freedom, the achievement of *federalism in overcoming the antinomy between freedom and order* is to be examined. In other words, the results and the nature of Yugoslav *self-governing federalism* should be analyzed.

The origins of Yugoslav *self-governing concept* as the basic principle of state’s organization can be found in the second half of the 19th century. The idea of society that governs itself on the basis of *mutuality*, from municipalities to cooperatives, being traditional Serbian units of governance, was warmly welcomed among certain circles of Serbian intellectuals and politicians during the period that preceded and followed the Berlin Congress in 1787 in which Serbia was given the status of an independent state.⁴¹ Supporters of the self-governing concept, including Svetozar Marković as the most distinguished one, advocated that Serbia, which was at that time characterized by equality in

³⁸ Karl Šmit, „Politička teologija“, op.cit., p. 91

³⁹ 1974 SFRY Constitution, Part II, Basic principles

⁴⁰ Franz Neumann, *Demokratska i autoritarna država*, Naprijed, Zagreb, 1992, pp. 207

⁴¹ Latinka Perovic, *Između anarhije i autokratije*, Zagorac, Beograd, 2006, pp.79-174

great poverty of its citizens, should *jump over* the process of institutional building which developed Western European states started long before.⁴² The idea of simultaneous creation of society and state through the process of searching for freedom unrestrained by state authority, on the basis of *popular democracy*, as the adventurous alternative to the fruitful experience of successful liberal democracies dates back from that period.⁴³

The self-government concept was formally inaugurated in the post-World War II Yugoslavia by laws which regulated integration of “working class”, “working people” or “producers of Yugoslavia” into workers councils (1950) and associations of producers (1952). That paved the way for sovereignty of “working people” to become the basic Constitutional principle in the 1953 SFRY Constitution. Also, those were the first steps toward decentralization in the country that was very centralized, even though federal by name. The basic idea was to start the practice of gradual inclusion of workers, which are connected with objectively existing common interests, into the self-governing process, first within their respective working organizations and later at all other levels of government for the purpose of achieving common tasks more efficiently.

Political decisions are polemical by their very nature, since they necessarily generate loss for one group of concerned actors. In order to limit the duration and the intensity of that loss, political decisions are limited by constitution and decision makers by term in office. Yet again, in the system of Yugoslav self-governmental federalism, *political decisions* were substituted by *no polemical consensus* that has to be found over and over again by “working people” integrated into self-governing communities of interests at all levels of society, starting from corporations, municipalities, cities, provinces, republics all the way to the federal level. Once class issues finally win over national ones, and when associated workers from different republics, “emancipated from nation”, start to fight as one in order to take over the control of “surplus of their work”, federalism would acquire full confirmation within socialistic and self-governing system of Yugoslavia.

Concrete results that *in reality* had the scenario of *self-governing federalism*, the concept that was at the *ideological* level meant to harmonize the relation between freedom and order, are now to be observed. The idea of self-government was relatively successfully applied only in the short period after the Constitution of 1963, and exclusively at the lowest levels of society, in working organizations, where it had certain success.⁴⁴ At all other levels of authority, self-government was used only as the ideological mask for hiding more or less transparent holders of political power.⁴⁵ *In reality, the order* in Yugoslavia was based entirely on *political decisions*, made in concrete centres of power within the Party. The self-governing *myth* made every thought of limiting political power pointless given that the system’s sustainable functioning is, according to that myth, based exclusively on *deliberation, agreement* and a never-ending search for *equilibrium and balance*. *In dogma* of self-governing federalism no one makes political decisions; instead, there is a constant search for overall consensus while, on the other hand, *in the reality* of the Yugoslav political system, a door was opened for the process of completely unrestrained political decision-making. **In the self-governing myth, through the process of neutralization and depolitization, the authority is transferred in the area**

⁴² Ljubomir Tadić, *Da li je nacionalizam naša sudbina?*, Multiprint, Beograd, 1986, pp.77

⁴³ Ljubomir Tadić, “Od ‘Srbije na Istoku’ do do ‘Srbije i Arbanije’“, *Da li je nacionalizam naša sudbina?*, op.cit., pp.71-83

⁴⁴ Vojislav Stanovčić, “Teritorijalni i funkcionalni aspekti federaliza“, *Federalizam i nacionalno pitanje*, Privredni pregled, Beograd, 1971, p.108

⁴⁵ From today’s point of view it is very difficult to determine the number of intellectuals that at the time sow into the real nature of Yugoslav self-government system at the time, given that it was practically impossible to publicly publish critical opinions of the official self-governmental doctrine.

on non-political, while in the reality *political power* was infiltrated in all spheres of society, depriving it completely of any kind of autonomy. Accordingly, Yugoslav producers, objectively connected with common interests, were deprived of any possibility to integrate on rational, economic basis. The manoeuvre space for efficiency oriented workers integrations was minimized by unlimited *political decisions* made within monopolistic Party.

Contrary to historical experience of modern states that created their institutions on the basis of federalism in order to control power as efficiently as possible, *the original mixture of federalism and self-government concept prevented any kind of rational questioning of power.* At the same time, since the order was based on political decisions of monopolistic Party, and not on general legal norms, the power itself could not have a clear picture about its limits. While the authority was completely situated in one centre, there were no obstacles for unrestrained political decision-making. Montesquieu was most certainly right when he wrote that only authority can control authority. **However, if that principle is to provide the enlargement of individual and collective sphere of freedom, it must be accompanied by integrative strength of legal order. This is confirmed by the historical experience of all successful modern federations in which the existence of autonomous political power centres is essentially connected with the independent constitutional control of decisions made in those centres. Otherwise, mutual limitations among holders of fragmented and uncontrolled political power, in a multiethnic community where the power of monopolistic state is decreasing, could lead to a paralysis of governance system and its eventual fiasco. The moment when uncontrolled power was decentralized in Yugoslavia represents the beginning of serious difficulties for the functioning of its institutional system, difficulties that would get a final epilogue in the agony of civil wars.**

National self-government in Yugoslavia – federalism as an excuse for fragmentation of uncontrolled power

Constitutional modifications in Yugoslavia after World War II were frequent and in accordance with the conception of federalism as a never-ending process of adjusting the rules to a changing social reality. The quest for federal institutional solutions that could provide balance between the country's multinational structure and self-governmental nature of social relations, was abruptly terminated with the adoption of the 1974 SFRY Constitution.

The concept of *self-governing federalism* lies in the essence of that constitutional solution. According to this concept, sovereignty was distributed to the “working people” and “peoples and ethnic groups”. Given the totally ambiguous and confusing nature of the terms “working people” and “peoples and ethnic groups”, the question of who was really vested with political power should be clarified.

“Working people, peoples and ethnic groups decide in the federation on the basis of agreement of republics and autonomous provinces (underlined by Bojan Kovačević) within federal institutions... on the basis of republics' and provinces' responsibility for their own development and development of socialist community as a whole”⁴⁶. From such provision it becomes clear that the decision-making process in all branches of federative authority, legislative, executive and judiciary, was completely dependant on full agreement that had to be found ever and ever again among all republics and provinces composing Yugoslavia. Bearing this in mind, together with the statement that “nations of Yugoslavia created a federal republic on the basis of each nation's right for self-determination and the

⁴⁶ 1974 SFRY Constitution, Basic principles

right of secession”, it becomes evident that the republics and provinces were according to their status very much like sovereign nation states. Accordingly, it becomes obvious that the term “peoples and ethnic groups” was referring to the concept of *nation* taken as an “*irrational structure of a modern sovereign state*”.⁴⁷

The requirement for consensus among republics and provinces about almost every issue made the constitutional provision giving the federal state surprisingly numerous competencies pointless. Instead, for particular issues, important for individual nations, complete agreement was required for every general issue related to the country as a whole. In that way, the federal level was deprived of any autonomy. Issues like economic development, modernization, new technologies etc. were becoming the subject of exhaustive negotiations among representatives of the republics’ and provinces’ representatives. The result was not the climate of agreement and deliberation but instead the atmosphere of constant national tensions. Contrary to all modern federations where at least two levels of authority exist, the level of inclusive and the level of included communities,⁴⁸ in Yugoslavia authority was completely transferred to the level of republics and provinces. In contrast to the sacrosanct federal practice where rights and obligations of federal units and the federation, in relation one to another and in the relation to citizens as well, are constitutionally defined, the Yugoslav Constitution of 1974 deprived the federal level of all rights and left republics and provinces responsible exclusively to themselves.

In this system, the notion of self-government continued to play the role of ideological mask that was now hiding not one but several centres of dispersed power situated in republics and provinces. Sovereign authority within federal units was attached to “the working class and all working people” only in ideological campaigns. The official belief was that once the “working class” “take over the control” of social reproduction within its respective nation, “working people” from different republics *will integrate on the basis of equality, mutuality and solidarity, through the never-ending process of deliberation and consensus seeking*. However, until the creation of necessary conditions for this kind of Proudhonian type federalist commonwealth, a political decision in real life will be made exclusively by national branches of the Communist Party, without citizens’ control and with no constitutional boundaries. ***In a word, the main function of the Yugoslav Constitution of 1974 was to decentralize uncontrolled power, by dispersing it from the central level to the level of republics and provinces.***

An institutional system of this kind can function predictably while the consensus among autonomous centres of power is achievable. This, again, is fully dependent on an equal distribution of power among nations. However in Yugoslavia that was not the case. Namely, one of the federal units, Serbia, was compounded by two provinces, Kosovo and Vojvodina, with almost equal constitutional rights and responsibilities as the republics.⁴⁹ It means that while the authority of republics and provinces was limited only from the outside, by the very existence of other republics, the authority of Serbia was restricted both from the outside and from the inside, which put this republic permanently in an unequal

⁴⁷ About the relation between notions of people, nation and state Frantz Neumann, *Vladavina prava*, op.cit., pp. 241-248

⁴⁸ Ivo D. Duhacek, *Comparative Federalism, The Territorial Dimension of politics*, Holt, Rinehart and Winston, New York, 1970, pp. 222-230

⁴⁹ The difference between provinces and republics was noticeable only in relation to their respective definitions. While the republic was defined as “state-based on the people’s sovereignty and on the self-government of working class and all working people” (1974 Constitution, art. 3), province was defined as “socio-political community within which working people’s citizens’ nations’ and nationalities’ sovereign rights are achieved” (Constitution, art.4)

position. In that way, the necessary prerequisites for the balance of power among different nations, as an indispensable prerequisite for this kind *polycentric system of states* predictable functioning, were harshly impaired from the very beginning.

Yugoslavia as a federation that was never destined to be

“In an association where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience.”⁵⁰

Inter-national discussions in Yugoslavia, structurally caused by the system’s confederative nature together with the unequal position of one republic, were becoming ever more heated with the loosening of communication strings within the Party. Once historical circumstances became an insurmountable obstacle for the achievement of inter-national consensus, the whole government system was confronted with enormous challenges. According to Montesquieu’s formula, power, unequally distributed in several national centres, was indeed restraining power. However, given that the system was deprived of a legal order as an essential integrative factor, the mutual restraining of national power centres, instead of safeguarding the sphere of individual and collective freedom, caused the complete paralysis of system. As a result Yugoslavia in the late eighties was facing a hard crisis of functioning of the whole governing system that was ever more seriously affecting the social and economic life of peoples living in this country.

In the years before the country’s bloody disintegration all hopes were concentrated on some kind of federal solutions for overcoming the crisis. However, even though there was some kind of general agreement that a solution had to be found in the spirit of federalism, the question of a specific federal institutional arrangement was causing heated quarrels and sharp disagreements among politicians and scholars alike. The Yugoslav political decision makers were facing three main alternatives, all three of which were, one way or another, related to federalism.

The first option meant the deceiving continuation within the self-governing utopia. Based on the premise that man is at same time citizen, member of an ethnic group and the working class, this approach tried to reconcile the classical concept of federation as a rule of law based community of communities with the idea of self-government. Every man is marked by numerous interests through which he belongs to several communities, state, nation, region, corporation etc. So that those interests would be represented in the right way, suggestions were made to form a federal representative body comprising the house of a *house of citizens*, as an essential prerequisite of every modern state, a *house of republics*, given that man is “a being of a nation and his territorial community” and the *house of self-governing producers*, “as a result of enlarging of democracy concept to the spheres of economy and culture”⁵¹. The main objection that can be given on the theoretical level is related to the question of unequal representation of citizens, i.e. their political inequality. Namely, those who do not belong to the class of “self-governing producers” would be represented only as citizens and members of the respective nation that would place them in a permanently unequal position. Even though theoretically very interesting, this original concept of federalism was in stark contrast to the social and political

⁵⁰ *The Federalist Papers*, op.cit, no. 15 (Hamilton), pp.110

⁵¹ Mihajlo Marković, “Pitanje demokratizacije u novom Ustavu SFRJ i SR Srbije“, Miodrag Jovičić (ur.) *Osnovi novog ustavnog uređenja Jugoslavije*, Beograd, 1990, 21-26

reality of the time. Nationalistic myths in each of the republics had already occupied a place that was irrevocably abandoned by the working people self-governing myth.

The other way meant the defeat of civilization standards, historical degradation, returning centuries back to the period when European states, based on the *concept of absolute and indivisible national sovereignty*, were exhausting each other in never ending conflicts. The foundation stone of this concept, that was fervently advocated in some of the republics, namely Slovenia and Croatia, is the idea of *nation in an organic sense, as an ethnical base of statehood*. Given that only nations can become states, man can become a citizen only as a member of nation. If this argument is consequently followed it comes to the conclusion that true and natural homogeneity of a people forming a political community is an essential prerequisite of this community's democratic functioning.⁵² In other words, ethnical homogeneity becomes indispensable, Carl Schmitt's, condition for democracy that was so ardently advocated by some supporters of the confederalist solution.

Accordingly, if the relation between the citizens, nation, democracy and state is understood in this way, only two possible ways out of the crisis can be conceived. The first one, totally hypothetical situation is further insistence on some kind of artificially created *Yugoslav national myth* that would continue to suppress objectively existing cultural and historical heritage of Yugoslav peoples. After WWII this role is played by the *myth of the communistic revolution*, the content of which was forbidden to be rationally challenged. The second option is the creation of new, ethnically based, states on the existing Yugoslav territory. In the case of Yugoslavia this scenario was presented in the form of a confederation, which means a very loose union of states. Why was the chaos of civil wars the inevitable result of this scenario? All former Yugoslav republics, except Slovenia, were characterized by the ethnic diversity of the inhabitants living on their respective territories. In these circumstances new national states can be brought into being only as a product of one of two equally intimidating scenarios. The first one is the separation of some republics' territorial parts, populated with a minority ethnic group, in order to unite with their respective national territories. The second one, is violent homogenization or, again, ethnic cleansing, with the aim of creating culturally and ethnically homogenous national states. In a community such as Yugoslavia, essentially characterized by a turbulent pre-Second World War and post war history together with great ethnic, religious and cultural diversities, chances for peaceful realization of either one of these two scenarios were minimal.

The third option, that would enable Yugoslavia to continue *its historic development*, was the creation of a *democratic federation* in the form of bright historical examples in which unity in the ethnic, cultural, historic, and economic diversity of communities was successfully safeguarded thanks to this specific form of state organization.⁵³ The first condition for this was the transformation of Yugoslavia from an unfinished political community into a modern state with its clearly differentiated spheres of state coercion and that of freedom. The Yugoslav political community could have been finished only on the basis of **“collective character of basic decision confirming the existence of Yugoslavia as a joint state of different peoples”**⁵⁴. That *basic decision* i.e., “social agreement”, understood abstractly

⁵² Karl Šmit, “Duhovno-povesni položaj današnjeg parlamentarizma”, Jagoš Đuretić, Slobodan Samardžić (urs), *Norma i odluka, Karl Šmit i njegovi kritičari*, Filip Višnjić, Belgrade, 2001, pp. 157-158

⁵³ This scenario, as only peaceful way out of the crisis, was advocated by some intellectuals and political thinkers in Yugoslavia. Slobodan Samardžić, *Jugoslavija pred iskušenjem federalizma, op.cit., p.63-71*, Miodrag Jovičić, „Ustavno pravni osnovi jugoslovenske federacije“, *Osnovi ustavnog uređenja Jugoslavije, op.cit., str.33-41*, Vojislav Stanovčić, “Elementi federalizma i konfederalizma u ustavnom sistemu Jugoslavije“, *Osnovi ustavnog uređenja Jugoslavije, op.cit., pp. 41-51*, itd.

⁵⁴ Slobodan Samardžić, *Yugoslavia and the Challenge of Federalism, op.cit., p.54*

in Hobbes's terms and not *non fictively* in Althusius's and Proudhon's theory of federalism,⁵⁵ would constitute *Yugoslav political people, demos*. In other words, the concept of a democratic federation is primarily based on the *Yugoslav citizen as a political being* and on the existence of particular ethno-cultural identities of Yugoslav peoples. Accordingly, the individual would gain its political subjectivity not only as a member of the respective nation but as a citizen of the federal Yugoslav state as well. The *sphere of freedom, constitutionally* separated from the *sphere of sovereignty*, would be composed of *the basic citizen and political rights*, together with *inalienable rights of communities* deriving from basic rights. Only in a community of this kind could federalism have played its historically confirmed role of safeguarding the unity of a state while protecting particular national identities at the same time.

A Yugoslav federal parliament, composed of two houses, the house of citizens and the house of federal units, would be an institutional expression of this concept of Yugoslavia as "a democratic and federative community, i.e., as a community of citizens and federal units"⁵⁶ Interests of Yugoslav citizens would be represented on a federal level through their direct representatives in the lower house, elected on the one man one vote principle, while their preferences as members of ethnically and culturally diverse communities would be represented by delegates of their respective federal units. While decision making in the lower house would be based on *majority principle*, in the upper house *consensus* would be the principal mode of decision making. In that manner, a balance between the democratic demand for equality of all Yugoslav citizens and demand for equal representation of their respective ethnic communities would be acquired. Also, the division of competencies between the federal level and level of federal units would be precisely arranged by the constitution.

The federal level would have only a narrow sphere of competencies related to the country as a whole i.e. monetary and fiscal policy, defence and foreign relations etc. while all the other particular questions would remain in the competence of federal units. Federal units would have very large possibilities to organize their legislative, executive and judicial power. The independent and strong constitutional court that would control political decisions made in several centres of power would be of the greatest importance for this federal system's predictable functioning. All other institutional solutions, such as the relation between two federal chambers in decision making process, specific division of competencies between the two levels of government etc. would be the subject of an agreement within *a finished political community of Yugoslav peoples*, whose clear contours are established by *fundamental consensus*, an abstract "social contract", of all Yugoslav citizens.

Epilogue

***"As nobody can destroy its shadow, nobody can destroy the nation and sometimes national feelings of men and women ...What we have to take care of on the other hand is to avoid that the shadow will start to control the men or the women, that the shadow becomes more important than the men or women themselves that it starts to determine their behaviour "*⁵⁷**

⁵⁵ In the case of Yugoslavia it is clearly shown how Althusius's and Proudhon's notion of a contract between individuals and collectivities as basis for parallel creation of a state and society, in reality easily transforms into myth.

⁵⁶ Slobodan Samardžić, *Yugoslavia and the Challenge of Federalism*, p.54

⁵⁷ Thomas Fleiner, "Nation state and autonomy for ethnic communities", *International problems no.1-2/1995*, Belgrade, 1995, p.91

The socio-political situation in Yugoslavia at the beginning of the twentieth century's last decade was extremely tense. The crisis, that was threatening to have terrible consequences, was caused and aggravated by numerous domestic and foreign actors directly interested in its final outcome. At that moment the destiny of the federal project was more than ever connected to the destiny of nations that have lived for eight decades in a country enriched by their ethnic and cultural heterogeneity.

From official *ideological constructions* according to which there is no need for *authority* and *decision making* since “working people” associated voluntarily in communities of interests *govern themselves*, the system has finally come to a critical stage where it has become practically impossible to control national holders of unevenly distributed power.

At the beginning of the nineties ex-communist ideologists of self-government miraculously jumped over the abyss that separates the political philosophies of Joseph Proudhon and Carl Schmitt. Encouraged by the strength of hysterical nationalistic passions, regional elites were promptly rejecting any kind of external control over their power. In each one of the republics, as a final result of the process initiated by SFRY 1974 Constitution, the absolute sovereignty of a *nation* replaced the absolute sovereignty of “*working people*”. The role of the *self-governing idea* was taken over by the concept of *nation as superior to the others*, with the same goal of deceiving citizens and distracting their attention from the question of liberty within rising authoritative political communities. Thus, a political power has safely remained in the sphere of the metaphysical with minimized possibilities for its efficient controlling. The space for rational integration that had been erased once by the common ideology of self-government was erased once again by separate national ideologies at the beginning of the nineties.

This type of situation in a society in which national shadows, suppressed for a long time, became suddenly more important than men and women themselves, former “believers of self-government concept” transformed into fervent nationalists, played greatly into the hand of the second of three scenarios presented as possible crisis outcomes. Having rejected the utopia of self-governing federalism together with the option of a democratic federation, that was at that moment too demanding and too progressive, national Yugoslav political leaders have stepped foot on the historically regressive journey of creating *absolutely sovereign and ethnically based nation states*.

Complete subordination of freedom to national authoritative orders is an inevitable result of any attempt to create new ethnically based states on the territory of an already existing and internationally recognized country. There are two main reasons for this. First, in order to successfully wage “national liberation” wars it is indispensable to have a great amount of uncontrolled power in the hands of a few people by whose opportune decisions the final outcome of wars depends. On account of the aspiration of one nation for *absolute power*, disguised with the excuse of “national self-determination”, the sphere of sovereignty completely erases the sphere that is free of it. Second, in republics whose territory is populated with different ethnic communities “national deliberation” what for one means complete “national freedom”, is for others complete “national enslavement”. This thesis got its full and depressing historical confirmation during the collapse of the former Yugoslavia.

As a result of horrible wars among Yugoslav peoples that shocked the civilized world during the nineties, on the territory of former *unfinished Yugoslav federation* four new nation states were created, Slovenia, Croatia, Macedonia, Bosnia-Herzegovina. Serbia and Montenegro stayed together as common country until the 2006 referendum in Montenegro. The result of a tight victory for pro-secessionist supporters was the peaceful disintegration of a common country into two independent states Serbia, and Montenegro.

Among all the former Yugoslav republics Slovenia as an independent state has achieved the best results, mainly in the field of economy. Also, Slovenia is so far the only one of the former Yugoslav republics that has acquired full EU membership. Even though *finished*, Croatia, Macedonia and Montenegro, are very centralized unitary *states*, falling a lot behind developed western European countries regarding the rule of law, democracy, economic development and culture. Bosnia-Herzegovina is an artificially created multi-ethnic federation composed of nations held together first and foremost by the strong will of the international community. The continued existence of this country in the future will depend primarily on success in finding institutional arrangements suitable to reconcile the necessity for a rationalized decision making process on the federal level, on one hand, and the need for safeguarding different national identities of Bosnia-Herzegovina peoples, on the other. Neglecting either one of these two aspects will present the unity of the country with very serious challenges. Of all of the former Yugoslav republics, Serbia is today confronted with the biggest problems caused by an attempt of Kosovo to create an independent state on Serbia's internationally recognized territory. If the practice initiated by the disintegration of Yugoslavia i.e. the creation of new ethnically based states by redrawing internationally recognized frontiers, continues in the case of Kosovo, the whole region could be easily sidetracked from its road toward the EU, the road that is already marked by numerous obstacles, into the area of political instability and uncertainty.

Instead of conclusion, the experience of Yugoslav federalism as a warning for Europe's unfinished federation

The political system of the EU bears some important features of federalism. The Union is featured by a multilevel governance system. Like in all modern federations, there are at least two autonomous spheres of decision-making with direct influence on citizens; the autonomous sphere of inclusive, supranational community and autonomous sphere of member states. The EU Court of Justice played a crucial role in the process of federalisation of the European supranational community. By adopting the principle of *direct influence and principle of supremacy of *acquis communautaire**, the Court managed with great help of national courts and the European Commission, to prevent selective implementation of *acquis communautaire* by member states.⁵⁸ These two principles secured on the one hand that legal norms of the Community made within its *limited* competences must be treated as domestic law in the areas of implementation of Community law, and on the other, that European norms have precedence in the case of conflict with national norms. In that way, in terms of the rule of law, relations between member states and supranational community are established in the way it is the case with other federal states.

Also, numerous federal characteristics are recognisable in the institutional structure of the EU. An important characteristic of all federal political systems is equal representation of territories of different sizes. Territorial dimension of politics in the EU is present fully in the Council of Ministers of the EU and the European Council, where small countries participate in the process of decision-making regardless of the size of their territories on equal terms with other members. Also characteristic for federations is the balance of territorial and non-territorial dimension of politics as a result of semifold loyalty of citizens to the federal unit territory, political parties, organized socio-economic interests, etc.⁵⁹ Such balance in the EU is recognized in the membership and the way how European Parliament, European Commission and the Court of Justice function.

⁵⁸ Džosef Vajler, *Ustav Evrope*, Filip Višnjić, Beograd, 2002, pp. 31-123

⁵⁹ Ivo D. Duhacek, *Comparative Federalism, The Territorial Dimension of politics*, op.cit., pp.46-63

However, for a community to be federal in the full meaning of the word, the process of changing basic rules must be organized in the way which demands cooperation of members and the inclusive community itself.⁶⁰ In the process of European integration, however, the main rules of the game are set exclusively by the *states*, by concluding mutually binding agreements. Also, unlike all federal states, where competences are at the federal level and at the level of federal units envisioned by the constitution, the founding agreements of the EU do not set forth clear division of competence between the states and supranational community. Instead, competences are set mostly on the basis of current political and functional purposefulness. Finally, what the EU essentially lacks to become a federation are *European citizens* who would participate in the process of decision-making in the measure in which those decisions affect their lives. Despite reinforced European Parliament, as a direct representative body of the “Europeans”, citizens continue to exercise their *political rights* exclusively as citizens of their national states. In a word, despite doubtless presence of federal elements in administrative, institutional and economic system, the EU can be characterized just as an *unfinished federation*.

The most important legacy of the process of European integration is certainly that any kind of conflict among EU member states that for centuries had a dark history would now be quite unthinkable. Gradually joining together at economic, rational basis, patiently and cautiously transferring their competences to supranational level, European national states slowly managed to overcome their negative features from the past. Taking that road, with time, the states, pressured by the existing economic globalization, were forced to create a complex multilevel governance system, which, apart from national representatives, include representatives of regions, federal units, as well as various socio-economic interests.⁶¹ Thus the decisions made in the EU became less the product of bargaining of a small number of actors at a highest level, but rather a result of a complex negotiating process among different centres of power. Such development simply imposes the question whether the European integration has finally flipped the outcome of the battle of ideas, which started at the turn from medieval to modern era, in favour of Althusius, Proudhon and Ostrom and against Bodin, Hobbes and Carl Schmitt? What is the relation between freedom, federalism and post-modern European federal order in the making? An attempt to fully answer this question is still too ambitious a task. Instead, in the light of the Yugoslav federalism, we should warn of the twin danger for citizens' freedom which is prying on the road of creating the European federation.

The first danger refers to the issue of political responsibility as part of the European multilevel governance system⁶². The overall process of European integration did not influence just the relation of the state – supranational institution but also the subnational actors, which have become more mobile in

⁶⁰ Carl. J. Friedrich, "Federal Constitutional Theory and Emergent Proposals", op. cit., p. 514.

⁶¹ Bojan Kovačević, "Europe of the regions - an attempt to overcome antinomy of freedom and order - a reality or utopia?", *International problems*, Institute for International Politics and Economics, Belgrade, 2008, pp. 137-170

⁶² The term multilevel governance contains in itself vertical and horizontal dimension. The term multilevel marks increased dependence of authority acting at various territorial levels. The horizontal dimension of the term multilevel governance refers to the network of private and public actors that associate in order to solve certain tasks with informal or formal institutional means. Both *governance* and *ruling* are based on giving consent by those who the governance will act upon. Essential difference between the two terms is seen in the way that consent is reached. Citizens' consent that is necessary so that they can be governed comes from formal terms of state sovereignty and constitutional democracy. Consent related to the term governance is established in a different manner through informal ways. That means constant quest for new mechanisms allowing the making of joint decisions. *Governance* is marked by a complicated process of informal negotiation in which actors are ready to constantly re-examine their starting positions due to good argumentation of speakers.

the political and economic arena. Regions are becoming more and more interested to get involved in the shaping of that comprehensive supranational framework through direct representation in Brussels, through their national governments or through membership in the Committee of the Regions (CoR). That increased mobility of subnational actors is constantly supported by experts from European institutions who represent them as important partners within the European *multilevel governance system*. For one such system to function *more efficiently*, *political decisions* need to be replaced by *constant negotiation, agreement* between private and public actors from various levels, from municipal, through regional, national all the way to supranational. To increase the *economic rationality and efficiency* the decision-making is neutralized, and authority is transferred to the *non-political* sphere. However, despite omnipresent tendency that politics is fully dissolved in the economy, it is clear that concrete political decisions in Europe are still made by concrete instances.⁶³ That, however, does not mean that real centres of political power are easily visible, like it was the case in the one-party Yugoslavia. It is quite impossible to give a precise answer to whether those are states, experts from Brussels, representatives of big businesses or someone else. Hence, it is quite difficult to discern *who* actually makes the political decision in a complex multilevel governance system in which apart from the regions, states and supranational institutions, representatives of various socio-economic interests also partake more and more. In other words, it becomes harder and harder to make responsible the authority that is gradually being transferred to the non-political sphere of “*complete economic rationality*”.

Unlike Yugoslavia in which aside from official ideology of self-governing federalism it was easy to recognize the real holders of political power, it is not an easy task in Europe. In that sense, the message from the experience of Yugoslav federalism is: ***Maybe Europe one day, in the far future, will transform into a harmonious multilevel governance system based on overall balance, and not on individual, concrete political decisions made by concrete instances. It is not impossible either that man, after a long road of moral and intellectual advancement, will manage to outgrow their Hobbesian, unrestrained nature of dangerous being and become Althusius' homo symbioticus. Until then, the lulling in the utopia of “federal Europe of the regions” and avoiding the question who makes the political decisions will mean getting into trap of “deception of anonymity,”⁶⁴ deception embodied in the system of governance in which invisible power rules.***

Another danger on the road of creating the European federation refers to activities of representatives of national governments whose decisions at the European level evade every political control. Namely, national competent ministers, who in their states represent executive authority, make political decisions at the European level, within the Council of Ministers as EU's main legislative body, far from the eye of their parliaments and the public eye. The role of the European Parliament, although to an extent reinforced by changes in agreements from Maastricht, Amsterdam and Nice, is considerably weaker from the one of federal parliaments in federal states. Bearing in mind that European decisions more and more influence the lives of ordinary citizens, we may conclude that there is *a serious quantity of uncontrolled power in the EU distributed quantitatively among national governments*.

⁶³ Hueglin Thomas, “Government, governance, governmentality. Understanding the EU as a project of universalism“, in: Koch Kohler, Eising Rainer (eds), *The transformation of governance in the European Union*, Routledge, London, New York, 1999, pp. 249-265

⁶⁴ Inspiration for using the expression “deception of anonymity” originates from Carl Schmitt, a great European thinker of politics, law and state, who was warning of the danger from the “deception of anonymity”, which threatens to mark contemporary international relations. See Slobodan Samardžić, “Carl Schmitt - contemporary thinker of absolute state“, Jagoš Đuretić, Slobodan Samardžić (eds), *Norm and decision, Carl Schmitt and his contestants*, Filip Višnjić, Belgrade, 2001, p. 26.

One of the ways in which this challenge for citizens' freedom can be fogged is the insisting on the issue *whether the EU is a federation or confederation*. Exhaustive discussions on whether the sovereignty remained at state level or was completely transferred to supranational level are related exclusively to the term of *modern state*, which is, again, unbreakably tied to the term of *nation*. Independently from whether the focus is on the danger from losing national identities of European peoples, or whether attempts are made to create some sort of common European identity by means of superficial engineering, yet attention irrevocably goes away from the issue of responsibility of representatives of national governments within the political system of the EU.⁶⁵ While as part of European super-state *uncontrolled centralized power* would belong to Brussels bureaucrats, further insisting on the full integrity of nation states' sovereignties would open the door to further quantitative *organization of uncontrolled power* in the hands of national governments. In either of these two cases, federalism could not realize its historically successful role of vertically controlling political power.

Eastern European EU enlargement came after old member states already achieved a very high level of economic and even political integration. Accession of poor and underdeveloped states caused a great deal of heterogeneity of political and economic interests which need to be reconciled when national ministers in the Council vote. On the one hand, there is a necessary question of readiness of rich Western European regions to support the poor ones. On the other hand, there is a constant fear of Eastern European countries from the predominance of politically and economically strongest EU states. In such circumstances, there is more insisting on the requirement for unanimous decision-making in the Council, which is directly against flexibility and efficiency of the governance system of the supranational European community. The insisting on unanimity threatens to jeopardize the autonomy of supranational level of governance. What does that mean? If the European level of authority would be deprived of any autonomy, national governments that at the EU level bring important decisions far from the citizens' eye would remain responsible only to themselves. That could lead to *nationalization* of those issues at the European level that are of general importance for all European states. Consequently, the European decision-making on the principle of current political purposefulness on these issues could grow into a tiresome international bargaining. Such scenario would most certainly result in more frequent and more serious institutional crises within the EU.

In that context, the experience of the unfinished Yugoslav state plays an unusually sobering role. ***If the goal is adequate functioning of the EU system, federalism by no means should serve as an excuse for dispersing the unlimited power in the hands of governments of 27 member states. So that freedom of citizens and their communities is preserved, political decisions in the EU must be limited by the universal European federal legal order while power holders must be responsible to those who are affected by their decisions.*** Failure to meet any of these two conditions will mean going away from solutions providing freedom of individuals and nations marked by ethnic, cultural, economic and political differences as part of a truly *democratic European federation*.

⁶⁵ Weiler Joseph, H.H., „The State 'uber alles'. Demos, Telos and the German Maastricht Decision“, European Integration Online Papers, <http://www.jeanmonnetprogram.org/papers/95/9506ind.html>

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