Constitutional Identity in the Socialist Yugoslavia and the Successor States:

Did a Break with the Past Really Occur?

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Abstract

With the dissolution of the Socialist Federative Republic of Yugoslavia, the new successor states adopted ethno-nationalist definitions of identity within their constitutions. Even though such a development was represented as a break with the communist past, by analyzing constitutional identity it will become clear that the nationalist ideology directly followed from the type of constitutional identity that was formed in the socialist Yugoslavia. While it is the prevailing line of thought that constitutional identity cannot be created in a non-democratic context, in this study it will be demonstrated that if certain conditions are met, this type of identity can be established even in a non-democratic regime, such as was socialist Yugoslavia. In Yugoslav case these conditions were found in the ideology and quasi-constitutionalism characteristic for the given system. Because of the special position that the ideology and the Constitution had in this regime, certain type of constitutional identity was formed. This constitutional identity created the preconditions for the development of nationalist conceptions produced upon the dissolution of the socialist Yugoslav Federation.
Table of contents

INTRODUCTION .................................................................................................................. 4

CHAPTER 1 .......................................................................................................................... 9
CONCEPTUALIZATION: CONSTITUTIONAL IDENTITY ...................................................... 9

1.1. ROLE OF CONSTITUTION IN IDENTITY FORMATION ............................................. 10
1.2. ELEMENTS OF CONSTITUTIONAL IDENTITY ....................................................... 14
1.3. CONSTITUTIONAL IDENTITY WITHOUT CONSTITUTIONALISM .................... 16

CHAPTER 2 .......................................................................................................................... 18
AMBIGUITIES OF CONSTITUTIONAL IDENTITY IN THE SOCIALIST YUGOSLAVIA:
FOUNDATION FOR ETHNO-NATIONALIST POLITICS IN THE POST-YUGOSLAV STATES ....... 18

2.1. EXCLUSIVIST CONCEPT OF ETHNO-NATION IN THE DEFINITION OF THE PEOPLE IN THE SUCCESSOR STATES .......................................................................................................................... 19
2.2. YUGOSLAV SOCIALISM: A DEPARTURE FROM STALIN’S REAL SOCIALISM .............. 22
2.3. YUGOSLAV SOCIALIST DEMOCRACY AS A REAL SOCIALISM: CONSTITUTIONAL ORDER 1948 - 1974 ................................................. 26
2.4. CONSTITUTIONAL IDENTITY IN THE WORKERS’ DEMOCRACY ............................. 30
2.5. SYSTEM IN CRISIS AND CONSTITUTIONAL CHANGE IN 1974 .............................. 36

CHAPTER 3 .......................................................................................................................... 41
POST-YUGOSLAV STATES: NEW INSTITUTIONALIZATION OF THE OLD PRINCIPLES ..... 41

3.1. THE COMMON ORIGIN OF THE SOCIALIST AND NATIONALIST IDEOLOGY ............... 41
3.2. CONSTITUTIONAL PATRIOTISM: FORMULA FOR INCLUSIVE MULTIETHNIC SOCIETY ....... 45

CONCLUSION ..................................................................................................................... 48

BIBLIOGRAPHY: .................................................................................................................. 53
Introduction

In contemporary world where cohabitation and tolerance among the members of different ethnic, national, racial, religious and other groups is treated as one of most important features of *global society*, the status of the citizens of different origins and characteristics within the same state becomes of crucial importance. Is the relationship between different groups in various states a reflection of historical evolution, specific culture and shared values or can this relationship be also an object of conscious influences of political actors? Is political order derived from specific culture of a community or does culture create in dependence to political institutions? One of perspectives from which these questions can be addressed comes from constitution and is related to constitutional theory.

As the highest law of the state, constitution defines the status of the citizens and the groups. When society decides to organize itself in political community - the state - the first step it will take is to give itself a constitution. As Ulrich K. Preuss explains, every constitution has to solve the question of who constitutes certain community - to whom will be given political subjectivity.\(^1\) Giving certain individuals the status of political subject means to create constitutional identity. Constitutionally defined identity (constitutional identity) determines the status of these subjects within the state.

Various scholars hold different views on the origin of the identities defined in the constitution. There are two widespread views on the origin of constitutional identity - one that considers constitutional identity as a mere reflection of pre-constitutional identities, and the other that sees constitutional identity as a product of both recognition of the pre-existing identities and creation of a new form of identity. According to the first line of thought (Hegel, Burke, Reid) culture and tradition determine constitution and political reality organized

through the constitution. Second pole of authors (Habermas, Rosenfeld, Arato) argues that
constitution is at the same time an originator and a product of culture and tradition, for
institutions and culture exist and act in mutual dependence.

It is the prevailing view that the interplay between the recognition and creation, and
constitutional identity in general, matters mostly, if not exclusively, in a democratic context
where the principles of constitutionalism are applied to practice. According to Ulrich K.
Preuss, as a set of ideas and practices, constitutionalism includes two basic premises: 1.) All
relations of power are regulated by the constitution, and, 2.) Government is limited by the
same law that it applies to citizens.\textsuperscript{2} In order to talk about constitutional democracy and the
rule of law, these two premises must be in place. If any of these principles lack, citizens are
not guaranteed the status prescribed by the constitution.

It is out of any doubt that the guarantee of citizens’ rights and freedoms pertains only to
those political regimes that have regulated organization of the state by constitution and
limited the state power by the same constitution. However, as practice shows, constitutional
identity can be of great importance also in some regimes where constitutionalism does not
exist as functioning principle. As various authors explain (Đindić, Puhovski, Dimitrijević),
socialist Yugoslavia does not confirm the claims of those who argue that constitutional
identity can exist only where preconditions of constitutionalism are in place. As they explain,
in case of socialist Yugoslavia we see the creation of class and national identities that found
its application in practice - in the status of the citizens, or more precisely in unequal status of
the groups in the state. As it will be explained later, this treatment of constitutional identity
showed as crucial for the relations among nations and minorities within Yugoslav federation
and states created upon its dissolution.

The questions that have to be addressed are whether constitutional identities of the named states really did play such an important role and how could we explain it. In this study, I intend to give an answer to these questions and show the continuity in the definition of identities in the constitutions of socialist Yugoslavia and constitutions of the successor states.

My research question is: Did constitutional identity matter in the context of socialist Yugoslavia and how can we explain it? How and why did constitutional identity matter in the socialist Yugoslavia? My assumption is that it is the special place that the ideology had in this regime that has caused creation and re-definition of constitutional identities, namely class and national identity. Moreover, I assume that the constitutional identities formed within socialist Yugoslavia and the successor states placed certain groups at privileged positions and contributed to the birth of exclusivist notions and worsening of relations between the nations and between national majorities and minorities in all the states.

In order to provide answer to these questions, I will firstly address the questions from the debates on the origin of constitutional identity and whether it can represent only a reflection of the pre-existing identities and traditions, or it can also create a new kind of identity - through invention or re-definition. I intend to follow the steps of the second approach and provide theoretical and empirical support for the argument claiming that constitutional identity and pre-constitutional identity create each other in an interdependent relationship. Secondly, I intend to analyze constitutional identities of the socialist Yugoslavia, created and re-defined by the constitution, and offer an explanation of their role in the state. Finally, I will investigate constitutions of the successor states of the former Yugoslav federation and show the continuity in the treatment of the constitutional identities within the constitutions of these states and former Yugoslav federation. I aim to explain how and why this treatment of constitutional identity had similar, if not equal, motives and consequences of the treatment of constitutional identity in the former Yugoslav state.
In order to address the research question, I will apply the methods of textual analysis of the basic constitutional provisions. In doing so, I intend to identify: a) Identities defined in the constitution; b) Status assigned to each of identities defined by the constitution.

After doing so, I intend to investigate whether these identities were applied to practice, in which way and why. In order to collect these evidences, I will apply the method of critical close reading of:

a) Status of the citizens in socialist Yugoslavia and the successor states;

b) Informal components of the constitutional identity: consciousness of constitutional identity, sense of belonging, sense of common interest between the subjects of this identity, identification with the bearers of the identity and the acceptance of the common norms and rules of behaviour;

c) Underlying ideologies, based on a certain understanding of the conceptual and practical-political place and the role of ideology in Yugoslavia and its successor-states;

d) Consequences of the applied politics of identities in the named regimes.

The study aims at providing evidence and explanation for the role that constitutional identity gained in the contexts of socialist Yugoslavia. Study is important as it offers a new view on the preconditions for the creation of constitutional identity. Prevailing line of thought, according to which constitutional identity requires adherence to the principles of constitutionalism, cannot explain how constitutional identity can be created if these principles lack. This study intends to analyze whether a substitution of these principles can be found in some other features as ideology and the existence of legal system, without limited power of the state. As such, it can serve as an important contribution to the theory of constitutional identity. Results can be relevant not only for the cases analyzed in this study, but also for other regimes that adhere to similar rules.
In the first chapter I will describe the concept of constitutional identity and show the main debates related to the concept. This part deals with the definition of constitutional identity, its relation to constitutionalism and the features of constitutional identity. Second chapter offers a description of constitutional identity of the post-Yugoslav states and its relation to the constitutional identity in the socialist Yugoslavia, as well its implications and explanation. Final section of this chapter contains the comparison between the two analyzed identities. In this section I will show how both socialist and nationalist conceptions represent a pre-modern form of identity. This definition of the people will be contrasted with the modern definition of political subjectivity. In the final instance I wish to show that a valuable solution for the post-Yugoslav states lies in the individualist model of constitutional identity, namely the model of \textit{constitutional patriotism}. 
Chapter 1

Conceptualization: Constitutional Identity

Constitutional identity defines who is going to get political subjectivity, the character of that subjectivity, the relationship between citizens thus defined and the state, and the pertaining status in the state. As Gary J. Jacobsohn explains, constitutionally defined identity gives an answer to the question of who “We the People” are, or - who represents the constituent power in the state. When the constitution defines identity it will both define the subjects and the content of the status these subjects will have within the state.

According to Rosenfeld, constitutional identity is a type of encompassing identity that incorporates all the identities recognized or created by the constitution. Constitutional identity means constitutionally defined identity. More precisely, pre-existing identities can be recognized by the constitution and from that moment they become political identities enforced in the legal document and legal order. In the same way, constitution can create a new identity that has not yet been present and by enforcing it through practice it can make this new identity equally strong as the pre-existing identities that have been recognized by the constitution.

What does it mean to have sufficiently defined common shared constitutional identity? As Rosenfeld argues, in order to have functioning constitution, three basic preconditions must be satisfied: limitation of the governmental powers, adherence to the rule of law and protection of the fundamental rights. Accordingly, at the minimal level, constitutional identity implies embracing of these three features.

4 Ibid.
“...If the Quebecquois do not share a common [constitutional] identity with Canadian citizens from other Provinces, then they are unlikely to recognize the legitimacy of the particular limitations on governmental power, such as the apportionment of powers among the federal and provincial governments, sanctioned by the Canadian Constitution (and, in fact, Quebec refused to accept Canada’s 1982 Constitution).”

Co-existence of constitutional and extra-constitutional identity demands an analysis of their relationship. Relation of these two is dynamic and varies across countries or even within one country, depending on the circumstances. But before even entering the analysis of these relations in specific cases, it is important to thematize the role that the constitution plays in building of these identities.

### 1.1. Role of Constitution in Identity Formation

The debates on the role of constitution in the creation of constitutional identity can be summarized as follows: a) Some authors claim that the constitution is simply a reflection of a specific set of beliefs, attitudes and values derived from the history and the culture of the community (constitution as a recognition of pre-existing identities); b) The second line of thought argues that the constitution, culture and identities are existing in interrelation to each other and build each other in the whole variety of aspects (constitution as a recognition and creation of new identities).

Let us first examine the first line of thought, namely the view that gives the primacy to pre-existing identities and culture and their role in formation of constitution and constitutional identities. According to Hegel,
“[T]he constitution of any given nation depends in general of the character of its self-consciousness... The proposal to give a constitution - even one more or less rational in content - to a nation a priori would be a happy thought overlooking precisely the factor in a constitution that makes it more or less an ens rationis... A constitution is not just manufactured; it is a work of centuries... A nation’s constitution must embody its feelings for its rights and its position, otherwise there may be a constitution there in a merely external way, but it is meaningless and valuesness... it is absolutely essential that the constitution should not be regarded as something made.”

Edmund Burke shares very similar vision of this relation. As he explains, every community is formed as a set “circumstances, occasions, tempers... and habitudes of people that disclose themselves only in a long space of time.” Constitution can only express particular history and tradition, but cannot hope to change the reality of a certain political space. Thomas Reid adds that it is historical memory of the members of a community what creates the core of its institutional system.

No matter how much this view can sound realistic and no matter how much tradition is important for the institutional order of the regime, these arguments give too little trust to the capability of polity and constitution to participate in the building of tradition itself. Explaining the role of constitution in formation of contemporary democratic societies, Jürgen Habermas argues that values adopted in constitutions of these states do not necessarily come from the nature of the specific culture and do not have always have any root in the tradition of a given community. In many cases these values have been built in the constitutions artificially and then accepted by the members of a community. However, the way they will be internalized

8 Reid, Thomas, as cited in Jacobsohn, Gary J. (1996): Ibid.
among the members of a specific community will certainly depend on the culture this community knows.

It is at this point noteworthy to refer to Rosenfeld and his analysis of empirical reality related to constitution’s role in the development of constitutional identity. As he explains, American and French Revolution serve as clear examples of how constitution actively builds the new order on the leftovers of the old one. Revolution implants its acquisitions in a constitution that follows the revolution. This new constitution and new order represent a clear break with the old order and many of the values that were immanent to that order. New (constitutional) identity does not naturally result in “total revamping of the self-identity of the people for whom the new constitution is made.”\(^{10}\) The establishment of new identity demands in the same time negation of the pre-constitutional identity and making of new constitution that does include many features of the old one.\(^ {11}\)

Thus, French Revolution did break with the old monarchic order and has built new democratic system where all the citizens came to enjoy equal rights. Still, it naturally did preserve many of the features of the old system, such as the central role of French culture or the language. Similarly, American constitution did proclaimed equality of all men and has rejected the inheritance of colonial status. However, it will pass many decades before the slavery will be abolished and the equality of all members of American society will be recognized the full and equal rights.\(^ {12}\)

As Rosenfeld explains, revolution-based constitutions are not the only example on how constitution forms a new order and identity. Similar consequences can be found in cases where the war losers had to accept foreign imposition of the law (Germany and Japan after the Second World War) or where pacted transition between autocratic and democratic political

\(^{10}\) Rosenfeld, Michael (2005): Ibid., 17.
\(^{11}\) Ibid.
\(^{12}\) Ibid., 17-18.
forces lead to the development of the new system. An illustration for this is given by Andrew Arato in his analysis of the constitutions of the new post-communist democracies of Eastern and Central Europe. As he emphasizes, former communist political institutions, political traditions or political culture could by no way create any solid basis for the new liberal-democratic system and identity. Institutions, traditions and culture of the old system were simply incompatible with the new order. Thus, new political elites had to make radical break with the past and build the new system from the beginning. Perhaps it is not unnecessary to remind that the citizens of new democracies could not inherit the features of the new values from the old system. New constitutionally proclaimed values constructed by elites and new identity had to find its ground in the minds of the people. And it took time for the people to comprehend themselves as political actors and to perceive their rights as really functioning principles. It is the educational role of the constitution and the system derived from that constitution that has to create new identity and find a fine balance between the new identity and features of the old one - naturally, the ones that are compatible with the newly proclaimed values.

Relation between pre-existing identities and constitutionally created identities is complex and depends on the conditions and political will of the society and the elites. What above outlined examples show is that a constitution is both the originator and the product of the extra-constitutional identities. The relation of institutions and culture must always be regarded as the relation of mutual dependence.

13 Ibid., 22.
1.2. Elements of Constitutional Identity

Constitutional identity is a collective and institutionalized political identity shared by the members of one constitutional order. From the debate presented above we can identify some basic elements of this type of identity. These elements can be recognized at the two levels - formal and an informal level. First level relates to the legal status subjected to the citizens that are defined as the bearers of an identity. This formal level represents institutionalization of identity in the form of citizens’ status: acting of political subjects is regulated by the law and through political institutions.

Except from this formal level, every kind of identity contains a set of beliefs and values adopted by the members that share certain identity. Most of the authors will agree on several necessary features of political identity: consciousness of having certain identity, identification with the values of the given political system, adoption of its norms, sense of belonging to the given community, sense of a common interest and a common public goal. Let us see more closely what these elements imply.

Individuals that are connected by the institutions, in which they accomplish their interests, will develop the norms characteristics for the given society. This internalization of institutional frames for action will lead to the identification with the ones that share the same modes of behaviour. Identification with the norms and institutions represents the basis for legitimization of an institutional order. Members that see their common interest as participation in a common good, develop the sense of belonging to the given community.

In the process of internalization of social norms - transformation from formal, legal level to an informal (cognitive and affective) level - the factors of social control will play the crucial


role. Internalization of the norms will be the most successful if social control is linked to the
authority whose behaviour will become a desirable pattern for all.

Integration of the members of a community, sense of belonging and internalization of the
values is will be further supported by its linking to some higher ideals. Some regimes will
refer to the rationality of the regime, while some others will link it to tradition and continuity
in time. Any order that wish to gain the legitimization has to present itself as a regime better
than any other available alternative. In that sense, the notion of belonging to a certain
community is not only formed in relation to the ones that are similar to “us”, but is also
reflected in its distinctiveness to others. Thus, in one hand, identity is perceived as a
sameness, and in the other hand, this sameness is conditioned by the fact that our values are
different from the values of some other community. Distinctiveness to others can represent a
mere reflection over a difference to other communities, or, as in some communities it can be
directed against the others and used a source of the uncontested support for the world view
offered by the ruling force.

Every regime that is creating certain identity will have to develop these basic features.
Further in the study we will see how socialist regime in Yugoslavia and post-Yugoslavian
nationalist regimes managed to create and re-define constitutional identities with the
pertaining elements. Before proceeding to the case study, it is important to see theoretical
debates on the constitutional identity in the non-democratic context.

1.3. Constitutional Identity without Constitutionalism

What constitutes the status defined by the constitution? Constitutional identity is almost exclusively discussed in the context of liberal constitutional democracies where the protection of citizens’ rights and freedoms are one of the main purposes and ideals of the constitution. Precondition or the protection of citizens’ rights and freedoms is the rule of law and limited government - or the existence and functioning of the principles of constitutionalism. As Andrew Arato explains, constitutionalism represents political form in which fundamental laws establish both the powers of the government and the limitation to these powers. “Fundamental rights, civil rights as well political rights understood on the model of civil rights, that is, freedom and liberties represent the major building block of liberal constitutionalism.” In this context, it is the rights and freedoms of the citizen that represent their status in the state and are therefore the main content of constitutional identity. As such, constitutional identity is inextricably linked to constitutionalism. As we have seen, Habermas holds the same view in relation to the precondition of constitutionalism in constitutional identity formation. Michael Rosenfeld explicitly denies the possibility of constitutional identity in the regimes where constitutionalism did not take place.

Discussing the constitutions in socialist countries, authors mostly agree that they (constitutions) served just as a facade for political reality. According to Lidija R. Basta, communist societies were para-state regimes which functioned based only on one principle - absolute control of the Party. As Gary J. Jacobsohn explains, as the role of the constitution in these societies represented a pure response to immediate desires of the Party, no

constitutional identity could be formed. Identity that is “contingently changeable... is the same as having no identity at all”. 24

Out of any doubt, socialist societies did not represent constitutional regimes. There indeed was no limitation on power of the Party, no consistent protection of citizens’ rights and freedoms, as well as no sovereignty of the people. The same can be said for the constitutional order of the socialist Yugoslavia. Nevertheless, I hold the view that the constitutional status of the citizens in socialist Yugoslavia was of crucial importance for their lives. This status cannot be linked exclusively to the rights and freedoms of political subjects, but was no less material for that matter.

While it is true that the Constitution of socialist Yugoslavia in many cases represented the response to immediate needs of the Party, we will see that this did not mitigate the relevance of constitutional identity in the system that socialist Yugoslavia proclaimed to be building. I will argue that constitutional identity in post-socialist Yugoslavia was directly related to the way constitutional identity was treated in the socialist Yugoslavia in two important ways. Firstly, nationalist tendencies were born already in Yugoslav Federation and the way they were handled in the legal system of the socialist Yugoslavia was determinant for the events that followed upon the dissolution of Yugoslavia and creation of the new states. Secondly, nationalist conception of political community in the successor states did not represent a break with the communist form of identity, but its extension with the different means. In the text that follows I will show how and why constitutional identity in socialist Yugoslavia was of great relevance both in the period of socialist Yugoslavia and the creation of the new post-Yugoslav states.

24 Ibid.
Chapter 2

Ambiguities of Constitutional Identity in the Socialist Yugoslavia: Foundation for Ethno-Nationalist Politics in the Post-Yugoslav States

Fall of communism and the disintegration of Social Federative Republic of Yugoslavia in 1992 were followed by creation of five independent republics: Bosnia and Herzegovina, Croatia, Macedonia, Federal Republic of Yugoslavia and Slovenia. At the time of the dissolution all the states, with the exception of Slovenia, represented multiethnic states, with highly heterogeneous composition of their population. Since the dissolution of the Yugoslav Federation, ethnical homogeneity has significantly increased in most of the states. Part of the blame can naturally be found in the war that occurred between post-Yugoslav states and ethnical cleansing in these areas. However, ethno-nationalist politics were not present only in the war zones or the war period. These principles were built in the basis of the system itself - they represented a foundation of the legal system of all the states and were institutionalized accordingly. Such legal system had the same purpose as ethnical cleansing did - active support of the state institutions for establishment of ethnically clean area of the given state.


2.1. Exclusivist Concept of Ethno-Nation in the Definition of the People in the Successor States

In the first chapter it was explained how constitutional identity determines political subjects in the state and their status. Now it is the time to analyze these principles in practice. In order to understand the essence of nationalist policies in the post-Yugoslav states we have to analyze their constitutions and the identity defined within them. In the period of the dissolution of the Yugoslav Federation and creation of the independent states, member states defined political community in the following way:

“... Bosnia and Herzegovina is a democratic sovereign state of equal citizens, of the nations of Bosnia and Herzegovina - Muslims, Serbs and Croats, and members of other nations and nationalities living within it.”

“Proceeding from... the inalienable and inextinguishable right to self-determination and state sovereignty of the Croatian nation, the Republic of Croatia is established as the national state of the Croatian nation and of the state members of other nations and minorities who are its citizens.”

“Resting upon the historical, cultural, spiritual and statehood heritage of the Macedonian nation and upon their centuries long struggle for national and social freedom, as well as for the creation of their own state... Macedonia is established as the national state of the Macedonian nation.”

“On the basis of the historical right of the Montenegrin nation to its own state, established in centuries of struggle for freedom ... the Parliament of Montenegro... enacts and proclaims the Constitution of the Republic of Montenegro.”

“Proceeding from the centuries-long struggle of the Serbian nation for independence ..., determined
to establish a democratic state of the Serbian nation... the citizens of Serbia enact the Constitution of
the Republic of Serbia.”

“Proceeding from . . . the basic and lasting right of the Slovene nation to self-determination... that
Slovenes have, over centuries of struggle for national liberation formed their national identity and
established their own statehood, the Parliament of the Republic of Slovenia enacts the Constitution of
the Republic of Slovenia.”

With a closer look at these definitions we will notice that all the constitutions define the
state as a property of a titular nation. Indeed, the main feature of nationalistic constitution
presupposes replacing the demos with an ethnos - constituent power is not the community of
the citizens, but a specific national group. In this system, a good rule is not determined by the
content of the norms and acts, but by the fact who is the ruler. More precisely, it is the nation
in its ethnic characteristics that represents the core of virtù in the system. The aim of such a
regime is a preservation of the chosen ethnic group - the majority nation in the state. In order
to preserve its distinctiveness to others, these regimes will search to exclude all the members
that seem to pose the threat to homogeneity of the nation and will deprive them from political,
economic, cultural and other rights.

Ethnicist concepts of the state expressed in the constitution, in practice were supported by
different policies aimed at enforcing superior status of the titular nation. As the recognition in
the constitution was linked to the status of the citizenship, those groups that were not defined
in the constitutional text did not automatically gain the right to be the citizens of the country.
As the eligibility to the right of the citizenship included confusing criteria such as accepting
the culture of the given nation, proficiency in the given language or uninterrupted residence in

the country, decisions were made arbitrarily. Gaining the citizenship, naturally, represented a precondition of the status and the pertaining rights as defined in the constitution.

Loosing the right to health care, employment or property did not represent the only expression of nationalist politics. These soft policies were accompanied by more radical ones. A set of measures, from pro-natalist policies to migration policies aimed at accomplishing quantitative supremacy of the nation in a certain area. This was supposed to serve as prevention to secessionist movements, or, contrary, as an instrument to enable them.

The question that naturally arises is how could these policies be supported by the public? Certainly, many of these policies were hidden from the public, whose underdeveloped and well controlled means of communication and civil society were not able to act freely. However, at least as far as the principles are concerned, a big majority of the public did not show very different attitudes. As we shall see the answer lies in the ideology employed by the elites that took over the power in the period preceding to the dissolution of the Yugoslav Federation. In order to understand how this particular concept of political community and constitutional identity was created and employed, we must first analyze the development of the concept of identity through socialist Yugoslav state and their re-definition in the post-socialist Yugoslavia.

36 The exception to this rule is the Republic of Slovenia that represents the most liberal of all of the states, nevertheless denied the right to citizenship to all those former Yugoslav citizens that have not resided in the country at the moment that the referendum for independence was held. Mazowiecki, Tadeusz, as cited in Hayden, M. Robert (1996): Ibid., 794.
2.2. Yugoslav Socialism: A Departure from Stalin’s Real Socialism

Constitution of Socialist Yugoslavia defined two constituting identities: workers’ self-management identity and national identity. Their relation is somewhat complex, partly for the reason of the numerous changes within the system, and even more because this relationship was filled with contradictions. For the matter of simplicity, we can divide the analysis into two periods: 1.) Since 1948 until 1974; and 2.) Since 1974 until 1992. With the risk of oversimplifying reality, we can say that in the first period there was a priority of an ideological element, expressed in the ideal of self-management democracy, whereas in the second period they were formally brought to equal position. How much this solution has worked out and with which consequences, we shall see later.

The first Constitution of the Federal People’s Republic of Yugoslavia was modelled after the Constitution of the Union of Socialist Soviet Republics of 1936. As Soviet leader, Josif V. Stalin, held that the goals of socialism are to be written within the program of the socialist party, the Constitution was supposed to represent only those relations and facts that have already been accomplished.

After the break between Yugoslav’s president Josip B. Tito and Soviet’s leader Stalin, in 1948, Yugoslavia changed its course and became determined to create socialist system different from the other socialist states. The new course was labelled as a path towards socialist democracy instead of Stalin’s administrative socialism. Yugoslav model cannot be understood without a reference to its mirror image - Stalin’s real-socialism. Therefore, it is noteworthy to describe its main features.

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Like every type of socialism, Stalin’s model has its background in the theory of Karl Marx and Vladimir Lenin. However, as we shall see, Marx’s ideals in the version of this socialism were inevitably reversed, in order to be combined with Lenin’s model - a condition for the establishment of socialism as a political regime.43

Essence of Marx’s thought lies in his postulate on the new epoch of history in which freedom of a man will not be derived from some abstract principles, but from one superior form of freedom - freedom of managing his own work and the products of his work. As the essence of human being is expressed in his labor, alienation from labor and the product of his work represents the alienation of its own essence as a human being. Such state of being will necessarily be reversed in the progress of history - in the revolution. History thus represents the history of class struggle, in which it is the role and destiny of the workers to win the battle and turn the relations of property of “man over a man” into the freedom.44

Revolution in Marx’s thought does not only mean the break with the existing state of being. Emancipation into socialism cannot be achieved by a radical break. On the contrary, it is achieved through “internal destruction of the form of production” that constitutes the core of the capitalist society.45 In that sense “…revolutionary position is enabled only as capitalist type of production becomes exhausted.”46 Class of workers and its leaders are not able to conceive of revolution before the development of objective conditions. From this it follows that the state cannot be abolished. It can only whiter away when historical progress brings the breakdown of capitalism and its substitution with an alternative model of real human emancipation.47

43 Puhovski, Žarko, Socijalistička konstrukcija zbilje (Zagreb: Biblioteka časopisa pitanja, 1990), 12. [Socialist Construction of Reality]
46 Ibid.
Liberal society here represents only the stage in the process of real human emancipation. In historical development, capitalist society is the first epoch that enables understanding of the contradictions present in the relation of production. While in pre-modern society forms of exploitation were legitimized through feudal conception of the universe, in modern society these decorations have vanished. Relations of men are based on the pure relations of production, in which the class of owners rules over the class of workers. Liberal society and its abstract freedoms cannot therefore represent the final historical stage of human emancipation, but are another expression of alienation.\textsuperscript{48}

While Marx’s work reflected theoretical efforts of conceiving the “necessity of history”, Lenin was oriented on practical use of socialist idea. Departing from the idea of emancipation, Lenin will abandon Marx’s understanding of historical change. Whereas for Marx the purpose of the revolution is the production of a new world and the liberation from private property represents only a stage, for Lenin the essence of socialism is the termination of capitalist mode of production\textsuperscript{49} and the establishment of an uncontested rule of the party.\textsuperscript{50}

Conceiving Russian society as a place where the revolution will take the first victory, and from where it will then be transferred to other parts of the world, Lenin had to compensate for the lack of “objective conditions” of socialist revolution as understood by Marx.\textsuperscript{51} Being aware that this main component is missing and that the conditions for the revolution did not yet come, he found it necessary to substitute reality with “one image of history, an ideal of the society that is not yet in place, but that ‘must be able to be’”.\textsuperscript{52} As we shall see, the essence of every socialist regime will exist on these foundations. Idea will become the guiding principle

\begin{footnotes}
\item[48] Ibid., 17 - 21.
\item[49] Capitalist mode of production represents the production of a surplus value, or a capital, that in such society ends in the hands of the owners of the means of production, depriving the workers of the control of the results of their work.
\item[50] Puhovski, Žarko (1990): Ibid., 11 - 14.
\item[52] Ibid., 29.
\end{footnotes}
for practice, while relations found in reality existing during proceedings of the permanent revolution will become of a secondary importance, if not denied.

As the breakdown of capitalism was missing, working class itself could not yet conceive its real interests or its mission. This role had to be found in another instance - communist party. Seeing that the only subject that can understand the mission of the future is the party (as we said, working class cannot conceive of revolution until capitalist type of production becomes exhausted), it is the party to be able to see the true interests of the working class. As such, it is its role and duty to mediate them to society and lead it in the revolution where these interests will be achieved. This relation between the party and the workers will have to imply unreserved support - consent without a critical judgment. Since it is unable to see the future, working class is naturally unable to judge it.

The first to apply Lenin’s idea of socialist revolution was Stalin. Stalin’s version here represents another form of reduction and dogmatization of Lenin’s principles. Abiding to central role of the Party and its role of enlightenment of the working class, Stalin silently abandoned the aim of revolution, using it only as a weapon for the legitimization of the Communist Party. Measures of nationalization and collectivization became presented as a core of the socialism that in socialist Russia began to take place. Stalin’s Russia and later USSR kept the apparatus of the liberal modern state, building the promise of classless society by turning ideal to the appearance of reality. As this ideal was clearly not present in reality, its establishment had to be supported by the coercion of state. New position of an individual will in Stalin’s regime, as in any real socialism, be determined by its role in the revolution. This is about to be explained in greater detail in the case of analysis of this study - socialist Yugoslavia.

53 Ibid., 29-33.
2.3. Yugoslav Socialist Democracy as a Real Socialism:

Constitutional Order 1948 - 1974

In 1948 Yugoslav leadership accused the Soviet leader for departing from the classical ideals of socialism as understood by Karl Marx - “withering away of the state” and handing the government over society to the people.\(^ {54}\) As they claimed, instead of weakening the state and preparing condition for socialist democracy, Stalin was strengthening its role and established another system of the monopoly of power. Indeed, Stalin did reverse Marx’s principle of the withering away of the state. His formula was in comprising the whole society in the centralized state (party) organization, letting the state apparatus to grow.\(^ {55}\)

It was the intention of disassociating Yugoslavia from Stalin’s system that was the main reason of its establishment of a relatively original variation of socialist democracy. This aim continued to lead Yugoslav Party even after Stalin’s death in 1953. As long as the Soviet Union insisted on its form of socialism, Yugoslavia had the motive to show that its system is reversely different than the Soviet’s system.\(^ {56}\) “To capitulate in front of Stalin would mean to lose the trust of the people. Therefore, the Communist Party of Yugoslavia... toughly insisted in fulfilling such a course in its internal development.”\(^ {57}\)

The need for legitimization of the system, that chose its development independent of Stalin, can explain such great differences between Yugoslav socialism and other socialist regimes. Ideology that was crucial for any socialist model, in Yugoslavian case become of an even greater importance. Necessity of having the masses on its side implied that special attention had to be given to convincing the people in the validity of its goals. This regime had to present itself as superior to other regimes - liberal democracies, and even more, to the most

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57 Kardelj, Edward, Putevi razvoja političkog sistema socijalističkog samoupravljanja (Beograd: Komunist, 1978), 124. [Courses of Development of the Socialist Self-Management as a Political System.]
feasible alternative - other socialist regimes. That is why the Yugoslav state found its tradition. Its foundations were lying in the revolution - National Liberation War, fought in the joint effort of the communists and the people that has brought the freedom and socialist order to the Yugoslavian people after the Second World War. This regime was predestined to reach a superior type of human freedom expressed in the government of the working people.  

In order to legitimize its power, Yugoslav leadership built a system that rejected many of the features of the existing types of socialism, as well as liberal democracies, still borrowing from them some essential features. In that sense, Yugoslavian socialism represented a third way in between democracy and socialism. And indeed, the combination of these features made Yugoslavian socialism unique among the socialist states. Moreover, the combination of these elements was determinant for the creation of constitutional identity, an attribute unknown by the other socialist regimes. It is now the time to analyze these features.

Two novelties in the Yugoslav socialism differentiate this regime in comparison to the Stalin’s system: workers democracy, and the principle of constitutionalism, or more precise, quasi-constitutionalism.

Workers’ democracy reflects Yugoslav intention of returning to the roots of Marx. The ideals of Marx reversed in the existing socialist regimes, in this state were supposed to be brought back to its right form. Common property did not prove to be enough. Confiscation of private property had to be supplemented with the institutions that will enable workers to make decisions on every aspect of economic, political, social and cultural life.

Second distinctive feature represented legitimization of the regime by creating a constitutional order. Unlike Stalin, Tito and Yugoslav leadership emphasized the role of constitution in the building of socialist society. For this reason, the program of the

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58 Ibid., 187.
Communist Party and Constitution do not show any important difference. Crucial position of the ideology in the system determined the content and the role of the Constitution. Lack of Marx’s conditions of socialist revolution made Yugoslavian elite to create them artificially using the Constitution and legal system. Constitution and legal system was thus loaded with the multiple tasks: 1.) It was supposed to give citizens-workers the sovereignty through a socialist social contract; 2.) It was aimed to prove that the order proclaimed by the Party actually exists in reality; 3.) By legalizing ideological element, ideology was able to gain on its importance and obligatory nature for its citizens.

Despite these two distinctive features, Yugoslavian socialism kept numerous characteristics in common to the socialism of the USSR. This is in the first place above mentioned primate of ideology over reality. Secondly, Yugoslav Communist Party never gave up its central position in the state. As in Stalin’s system, this Party had the role as prescribed by Lenin. It is a possessor of the knowledge of the future, and as such it has the understanding of the true nature of the workers. Such a role of the Party naturally looks as incompatible with the principle of constitutionalism. And, no doubt, it is. Yugoslav system could never be constitutional as it did not know of the limits to the power of the Party. What this system represented is a form of quasi-constitutionalism, or as Zoran Đinđić has labelled it - _fictional constitutionalism._

In socialist Yugoslavia all institutional solutions and changes were in fact just a “work at the facade”. Each time that in Yugoslavia something turned out as a need, the party-state found the solution in the Constitution - in the improving the system through changes of that act. Constitutional changes could not really be the solution, as constitutionalism itself was a fiction. However, this did not mean that constitutional and legal regulation was entirely a

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63 Đinđić, Zoran, _Jugoslavija kao nedovršena država_ (Novi Sad: Književna zajednica Novog Sada, 1988), 44. [Yugoslavia as the Unfinished State.]
fiction. 64 “The whole segments of the society were comprised by this Constitution and it was very well known which norms are valid”. 65

And indeed, Yugoslav leaders had an ambiguous relation to the application of the norms in the Constitution. On the one hand, as the law was formulated in such a way to present the core of socialist ideology, it had to be respected. “Yugoslavia, like other communist countries, espoused the methods of proletarian dictatorship, nevertheless practiced democratic procedures and forms, frequently with almost religious pedantry.” 66 On the other hand, the same Party perceived itself as superior to the laws it has created. It could or violate the law, or, simply change it when convenient, which it often did. As Nenad Popović emphasizes, the situation created in Yugoslavia of that time was the state of reversed legality - the Party could not violate the law as it simply legalized what it had found necessary for it aims. 67 Referring to the terms of András Sajó, Nenad Dimitrijević illustrates the difference between the rule of law, characteristic for constitutional democracies, and the rule by law, present in cases where the law is being applied without imposing limits to the government, or the Party itself. 68 In Yugoslavia, the law was applied in many, but not in every case, and only to the citizens, and not to the Party.

Which were these whole segments of a society and what did the rule by law mean? Where can we find a religious pedantry in the application of Yugoslav constitution? What the authors are describing refers to that part of Constitution that reflects the essence of ideology of the socialist Yugoslavia. While basic liberal provisions of citizens’ rights and duties are being often violated, the norms following from the ideology, namely social democracy and workers’ self-management are being consistently applied. Legal system of Yugoslavia cannot be

65 Ibid., 41.
67 Ibid., 112.
compared to the one in liberal democracies. Its essence lied in the ideology. Its lack of constitutionalism implies that citizens’ rights and freedoms did not enjoy the state protection. In fact, the status of the citizen - worker - in socialist Yugoslavia should not be searched in the rights and freedoms, but within the status given through a self-management democracy. Let us elaborate on this argument.

2.4. Constitutional Identity in the Workers’ Democracy

After 1948 Yugoslavia started reorganization of federal and republic government. Decentralization of the state started in 1949. In the period of 1949 until 1953 Yugoslavia introduced a series of laws intended to enable workers’ economic self-management. In 1953 these laws were integrated in the new Constitutional Law. In accordance with the goals of decentralization, republics were given greater amount of political power. Further decentralization was accomplished by allowing an important degree of autonomy to communities and districts. Newly proclaimed democracy of workers, self-management was now institutionalized through a representative system of government also at the political level as the “assembly system”. Federal Assembly, which now had two houses - the Federal Council and the Council of Producers - became the highest authority of the state.

With years ideological component was becoming more and more important. At the beginning of 1960s, Yugoslavian leadership announced that the time has come to bring the Constitution in harmony with actual social development that has taken place. Role of the Constitution began to be comprehended as a defence from etatism and bureaucratism, characteristic for the Soviet Union. As it was explained, the stated ideological claim of the

69 Bažić, Arsen, Principles of the Division of Powers in Yugoslavia.
70 Constitutions of the Countries of the World, Ibid., 3.
Constitution was to establish the real government of the (working) people.\textsuperscript{71} As ideological component gained the primate in the Federation, the new system proclaimed that the development of the self-management system made national principle of secondary importance.

It would be wrong to think that socialist Yugoslavia did not see the importance of national identities. In fact, since the establishment of the Federal People’s Republic of Yugoslavia the status of nations and nationalities were given the special attention. In order to prevent any potential conflict, all republics were entitled to the equal status. Principle of equality was carefully maintained through the whole existence of the socialist Yugoslavia. However, the emphasis on particularistic identities was perceived as a danger for the Yugoslav integration. On the other hand, creation of some unitary Yugoslavian identity was seen as a contradictory to the international character of a socialist revolution. Trying to impose itself as a serious alternative to the Stalin’s type of socialism, Yugoslav state decided for creation of an integrative class identity.

New Constitution adopted in 1963 defined working class as the sovereign in the state. In the new socialist democracy workers were enabled to “bring decisions directly whenever appropriate, or choose their delegates when the nature of decision did not allow direct decision making.”\textsuperscript{72} Economic self-management implied workers deciding on the management of the enterprise, directly within the Workers Assembly, or indirectly by choosing their delegates in the Workers Council. Since 1963 political self-management was organized following the principle of territorial decentralization and dispersion of political power in small units of political management - work place, local community, commune, etc.

New constitutional identity demanded re-organization of the Federal Assembly. Since 1963 Federal Assembly was consisted of five councils: Economic Council, Council of Culture

\textsuperscript{71} Ibid.
\textsuperscript{72} Bačič, Arsen (1990). Ibid., 222.
and Education, Council of Health and Social Security, Organizational-Political Council and National Council. Unlike in the system of 1953, the new system allowed citizens’ deciding on all issues of common interest at the federal level - by direct decision-making or by choosing delegates for the four councils of the Federal Assembly. Only if decision was strictly related to the particular interest of one of the republics, then national delegates from the Councils of the Federal Assembly would meet within ad hoc organized National Council to discuss the matter in question.\footnote{Ibid., 222 - 223.} Such organization of political decision-making that made the citizens, and not the republics (nations) as a sovereign in the state, represented how class identity gained the priority over national identity even in practice. This \textit{constitutional optimism} was symbolically expressed in the official change in the name of the Federation. Instead of Federal Peoples’ Republic of Yugoslavia, the state was now named Socialist Federative Republic of Yugoslavia.\footnote{Ibid.}

Precondition for such form of socialist democracy lied in the ideological assignment of the place of the workers in the system. The lack of the preconditions that was evidently present in reality did not pose the problem for socialist system - it was compensated through a replacement of reality with the ideology. Constitution and its interpretation by the Communist Party transferred this ideal in the practical life of the state. In accordance with Lenin’s thought, Yugoslav Party was the only force able to conceive the true path to the revolution. It was thus the Party that had the power to announce to workers their mission in the state. This mission lied in their ability to contribute to the building of a society as proscribed by the Constitution - workers’ self-management society. It was exactly this principle that has enabled workers’ constitutional identity to be created in the non-constitutional system of socialist Yugoslavia.
Workers’ democracy was bound to be accomplished only if the workers conceive of their ideologically formulated true interests common to the whole working class, and indeed to the society as a whole. As particularistic interests could have pertained only to those societies at the lower level of development - liberal democracies - communist state had to provide for the unity of the working class. All differences among the citizens present in reality had to be erased.

“In our society there are certain political differences and conflicts of ideas... but these are conflicts based on the ground of socialist relations... such as further development of the socialist society, solving present economic, cultural and other social problems... the differences in ideas on how to solve concrete issues.”\textsuperscript{75}

Yugoslav socialism also did not lack an important integrative mechanism - tradition. Tradition lied in the Socialist Revolution and the National Liberation War that has brought Yugoslav people to the freedom, while the common cause of fighting for socialist democracy unified the workers in the perpetuation of the revolution.\textsuperscript{76} Such an ulterior cause naturally made possible to identify not only the \textit{progressive forces} in the regime, but also the enemy of the working class.

By giving ideological content and institutional shape to the general Marxist idea of primacy of working class, Yugoslav system created one complete collective identity that could now perfectly fit in the order being made. This identity had all the components - common interests, common cause and mission, unity, tradition and a common enemy. With thus completed perception of the ruling individual and collective identities, socialist democracy became \textit{real}.

\textsuperscript{75} Kardelj, Edvard (1978): Ibid, 112.
\textsuperscript{76} Constitutions of the Countries of the World, Ibid., 29.
Party’s intervention in social relations did not reproduce relations of power, as its interests were the interests of the working class. Instead of classical pluralism - an instrument of aggregation of the false interest - Yugoslav society had the self-management pluralism. Since the interests of the worker were at the same time common self-management interests, further translated in the common societal and political interests, they could be flawlessly organized and fulfilled within the self-management system. That social democracy and self-management pluralism in this regime were not only empty phrases, it was evident in the existence of numerous political, economic, cultural and other institutions and organizations, as well as the institutions of the self-management autonomous organizations: The League of Communists, The Socialist League of Working People, The League of Socialist Youth, unions, cultural and academic institutions and other social associations.77 In addition, and in difference to the classical ‘real socialist- system’, this system was formalized through an extraordinarily complex network of the economic and political institutions of self-management.

As socialist society did not consist only of its “institutions, members or associations, but also of the consciousness, culture, ideas, academic and expert potentials, and ethics...”78 at every step of his life, the worker had the possibility to contribute to the goals of self-management socialism. In fact, the right to participate in such a society become more than the right. If the core of one’s status lies in his ability and effort in participating in the building of a community, then this status becomes more a duty of the member than the right itself.

Let us see the definition of the people in the Yugoslav self-management state. “All those are the people who in any way, with physical labour or mental effort, make a positive contribution to the totality of the constructive process in the state”.79 This confusing statement

77 Ibid., 117 - 118.
78 Ibid., 167 – 168.
discovers the essence of constitutional identity in the socialist Yugoslavia. There are several implications of this definition.

As in reality the state has penetrated every particle of the society’s space, each aspect of one’s economic, political, social and cultural life became reduced to the contribution to the socialist goals. Given that individual existed only in relation to one assumed collective cause, his value could be expressed only through his position in this cause. In this way every individual identity was erased - a man became a pure material, modelled to fit the needs of the ideal order. Naturally, in a community founded on these basis, all those who did not contribute to the “totality of the constructive process in the state”, had to find themselves outside the borders of political community. As the system did not offer any other identity, these individuals were determined to lose even that limited political subjectivity they might have had.

Equalization of the interests and erasing of the differences made the space for society carefully drawn. In the one hand, as the content of the interests was always at the disposal for interpretation and reinterpretation of the Party, so did the borders leave less space for the autonomous judgment. Deprived of any individuality and determined by the image he did not choose, an individual found himself safely locked in the identity he could not escape. In the end, his practical life and reality had no other destiny than to function according to the ideal. Reality became the “idea” itself.

Instead of the rule of law and constitutionalism, in the Yugoslav case the rule of words (ideology) and the rule by law made it possible for the Party to invent the new identity and legitimize its power. The fact that the status of the worker in this system was not linked to the rights and freedoms did not undermine the relevance of this identity. However, such system

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82 Ibid., 60.
could have existed only as far as it was sufficiently legitimized. With the upcoming crisis legitimization of the order came in question. The Party had to devise a mechanism of further legitimization. Without giving up the emphasis on class identity, Yugoslav leaders decide to combine it with the constitutional identity based on the national identity.

2.5. System in Crisis and Constitutional Change in 1974

First signs of crisis occurred within the economic system. While decentralized economy was functioning well in the 1950s and early 1960s, in the middle of 1960s system was entering serious crisis. Besides actual economic reasoning, of special relevance became the perception of economic development in the state. Even though Yugoslav system brought development to all member states, its outcomes were not redistributed equally among the republics. In the socialist system of Yugoslavia where the equality of all the citizens and all the nations and nationalities was emphasized on a daily basis, inequalities got special dimension. All states and groups perceived themselves in some way damaged. Poorer states demanded greater centralization and the richer ones broader liberalization.  

At the Eight Party Congress in 1964 it became clear that the second option won greater power. In 1966 Tito supported the reformist and excluded the leaders of conservatives from the Party leadership. The solution of Edvard Kardelj, the leader of the reformists, was an unusual mixture of ideology and pragmatic reasons. Yugoslav state had to be “national in its form and socialist in its essence”. As nations and ethnicities represented realities of the Yugoslav state, not recognizing them could only result in the dissolution of Yugoslavia.

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84 Ibid.
However, this reality should not blur the goals of socialism - creation of socialist democracy with the government of the working people.\textsuperscript{85}

Without a change in official ideology, reformists started to reorganize the Party, and, consequently, the whole society. Decentralization of federal power now meant that major decisions were made more in the direct contacts of the federal units than on the federal level. Central Party leadership began to provide less policy prescriptions to the states.\textsuperscript{86} This all meant gradual change of the balance between the radical socialist and national identities.

Easily the conflict in the elite got to the eyes of public, no matter the attempts of the leadership to keep them in silence. Demands on equality now outgrew economic reasoning. In 1967, while the amendments aimed at the reform of the constitutional system were being prepared, Croatian cultural organizations published a Declaration demanding an equal position of Croatian and Serbian languages.\textsuperscript{87} Croatian Communist Party and Tito declared such act as a manifestation of nationalism and a “return to past”. Nevertheless, Declaration had its reaction in Serbian public. A group of writers and a few Party members replied with a document of similar content named “Proposal for the Consideration”. Serbian Party reacted in the same way as did Croatian. Party members were forced to resign.\textsuperscript{88}

By now it became clear that economic crisis and conflicts in the Party had its effect in the society as well. Citizens in all republics showed dissatisfaction with the self-management system. Most of the workers found it overly complex, disabling them to have control over

\textsuperscript{85} Kardelj, Edvard, as cited in Jović, Dejan (2003): Ibid., 137 - 152.
\textsuperscript{87} Declaration on the Name and Position of the Croatian Literary Language stated that contrary to the Agreement in Novi Sad in 1954 which made Croatian and Serbian language as official language in the Federation, Serbian language was actually the only official language in the state. Organizations demanded equalization of Serbian and Croatian languages, along with the rest of the languages of Yugoslavia.
decisions.\textsuperscript{89} Except from this, citizens perceived themselves as economically damaged for the well being of the other states.\textsuperscript{90}

In the atmosphere of general dissatisfaction with the system, student movement in 1968 showed that the legitimacy of the system was loosing its ground. Emphasizing the need of fulfillment of the socialist goals, students have put in question the position of the Party as the authentic leader of socialist revolution. Movement was suppressed, but the message for the Party was clear.\textsuperscript{91}

By the beginning of 1971 demonstrations revolving around national issues were taking part in other republics, and this time they were initiated or supported by regional Party领导。Although Tito broke these movements and punished guilty leaders, in 1974 he decided for the final step in decentralization - giving both the Federation and republics the new Constitution. Empty space of socialist identity will now be filled with the only identity that could gain further legitimization - national identity.

Constitution of 1974 abolished the principle of priority of workers identity, formally equalizing the status of class and national identity. National identity was necessary for further legitimization inside the state, but at the same time, the distinctive feature of Yugoslav socialism - self-management of the workers - could not have been abandoned. As in Lenin’s view national equality could only be based on the class nature, Yugoslav leadership devised the formula that represented a synthesis of these two principles.

“Socialist Federative Republic of Yugoslavia is a federal state in the form of state community of voluntary united nations and their socialist republics... founded on the management and self-

\textsuperscript{91} Puhovski, Žarko (1990): Ibid., 35 - 39.
management of the working class and all working people, and socialist self-managing democratic
community of working people, citizens and equal nations and nationalities.”

This, at the first sight innocent definition, had devastating consequences for the existence
of the Federation and the establishment of the successor states. Defining sovereignty in such a
way made survival of the Yugoslav state impossible; it contributed to intensification of
national issues and attitudes, finally resulting in the emersion of exclusive ethno-nationalism
as a basis for the establishment of the successor states. Such development was predetermined
by the contradiction that these two principles carried.

Emphasizing the importance of class identity did not change, but this time its value became
only rhetoric. In fact, combination of these two principles made workers’ democracy
impossible even at the formal level. Until 1974, the idea of democratic community in
Yugoslav version meant direct or indirect participation of the workers in politics of the
Federation. However, as the new Constitution defined democratic community as a community
of the “working people and citizens, and equal nations and nationalities”, decision making
had to change its form. Workers and citizens could now decide on the federal level only
indirectly, choosing their delegates at the national level. Instead to workers, the new
Constitution factually gave sovereignty to the republics. In difference to the constitutional
system devised in 1963, in which self-management was the leading organizing principle of
the federal politics, it was now constitutionally restrained to the level of member-states.
Federation became the place for negotiations of ethnically defined member states.

93 Ibid., 62 - 63.
This still might not have tragic destiny in one democratic state. However, in socialist Yugoslavia, there existed no elaborated system of decision-making with democratic procedures. Instead, self-management socialism implied a harmony of interests - as among the workers, so between the republics. In practice this meant that all decisions had to be brought by consensus of the regional elites.

As self-management remained only an empty phrase, and as the federal authorities lost the legitimacy since the destiny of the citizens was now in the hands of their national elites, citizens turned to their national leaders. At the same time necessary consensus that regional elites had to accomplish to bring any decision, naturally could not function. Without mechanism of resolving political conflicts, decision-making process was ending up in blockades, open conflicts and the inability of finding agreements among the leaders of republics and provinces. Weak federal power lost any control over, by now, clearly disintegrated leaders.  

National issues that started to disjoin the elites already during the 1960s have in 1980s become the main motive in Yugoslav politics. As it was becoming clear that the existence of the Federation was in question, conflicts between regional elites began to include nationalistic rhetoric. In the situation where disagreements between the elites necessarily had to grow in the open conflicts and mutual accusations, it was not hard to win the masses using nationalist arguments. Citizens inclined to find their self-expression in the nation, easily accepted nationalist calls. When the dissolution of the regime occurred, the power of nationalist elites was already secured. In the successor states it was sufficient to apply the old means to gain political legitimacy.  

95 Ibid., 134 - 135.
96 Ibid., 135.
Chapter 3

Post-Yugoslav States: New Institutionalization of the Old Principles

In the previous chapter it was explained how constitutional identity of the socialist Yugoslavia created the basis for nationalist constitutional identity that took place upon the creation of the new states. In this chapter it will be explained why this new identity did not differ importantly from the old, socialist one. In order to understand it, it is necessary to analyze ethno-nationalist concept of constitutional identity.

3.1. The Common Origin of the Socialist and Nationalist Ideology

Nationalism represents ideological relation to specific social identity. As a political program, it issues the demand over how the world should look like considering the treatment of the members and non-members of the given nation. In contrast to political ideologies that first must aim to indoctrinate society for their understanding of the world, nationalism uses emotional side of a human psyche related to the person’s affection for her nation. This naturally does not mean that both of types of ideologies do not aim to comprise both emotional and cognitive sphere. However, as communism primarily addresses to human consciousness offering cognition, nationalism seeks to touch in the emotional sphere to employ individual’s unconditioned support for the fulfilment of its program.

In doing so, it has to offer a vision of reality that will justify all the goals. Nation in that sense becomes the sacred value - nation has a mission and it must be preserved and carried

97 Jenkins, R., as cited in Golubović, Zagorka (1999): Ibid., 89.
out. In post-Yugoslav case the mission was the principle of self-determination superior to any rational justification. Nationalist ideology always uses the feelings of threat from the others that want to prevent us in fulfilling our mission. "Symbols of suffer, injustice, loneliness and miscomprehension... place the values of our national identity so high... that they simply cannot be reached."101

In post-Yugoslav states such symbols were not lacking. With media under control of the new democratic elites, something like that could not have posed a problem. The first to discover this powerful weapon was Serbian president, Slobodan Milošević, who let their citizens be reminded of the massacres done by Croats in the Second World War.102 Croats were not falling behind. Here especially popular were the scenes from war that Croatian government used in any convenient occasion even in years after the end of war.103 To defend its radical position, Croatian elite used a myth of centuries-long ethnical hatred between the Croats and Serbs, convincing the masses that these two nations could never live together in harmony. Serbian reaction to such claims involved indoctrination of Serbian population in the impossibility of peaceful co-existence with the nation that hated Serbs and all it represented.104 Slovenians were less radical. They have found Serbian and Montenegrin culture as “violent and crooked Oriental-Byzantine heritage...”105 Albanian nationalism as “...irrational world of hatred, revenge and bleeding for the ideals and ideologies” in contrast to

99 Ibid., 90.
100 Kecmanović, Dušan, as cited in Golubović, Zagorka (1999): Ibid., 90.
103 Records can be found at the Internet source www.hrt.hr/arhiv/vukovar/video.html; Accessed May, 20, 2007.
Croatian and Slovenian nationalism that represent “non-aggressive, non-defensive, non-expansionist, multiculturalist orientation...”\textsuperscript{106}

If the nation has the mission, it has to be rooted deeply in history, for an arbitrarily devised mission could not satisfy the citizens and their sense of pride. If tradition lacks, as was the case with the most of the societies in the Yugoslav case that were recognized as states within by now ideologically rejected former Federation, it will be re-interpreted and nations will be given myths and heroes. In Yugoslav case where the borders posed great problems between the nations, this instrument gained special importance. Texts of the preambles as shown above had to make an individual feeling honoured to be a part of such a rightful nation. In the end, the regimes that had the mission to lead the nation to salvation could not become a subject to critical thought.

By now it has already became clear that constitutional identity of communism and nationalism comprise the same elements and principles. Communist regime invented one new, collective and exclusive identity - workers’ self-management identity and has been using it as long as it was fulfilling the function of legitimization. When this identity lost its ground, it was supplemented by national identification that could have filled for that moment the emptiness of the old one. Nationalist regimes that followed re-interpreted ethno-national identity in a way to enable its exclusive status in the legal system.\textsuperscript{107}

Communist regimes justified the necessity of this exclusive identity by prophesying communist society that is about to come; nationalistic regimes promised a preservation of a group defined by ethnicity. Clearly, both of principles became ideals only through hard effort

\textsuperscript{106} Rupel, Dimitrij, as cited in Bakić-Hayden, Milica and Hayden, M. Robert, Ibid., 11 - 12.

\textsuperscript{107} Dimitrijević, Nonad (2001): Ibid., 74.
of the elites to set them as such. In such a system imaginative inventions of traditions had the crucial role.\textsuperscript{108}

Unity and homogeneity in both systems are the conditions of the endurance of the elites’ power. As the others (members of non-working classes, members of other nations) pose a threat to the unquestioned status of ideology, they have to be marginalized. These others are the ones different from us, as well as the ones who disagree with us. In both cases the chosen group has to be unified in the fight for the same cause.

Both socialism and nationalism offer emancipation of oppression, be its source in the relations of production or national hegemony. Their cheap cover cannot hide the fact that the only guiding principle is to \textit{catch} the majority eager to find an escape from the frustrating everyday life. One integrative concept based on the cognitive, but irrational component had to be exchanged by another one that had the power to employ emotions.

The reason why these identities show such overlapping lies in the fact that they share the common pre-modern nature.\textsuperscript{109} In pre-modern society legal status of an individual is predetermined by its position in the social scale and by its belonging to certain social group. Legitimization of such an order is being searched in one comprehensive construction of reality that determines all the aspects of the individual’s, group’s and community’s life. Such explanation of the universe at the same time poses an absolute truth, for its critical judgment automatically means the expression of its delegitimiztion.\textsuperscript{110} In such community individuals are the mere objects of the ulterior cause of this order - they exist only as far as they serve to the cause.


\textsuperscript{110} Dimitrijević, Nenad (1989): Ibid., 58.
At this point it is noteworthy to return to the liberal arguments and their conception of political community. As Charles Taylor explains, pre-modern society was rejected exactly because it became recognized that absolute concepts of reality necessarily disable any kind of human dignity, inextricably linked to personal autonomy and a free choice. Human dignity can be established only when the man is recognized on the basis of its individuality, and not his/her characteristics or belonging to a certain group. In the text that follows I will explain why the finest alternative for the successor states of Yugoslavia can be found in the liberal conception of constitutional identity.

3.2. Constitutional Patriotism: Formula for Inclusive Multiethnic Society

From what it was said in this study it is clear that group identity, be it class or national identity, cannot create the basis for equality of all the members of the republics, their dignity and their co-existence. Although some of the republics, namely Slovenia and Croatia, have changed their definition of political community, new constitutions still do not offer a formula for these principles to take place. Let us see the new formulations adopted by the new Croatian and Slovenian constitutions.

“Republic of Croatia is established as a national state of Croatian nation and the members of autochthonous national minorities: Serbs, Checks, Slovaks, Hungarians, Jewess, German, Austrian, Ukrainian, Russians and others that are its citizens...”\(^{111}\)

“Slovenia is a state of all its citizens, founded on the perennial and inalienable right of Slovene nation to self-determination.”\(^{112}\)

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Even though such formulations represent some sort of development, emphasizing titular nation or enumerating national groups within constitutional text cannot really solve the problem for two simple reasons. Firstly, it is impossible for the constitution to enumerate all the existing nationalities in the country and to predict new potential members. Secondly, the formulations we see above do not solve the problem of the first and the second class citizens. By accentuating titular nation, constitution sends a message to its citizens making it clear to whom this state belongs. Those that cannot comprehend it as our home - other nations - naturally develop defensive attitude towards such community.\(^ {113} \) This cannot represent the basis for inclusive community of equal citizens.

Plausible solution for multiethnic states can be found in the model offered by Habermas as a constitutional patriotism. As he argues, the right to equal respect cannot be based in someone’s culture origins or some proclaimed excellence of a specific culture. In complex societies the citizenry can no more stem from the consensus on the values specific to a certain group.\(^ {114} \) It must be founded on the consensus on “procedures for the legitimate enactment of the laws and the legitimate exercise of power.”\(^ {115} \) Values that are derived from this principle are inclusive, whereas culturally based values are in the same time inclusive and exclusive - inclusive for the members of that culture, and exclusive for the others.

In this system the contradiction between community preservation and protection of individual freedom becomes solved by the establishment of one “abstract identity of political community” in the form of social contract. As social contract represents broad social consensus with the members of a society agreeing to limit themselves by the rule of law in order to gain maximum freedom equal for all, such constitutional order does not need any

\(^{113}\) Dimitrijević, Nenad (2001): Ibid., 129 - 130.


\(^{115}\) Ibid., 135.
external justification to legitimize itself among the citizens. Its legitimization and value lie in its rationality - these values are valuable for any member of a society.

Instead of glorifying principles such as ethnicity and the nation, values of this rational system represent an ideal in itself. In this way the power is not legitimate if it accomplishes some externally fixed goal, but if it is being exercised in the accordance with the procedures that guarantee the protection of the general interest proscribed within the constitution. As the law in its abstract nature cannot know of any form of discrimination, this type of the system can enable equal individual status, irrespective of the ethnical, national, racial or any other group or personal characteristic.

It is often heard that such conception of a community is not a realistic solution for cultures such as post-Yugoslav. Here I would like to remind on the discussion made in the first chapter. As it was explained in a greater detail, identities are not fixed, nor are they predetermined by the culture and tradition. On the contrary, their relation is interdependent and numerous examples confirm this reasoning. However, by embedding ethno-nationalist, exclusivist principles in the foundations of the system, there is a little hope that any development will be made. By determining the ideals of one community within the constitution, the state is sending a message to its members on which kind of attitudes and behaviors are valuable and desirable. Establishing such principles has to represent a first step towards the protection of human dignity and the co-existence of different groups. If these arguments do not pose sufficient reason, it should be emphasized that it will be much more expensive for a community to bear the price of an inadequate treatment of its minority members, than to invest in creating a community open for all the members.\footnote{Offe, Claus, “Homogeneity and Constitutional Democracy: Coping with Identity Conflicts through Group Rights,” Journal of Political Philosophy, No.2 (1998), 136.} In the post-Yugoslav case this has certainly proven to be true.
Conclusion

Constitutional identity is mostly being discussed in the context of liberal constitutional democracies. According to the liberal line of thought, constitutional identity is always linked to individual rights and freedoms which are assigned to the citizens by the constitution. In this context constitutional identity can be formed only if the principles of constitutionalism are in place: if all relations of power are regulated by the constitution and if government is limited by the same law that it applies to citizens.

From this it follows that a non-democratic regime cannot establish constitutional identity, or that the constitutional identity in such regime plays no important role. If rights and freedoms proscribed by the constitution are not protected in practice, there is no place for talking about constitutional identity. However, in this study I showed that constitutional identity can be of the same relevance in the regime where rights and freedoms do not constitute the core of the citizens’ status defined in the constitution. While, for instance, in the Soviet Union the Constitution really did not create any new constitutional identity, in socialist Yugoslavia this was not the case. Main reason for creation of constitutional identity in Yugoslavia should be searched in the status that socialist ideology had in this regime.

Unlike in the Soviet Union, in Yugoslavia ideology of the Party constituted the essence of the Constitution and legal system. By adopting the Constitution that reflected main ideals of the Yugoslav socialist order, Yugoslav leaders wanted to give to ideology the status of reality. To create new socialist reality, the Constitution had to ignore existing state of being and give to the citizens the status and characteristics necessary for functioning of the socialist ideals. Identity proscribed by the Constitution became a reality for the citizens as they had no choice than to adopt it. Instead of having state coercion aimed to protect citizens’ rights and freedoms, in socialist Yugoslavia it was the state that determined the status of the citizens by proscribing the identity they had to adopt, while state coercion served to guarantee that
citizens have adopted socialist values. As a replacement for constitutionalism and the rule of law, in Yugoslavia it was the *rule of words* and the rule by law that enabled constitutional identity to be formed.

No matter how elaborated ideology and the institutional system were, in 1960s the Party started to lose its legitimacy. The elite was forced to find a new basis of support for its rule. Instead of insisting solely on the class identity, in 1974 it introduced a new definition of the people. Now the sovereignty was given to the class of workers and the nations in the Federation. However, such solution could not function. By restraining the rule of the people to the national level, in reality the power of decision-making transferred exclusively to the hands of regional elites. Citizens have lost even that limited sovereignty they had in the preceding system. Furthermore, the formula of national sovereignty combined with the socialist method of decision-making - consensus for every decision needed to be brought - made the decision-making process in Yugoslavia impossible to function. Instead of reaching harmonic agreements that the Constitution demanded, decision-making process was ending up in blockades and conflicts of national elites. As the Party was changing its position from an integrated and unified federal instance to a number of disintegrated national leaderships, nationalist tendencies started to grow gaining support from the people. As the existence of the Federation came in question, national elites and the opposition invested in the building of the new ideology for their legitimization - nationalist ideologies.

Already disjoined by the nationalist politics and propaganda, citizens accepted the new nationalist leaders. While these leaders were gaining legitimacy by playing on the card of nationalist logic and by emphasizing their democratic rule, in reality the new course meant everything but the break with the past and a democratic development. New system found the new subject of sovereignty - nation; new final cause - preservation of the nation and its self-determination; new tradition - historical struggle for the self-determination of the nation; and
a new enemy - the members of different ethnic group. In this system privileged position belongs to the members of the ethnic group that represents the majority nation in the state. All other ethnicities are predestined to obtain the second class status in the society or the exclusion from political community. Basis of this constitutional identity is the identical to the ones that the socialist system has used. Both of these identities belong to a pre-modern form of the identity.

Pre-modern communities are built in accordance to an absolute and comprehensive image of a universal order (most often religious), that determines the position of every individual in the society according to his belonging to a certain class. Status of an individual and the whole community in such a system is therefore derived from the character of a group. In this world view, one group enjoys the position of a privileged subject entitled to sovereignty in the state. All those who do not belong to this group are condemned to the lack of any power in the regime. Position of the ideology in this regime guarantees the compliance with the social roles - as this image represents the truth itself, a critique over institutional order would imply disapproval for the final truth.

In contrast to a pre-modern society, modern community constructs political order based on one rational vision of political power. Instead of founding institutional system on the preservation of some metaphysical image of the world, the power is institutionalized to protect the values that are considered to be valuable for all the citizens in the community, such as freedom, the rule of the people, equality, etc. While these ideals can be interpreted as the ideology itself, there is a crucial difference between this and an ideocratic system. Because this system is based on one rational comprehension of the optimal order, and not one absolute truth, the system can be a subject of a critical judgment. Criterions for the establishment of the norms and ideals are thus established by a free judgement on the optimal system that serves to satisfy its political subjects - the citizens.
Some of the post-Yugoslav states, namely Croatia and Slovenia, have by now adopted new definitions of identity within the constitutions. However, even these new formulations still emphasize special position of a titular nation in the state. Even if the constitution mentions all or most of the minority groups, or gives the sovereignty to all the citizens, still distinguishing between them and the majority ethnic group, this constitution is establishing a difference between the first and a second class citizens. All those who do not belong to the titular nation will necessarily feel that the state does not belong to them as it does to the ones that have fought for its self-determination - the majority nation.

In this study the model seen as the finest solution for multiethnic societies, including post-Yugoslav ones, is a formula offered by Jürgen Habermas named constitutional patriotism. Constitutional patriotism rejects all such definitions of the people that are based on the foundation different from the human reason. Type of community as seen by Habermas is founded on the values that enable the inclusion of all the members of the society, as they are linked to the protection of the greatest possible amount of the individual freedom and rights shared by all the members of a community. Instead of having consensus based on some characteristic related to culture, tradition or ethnicity, here the consensus is built around the set of procedures that best protect proscribed values. Therefore, the regime will be legitimate in the measure in which it adheres to the principles and procedures proscribed by the constitution. Such regime needs no external justification of the adopted order for its desirability lies in the fact that it is the most rational and the optimal order for all rational individuals.

Even though there are many of those that will express the doubt in the ability of post-Yugoslav societies to adopt democratic and liberal values, for the lack of democratic and liberal tradition, it has to be emphasized that institutional order depends only partly on the tradition and culture. Numerous regimes made a break with their past by adopting new values
within their institutional systems. Such a break meant rejecting the values that contradicted to the newly established ones, and preserving the values that could function in the new order. Certainly the culture of the community does not change easily. Nevertheless, it is a subject to the development and it is affected by the external factors. In this sense, the constitution as the foundation of the political order has both educative role for all of the members of the society, as well as it enables to the system to function according to its principles. By demanding from actors to adjust to the new order and by enabling initiative for change giving it the legal force, constitution represents one of the major mechanisms for the building of the new society. In post-Yugoslav states such change has shown to be necessary if peaceful co-existence is wished to be fulfilled.
Bibliography:


