

CONSTITUTIONAL LAW AND THE MULTINATIONAL STATE: THE FAILURE OF YUGOSLAV FEDERALISM

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I. INTRODUCTION

The history of the Yugoslav state established in 1918, was dominated by an unending quest to establish a viable political system that satisfied the aspirations of its multinational population and maintained its territorial integrity. The major aspect of the so called 'national question' was a conflict between Yugoslavia's two largest national groups, the Serbs and Croats, over the constitutional structure of the state. The Serbs generally favoured centralism, whilst the Croats consistently favoured a federalised state. During the interwar Kingdom of Yugoslavia, the Serb concept of a centralised constitutional order prevailed, but it failed to provide political stability. World War II saw Yugoslavia's dismemberment at the behest of the Axis powers who had invaded the state in 1941. It was during the war that the communist led Partisans, under the leadership of Josip Broz Tito, propagated a policy of federalism as the basis of the constitutional structure for a future united Yugoslavia. The Partisan vision of a federal Yugoslavia became a reality in 1946, following its victory in a brutal civil war and revolution.

The first aim of this article is to detail the origins and workings of the federal system that was established in 1946, as Yugoslavia's new communist leadership sought to resolve the national question. Although Yugoslavia's communists

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believed that the Partisan victory in the civil war and revolution had solved the national question, this was soon found to be incorrect. Yugoslavia's numerous constitutional arrangements during the post-World War II era represented efforts to resolve the national question within a federal constitutional framework. These efforts ultimately failed and were the root cause of Yugoslavia's dismemberment in the early 1990s. The second aim of this article is to offer an explanation for this failure of Yugoslav federalism.

II. ORIGINS OF COMMUNIST YUGOSLAVIA'S FEDERALISM

The essence of Partisan strategy during the civil war and revolution was a policy of equal treatment of all national groups in the face of Axis occupation. An emphasis on the theme of the 'brotherhood and unity' of Yugoslavia's nations enabled the Partisans to eventually gain widespread support from all of the nations, even though initial support was overwhelmingly drawn from the Serbs.¹ Nevertheless, nationalism within Partisan ranks proved a major problem. Thus, in 1943, Macedonian communists declared their independence outside of Yugoslavia, and became affiliated with the Bulgarian Communist Party. To entice the Macedonians to belong to Yugoslavia, Tito was forced to concede a considerable degree of initiative to the Macedonian communists in the party and the liberated territories.² In Croatia, expressions of nationalism within the Party were widespread and it was only the authority of Tito that prevented the Croat communists from adopting separatist policies.³

To overcome these problems the Communist Party of Yugoslavia (CPY) was forced to concede some degree of local autonomy to Partisan units. This enabled the CPY to make each region feel that the Partisan movement was fighting primarily for the freedom and liberation of that region. The Partisan leadership realised that appeals to the national identity of Yugoslavia's population were necessary to attract support.⁴ The nationalist basis of Partisan mobilisation strategy was reflected by the use of the word 'national' in the names of all Partisan military detachments.⁵

On 27 November 1942, the first congress of the Antifascist Council of the People's Liberation of Yugoslavia (AVNOJ), ostensibly a multiparty "partisan Parliament" organised by the CPY, declared itself the legitimate representative

1 JB Tito, "The National Question in Yugoslavia in the Light of the National Liberation War" in F Trgo (ed), *The National Liberation War and Revolution in Yugoslavia (1941-1945)*, *Selected Documents*, Military History Institute of the Yugoslav People's Army (1982), p 394 at 401-2.

2 SE Palmer Jr and RR King, *Yugoslav Communism and the Macedonian Question*, Archon Books (1971), pp 61-116.

3 LR Godtfredsen, *Federalism and Yugoslav Political Integration*, Unpublished Doctoral Dissertation, Tufts University, (1973), pp 180-5.

4 P Shoup, "The Yugoslav Revolution: The First of a New Type" (1971) *Studies on the Soviet Union (New Series)*, Vol XI, No 4, p 215 at 233.

5 W Connor, *The National Question in Marxist-Leninist Theory and Strategy*, Princeton University Press (1984), p 151.

of the Yugoslav peoples.⁶ At its second congress held on 29-30 November 1943, AVNOJ proclaimed itself the supreme legislative and executive body of Yugoslavia. Furthermore, Yugoslavia was to "be established on a democratic federative principle as a state of equal peoples".⁷ The new state was to consist of six republics, five of which were to be homelands for Yugoslavia's five constituent peoples, the Serbs, Croats, Slovenes, Macedonians and Montenegrins, with the sixth republic of Bosnia-Hercegovina the home of Serbs, Croats and Slavic Muslims. These provisions were justified on the principles of national self-determination and the equality of all Yugoslavia's nations.⁸

At its third Congress held on 7-9 August 1945, AVNOJ was renamed as the Provisional National Assembly.⁹ On 21 August 1945, this assembly passed a law for the purposes of electing a Constituent Assembly to draft a new Yugoslav constitution.¹⁰ The election was held on 11 November 1945, and resulted in an overwhelming victory for the Popular Front, headed by the CPY. When the Constituent Assembly convened on 29 November 1945, it immediately voted to change the state's name to the Federative People's Republic of Yugoslavia (FPRY). Yugoslavia was declared to be a federal republic, "a community of equal peoples who have freely expressed their will to remain united within Yugoslavia".¹¹

Even though the CPY had officially been committed to a policy of federalism in a reconstituted Yugoslavia, the administration of Partisan controlled territory during and upon completion of the war grew increasingly centralised.¹² The CPY remained a highly centralised organisation throughout the war. The war and revolution provided it with a new generation of cadres, whose first loyalty was to the CPY, and an essentially unitary approach to the nationality problem.¹³

III. THE CONSTITUTION OF 1946

The victory of the Partisans coincided with a subsidence of the nationalist sentiment that had been so prevalent during the interwar period and World War II. Nationalist leaders had been forced to flee or were executed, leaving the forces of nationalism temporarily leaderless. Nevertheless, nationalism did persist. For example, campaigns against the Catholic Church and the Serbian Orthodox Church led to conflict between church and state, which quickly assumed nationalist overtones.¹⁴

6 B Petranović and M Zečević (eds), *Jugoslovenski federalizam, Ideje i stvarnost, Tematska zbirka dokumenata, Prvi tom, 1914-1943*, Prosveta (1987), pp 732-3.

7 *Ibid*, pp 791-6.

8 *Ibid*, pp 800-1.

9 B Petranović and M Zečević (eds), *Jugoslovenski federalizam, Ideje i stvarnost, Tematska zbirka dokumenata, Drugi tom, 1943-1986*, Prosveta (1987), p 193.

10 *Ibid*, pp 211-12.

11 *Ibid*, pp 228-30.

12 P Shoup, *Communism and the Yugoslav National Question*, Columbia University Press (1968), pp 72-4.

13 *Ibid*, pp 91-2.

14 *Ibid*, pp 103-7.

The relative decline of nationalist expression, coupled with tight CPY control of the state, enabled the enactment of a highly centralised constitution on 31 January 1946, which had the appearance of federalism, but was in reality highly centralised. In accordance with decisions made during the war, the 1946 Constitution provided for six republics. Although not provided for at the second congress of AVNOJ, within the Republic of Serbia, two sub-federal units, the Autonomous Province of Vojvodina and Autonomous Region of Kosovo-Metohija were also created (Article 2). These autonomous units were designed to meet the needs of minority populations in Serbia, especially the Hungarians and Albanians.¹⁵ The creation of these republics and autonomous units flowed from the combined effect of the principles of equality of nations and national self-determination, adopted at the second congress of AVNOJ, and reiterated in the 1946 Constitution (Article 1). In socialist theory, these principles meant the liberation of oppressed nations from an oppressor nation. In the case of Yugoslavia the oppressed nations were non-Serb nations, the oppressor nation was the Serb nation.

Sovereignty was referred to as belonging to the republics (Article 9) and the peoples of Yugoslavia (Article 10). Five constituent nations were recognised, namely the Serb, Croat, Slovene, Macedonian and Montenegrin. Each nation was granted a republic. The sixth republic of Bosnia-Herzegovina, with its mixed population of Serbs, Croats and Slavic Muslims¹⁶ was originally intended to be an autonomous unit within Serbia or Croatia.¹⁷ However, at the second congress of AVNOJ, it was decided to grant it the status of a republic, partly due to the probability of Serbo-Croat tensions if the original plan was to proceed, and partly because Bosnia-Herzegovina had been a stronghold of the Partisan movement during World War II.¹⁸

The republic of Bosnia-Herzegovina differed in an important respect from the other republics. In socialist theory, federal units were essentially based upon nationalist criteria, in that each federal unit was the homeland of one particular national group. In Bosnia-Herzegovina the republic was the homeland of Serbs, Croats and Slavic Muslims. Thus, the national character of federal units in socialist legal theory was abandoned in this case by the recognition and

15 The distinction between 'autonomous province' and 'autonomous region' indicated a slightly higher status for the former. It was in the 1963 Constitution that Kosovo (formerly Kosovo-Metohija) and Vojvodina were given formal equality as autonomous provinces. In 1946, the power of autonomous units was limited and was progressively downgraded through to the 1963 Constitution. However, by the time of the 1974 Constitution, the autonomous provinces had *de facto*, but not *de jure*, equality with republics: RR King, *Minorities Under Communism, Nationalities as a Source of Tension Among Balkan Communist States*, Harvard University Press (1973), pp 134-45. Other national groups were defined as minorities until 1971 and thereafter as nationalities. However, these minorities could never be granted the status of nations and be granted their own republics, because in Yugoslav political and legal theory, these minorities had mother nation-states outside Yugoslavia.

16 In 1944, the Partisan Anti-Fascist Council in Bosnia-Herzegovina declared that it would guarantee the "equal rights of Serbs, Moslems, and Croats in Bosnia and Herzegovina, their common and indivisible homeland": Trgo, note 1 *supra*, pp 661-2.

17 BM Pešelj, "Constitutional Characteristics of the Socialist Republic of Bosnia and Herzegovina" (1965) 5 *Review of the Study Centre for Yugoslav Affairs* 328 at 330.

18 J Pleterski, *Nacije-Jugoslavija-revolucija*, Izdavački Centar Komunist (1985), p 459.

acceptance of a territorial principle in which an historical entity formed the basis of a federal unit.¹⁹

The 1946 Constitution established a bicameral legislature; the Peoples Assembly. The Federal Chamber had representation based upon equally sized single member electorates (Article 53). The Chamber of Nationalities had 30 representatives from each republic, with the autonomous provinces and regions having 20 and 15 representatives respectively (Article 54).

Effective implementation of the federal provisions of the 1946 Constitution was prevented by various provisions. First, the right of secession was seen as purely theoretical.²⁰ Second, the Federal Assembly, and in particular the Chamber of Nationalities, was merely a formal body which convened for only a few weeks of each year, thereby precluding it from becoming a forum for the articulation of either national or republic rights.²¹ Third, in the division of power, the 1946 Constitution gave wide and far reaching powers to central authorities, whilst only a residue of power was left to the republics (Article 44). Any existing republic authority was subject to review by central authorities. In cases of discrepancy between federal and republic legislation the former prevailed (Article 46). Extensive federal legislative competence was justified as necessary, first, to preserve the economic unity of Yugoslavia, and second, to establish uniformity in major areas such as criminal law, justice, work relations, social security, and civil rights. In this way, the equality of the Yugoslav peoples and republics would be safeguarded.²² Finally, republic constitutions had to be in conformity with the constitution of the FPRY (Article 11).

As a consequence, all political and economic decisions were the responsibility of the central government and the CPY.²³ The centralism that characterised the governmental structure was even more evident in the organisation of the CPY. Party leadership, making its decisions in the Politburo, was served by a large bureaucracy whose main sections extended down to the republic and local levels. However, in the representation in higher Party posts, care was taken to ensure representation of all national groups in accordance with the ratio of national populations. Key bureaucratic positions were allocated with the aim of maintaining a proper national balance. In lower bureaucratic positions this was impossible due to the location of the state's capital city in Belgrade, and thus there was a dominance of Serbs in these lower bureaucratic positions.²⁴

The 1946 Constitution was devoid of all but symbolic federalism. The CPY was obliged by commitments made during the war to adopt a federal constitution, even though in practice the state was centralised. The only areas where autonomy was permitted to the republics was in the realm of cultural

19 Pešelj, note 17 *supra* at 332.

20 FW Hondius, *The Yugoslav Community of Nations*, Mouton (1968), pp 140-5.

21 AJ Whitehorn, "Yugoslav Constitutional Developments: An Expression of Growing Nationality Rights and Powers, 1945-1972" (1975) 9 *East European Quarterly* 345 at 346.

22 L Geršković, "Ustavni temelji pravnog poretka nove Jugoslavije" (1947) *Arhiv za pravne i društvene nauke*, Br 2, April-Jun, Knjiga III, Godina XXXIV, 201 at 207-8.

23 MB Petrovich, "The Central Government of Yugoslavia" (1947) 62 *Political Science Quarterly* 504 at 523-7.

24 Godtfredsen, note 3 *supra*, pp 213-14.

expression - language, education and literature. Nevertheless, this limited autonomy contributed to the rise of nationalism during the 1950s and 1960s.

The 1946 Constitution inaugurated a period, later called the period of administrative socialism, which was in fact a period of totalitarian rule by the CPY. In the communist political lexicon this arrangement is described as 'democratic centralism'. All expressions of nationalism were suppressed, and in the short run, these policies were successful.

IV. SELF MANAGEMENT AND THE CONSTITUTIONAL LAW OF 1953

The demise of the period of administrative socialism was heralded by Yugoslavia's expulsion from the Cominform in 1948. The break with Stalin forced Yugoslav leaders to chart a new communist course. The rejection of the Soviet constitutional model was justified on the grounds of its lack of democracy, bureaucratic centralism and denial of the Marxist thesis concerning the withering away of the state and law.²⁵ The changes adopted by the CPY had a major impact on the theoretical structure of the Yugoslav constitutional structure.

The Yugoslav response to rigid centralism was a system of self management and a decentralised political system. Decentralisation and self management were to apply in the economy, politics, culture and all other fields of life and were supposed to lead to the gradual withering away of the state as an instrument of coercion. The first step in this direction was the enactment of the Basic Law on Workers Self Management on 15 July 1950. This law enacted principles of workers' self management through a system of workers' councils.²⁶ Eventually, extensive modification of the 1946 Constitution was required. The Fundamental Constitutional Law of 13 January 1953 virtually created a new constitution. The consequence of self management was an emphasis placed on social relations at the expense of national relations. It was argued that the former would have a far greater role in society as a whole. The 1953 Law reflected this by de-emphasising the role of the republics in the affairs of the state. Whereas in 1946 the emphasis was on the republic it had now become emphasis on communes and producers' councils.

The 1953 Law effectively abolished the Chamber of Nationalities by merging it with the Federal Chamber. The new Federal Chamber consisted of deputies elected on the basis of one for every 60,000 citizens, plus 10 deputies from each republic, six deputies from the autonomous province of Vojvodina, and four deputies from the autonomous region of Kosovo-Metohija. A Chamber of

25 I Lapenna, "Main Features of the Yugoslav Constitution 1946-1971" (1972) 21 *International & Comparative Law Quarterly* 209 at 214; Balsa Spadijer, "Federalism and National Question in Socialist Yugoslavia" (1977) 38 *Indian Journal of Political Science* 521 at 523.

26 This was achieved by the Basic Law on the Management of Economic Enterprises and Higher Economic Associations by Workers' Collectives, adopted in June 1950: I Lapenna, "The Yugoslav Constitution of 1963" (1969) 18 *International & Comparative Law Quarterly* 469 at 470.

Producers, constituted on the basis of worker-peasant rather than republic representation, was introduced in its place. This Chamber had deputies according to the proportional contributions to national income of the industrial and agricultural sectors. There were more delegates from the industrial sector, even though the agricultural sector was numerically larger.²⁷ Further, there was no reference to the concepts of sovereignty of republics and of the rights to self-determination and secession. The 1946 Constitution had enumerated a wide range of powers to the federal authorities and left only a residue of powers for the republics. In 1953, republic legislative authority was further relegated to those rights established by republican constitutions. Federal powers were so broad and comprehensive that federal legislation was possible in virtually all spheres of society. Earlier republic rights in cultural areas were qualified by a provision that the federal legislature could legislate to provide guidelines for the republics to follow in these areas. Finally, responsibility for the enforcement of federal and republic legislation was given directly to the communes and not to the republics. Virtually no political, economic or administrative function was reserved solely for the republic.²⁸

Nevertheless the republic remained as an institution. The Party was aware that republics had to be retained if for no other reason than to prevent negative reactions from national groups, especially in Croatia. The republic was of symbolic significance only in so far as the 1953 Law sought to replace the republic-nationality basis of the 1946 constitutional structure with one based upon all-Yugoslav social self management.

Concomitant with the constitutional reform was reform of the CPY along the principles of self management. The Sixth Party Congress of 1952 asserted that the Party would no longer rely on direct controls over economic and social activities but would rely on persuasion through individual members in social organisations. The Party was de-bureaucratised and considerable freedom was given to Party members. Finally, the Party adopted a new name, the League of Communists of Yugoslavia (LCY).²⁹

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The relegation of the republic and nationality by the 1953 Constitutional Law was taken further by the introduction of the notion of a Yugoslav nationality, in the late 1950s. The Seventh Party Congress of 1958 stressed the theme that the future of national relations lay in social relations developing a socialist Yugoslav consciousness. The LCY Programme proclaimed:

The common interest is increasingly manifest in the general social and cultural consciousness of the working masses. On this basis grows Yugoslav socialist consciousness, Yugoslav socialist patriotism ... This is not a question of creating a new 'Yugoslav nation' to replace the existing nationalities but of organic growth

²⁷ Lapenna, note 25 *supra* at 217-18.

²⁸ Godtfredsen, note 3 *supra*, pp 271-2, 275-8.

²⁹ *Ibid*, pp 284-7.

and strengthening of the socialist community of producers or working men of all nationalities of Yugoslavia.³⁰

Although there was no explicit renunciation of national self-determination, Yugoslavism relegated national identification to questions of language and culture only.³¹ In a speech in 1962, Tito called for the creation 'of our own Yugoslav socialist history' and spoke of the absolute danger of relegating cultural life to the republics alone. This clearly indicated Tito's awareness of the potency of culture to the development of nationalism. Yugoslav communists were of the view that Bosnia-Herzegovina, with its complex mixture of Serbs, Croats and Slavic Muslims, would serve as a melting pot and provide the first example of the new Yugoslav national consciousness.³²

However, instead of bringing the Yugoslav peoples together it only provoked a growth of nationalism, especially amongst the Croats and Slovenes who interpreted Yugoslavism as simply a mask for Serb hegemony. The arousing of national rivalries and suspicions led to Party divisions. The LCY became the protagonist rather than the mediator in national disputes.

VI. THE CONSTITUTION OF 1963

Opposition to Yugoslavism was evident in the discussions prior to the drafting of a new constitution, adopted on 7 April 1963. This constitution was designed to facilitate further development of self management. However, there was the articulation of a new concept of federalism in the description of Yugoslavia as a 'community of nations'. This was indicative of a trend towards increased recognition of republic rights, and reflected the growth of nationalism during the late 1950s and early 1960s.

In ideological terms the 1963 Constitution transformed Yugoslav federalism by introducing the commune into the federal structure as the basic socio-political unit (Article 96). The federation, now officially renamed the Socialist Federative Republic of Yugoslavia, was no longer based simply on the federal government and territorially based federal sub-units. Socio-political communities, based upon principles of self management, became part of the structure with the aim of gradually transforming territorial federal sub-units into self management human communities.³³ The Constitution defined republics as state and self-managing socio-political communities,³⁴ but did not speak in terms of republics as bearers of sovereignty. To implement this ideology a transformation of the Federal Assembly was necessary.

The Federal Assembly, established by the 1963 Constitution, was a complicated system of five, and in some cases six, chambers. The Federal

30 From the Programme of the LCY in 1958, reprinted in PF Sugar (ed), *Eastern European Nationalism in the Twentieth Century*, American University Press (1995), p 316 at 319.

31 Shoup, note 12 *supra*, p 207.

32 RV Burks, *The National Problem and the Future of Yugoslavia*, Rand Corporation (1971), p 11.

33 Spadijer, note 25 *supra* at 528-9.

34 Hondius, note 20 *supra*, pp 301-2.

Chamber represented the citizens in the communes and republics, that is the territorial communities. Within the Federal Chamber there was the Chamber of Nationalities, with 10 deputies from each republic and five deputies from each autonomous province, whose task was to safeguard the equality among the peoples of Yugoslavia and the rights of the republics (Article 165). The four other chambers, representing the producing and scientific communities, that is functional, non-territorial communities, were the Economic Chamber, the Chamber of Welfare and Health, the Chamber of Education and Culture and the Organisational-Political Chamber (Article 165). The legislative competency of the Federal Assembly as a whole was similar to that under the 1953 Law.³⁵ The revival of the Chamber of Nationalities, even though it met infrequently, was indicative of a revival nationalism and an increase in the importance of the republic.

The trend towards greater republic rights was illustrated by a number of other features. First, republics were given greater freedom to regulate their own internal constitutional and organisational structures.³⁶ Second, republics were given extended legislative competence. Even though Articles 160 and 161 granted the federal government extensive legislative competence, it was only in the areas of foreign policy and trade, and national security that the federal government had exclusive competence. The federal government had power to enact basic laws of a binding nature, but they were intended to be declarations of general policy, and were virtually inoperable until supplemented and made effective by subsequent republic legislation. This gave republics considerable power and influence, including input into the content of the basic laws passed by the federal government.³⁷ Third, the right of national self-determination, including the right to secession, was restored to the constitution.³⁸ Finally, the Federation could now only deal with communes through the republic.³⁹

Despite the trend towards greater republic rights, there were signs in the 1963 Constitution that Yugoslavism had not been completely rejected. The establishment of an Education and Culture Chamber was inconsistent with the autonomy of the republics in these matters. Tito hoped that the chamber would function as a symbol for a united Yugoslav community. It was only at the Eighth Party Congress of 1964 that Yugoslavism was officially abandoned.⁴⁰

The 1963 Constitution was primarily concerned with self management and failed to adequately deal with questions of federalism and nationalism. Apart from the few points already noted, the Constitution glossed over these issues with the ideological veneer of self management. It is not surprising that the

35 *Ibid*, pp 286-9; Lapenna, note 25 *supra* at 218-19.

36 Hondius, *ibid*, pp 254-5.

37 *Ibid*, pp 282-6.

38 *Ibid*, pp 245-6.

39 *Ibid*, pp 303-4; WM Fisk, "The Constitutionalism Movement in Yugoslavia: A Preliminary Survey" (1971) 30 *Slavic Review* 277 at 283-4.

40 *Practice and Theory of Socialist Development in Yugoslavia, VIIIth Congress of the League of Communists of Yugoslavia*, Melunardna Politika (1965), pp 249-50.

Constitution was in need of regular amendments during the ensuing decade, especially in the light of the rapid escalation of nationalist sentiment.

VII. THE CONSTITUTIONAL AMENDMENTS OF 1971

The trend towards increased republic rights apparent in the 1963 Constitution was followed by increased republic activity in the post-1963 period. In the mid 1960s the LCY was split over the issue of greater republic rights with the debate over economic reform. One faction, predominantly from Slovenia and Croatia, favoured greater republic control over resources with the consequence of minimal subsidisation of the poorer and economically under developed southern regions such as Macedonia and Kosovo. The Party's other faction, predominantly Serbs and Montenegrins in the federal apparatus, favoured the continuation and further implementation of centralism.⁴¹ The debate within the LCY culminated in the victory of the former faction with the adoption of their programme for economic reform in 1965, and the fall from grace of Aleksandar Ranković in 1966.⁴² Earlier, in 1964 at the Eighth Party Congress, the Party was reformed by granting republic Party congresses a much greater role in the formulation of Party policy.⁴³

The efforts of the republics to assert a greater role in government were apparent in five broad areas. First, republics lobbied for a greater share of federal funds and greater control over republic political and economic issues. Second, efforts were made to extend republic control over communes and enterprises. Third, republics resisted federal authority in key areas such as the jurisdiction of federal courts, federal inspection of republic and commune affairs, and in particular, the privatisation of the economy. Fourth, republics began searching for cooperative ventures with other republics as a defence against other national alliances in the country. The most outstanding example of this was the alliance of Slovenia and Croatia against Serbia and Montenegro on the question of economic reform. Fifthly, republic Parties struggled to obtain control over local Party cadres and the type of cadre the Party should recruit. And so, with the plea for economic and political reform came a plea for the decentralisation and democratisation of the LCY.⁴⁴ To accommodate these political changes, repeated amendments to the 1963 Constitution were necessary.

In 1966 and 1967 Yugoslavia's federal units became entitled to legislate on a wide range of issues, including foreign affairs and defence. Republics and autonomous provinces were entitled to deal directly with foreign states and international organisations, provided it was within federally established foreign policy and in conformity with international treaties to which Yugoslavia was a party. International treaties which Yugoslavia wanted to ratify, and which

41 Burks, note 32 *supra*, pp 15-16.

42 SL Burg, *Conflict and Cohesion in Socialist Yugoslavia, Political Decision Making Since 1966*, Princeton University Press (1983), pp 27-30.

43 Shoup, note 12 *supra*, p 213.

44 Godtfredsen, note 3 *supra*, pp 381-94.

required changes to existing republic legislation, could not be ratified without the approval of republic and province assemblies.⁴⁵ A further indication of republic assertiveness was in the process of amending republic constitutions. Whereas prior to the mid 1960s, such amendments were directed from the federal level and produced uniform republic constitutions, they were now directed from increasingly independent minded republic leaderships and often produced differences between various republics. These differences were not overly dramatic but did confirm the trend toward increased republic authority within the Yugoslav federation.⁴⁶ An amendment in 1967 increased the authority of the Chamber of Nationalities within the Federal Assembly. Republic assemblies were entrusted with the selection of their own deputies to the Chamber.⁴⁷ By 1969, the Chamber of Nationalities had become the most influential house in the Federal Assembly. This was the result of the abolition of the Federal Chamber and its replacement with a new Chamber of Nationalities. The new Chamber of Nationalities had 20 deputies from each republic and 10 deputies from each autonomous province. Citizens were later represented by a new Socio-Political Chamber. Also, the Organisational-Political Chamber was abolished.⁴⁸ Subsequent constitutional amendments in 1969 and 1971 expanded further the power of the Chamber of Nationalities. All federal legislation had to be approved by the Chamber. Finally, federal economic powers were further devolved to the republics and communes.⁴⁹

Accompanying these constitutional changes of the late 1960s were changes within the LCY, the secret police, party ideology and the military. These changes were testimony to the growth of republic power and nationalism. The unifying role of the LCY was greatly weakened in the post-Ranković period. Republic Parties gained control over delegates sent to Belgrade. The standard of the federal Party slumped dramatically as ambitious and talented men and women realised that their futures lay in the republic. The secret police, which had provided Ranković with a power base up to 1966, was decentralised and security matters became the domain of the republics. Party ideologists adopted a new approach to nationalism. Official dogma asserted that national interests and national questions were not a thing of the past but existed in the present social conditions. Nationalism was given *de facto* recognition and legitimacy under the rubric of 'regional awareness'. This represented a complete reversal of official policy as it existed in the late 1940s, when the Party had proclaimed that the nationality question had been solved by the successful liberation struggle during World War II.⁵⁰ Finally, there was the partial republicanisation of the Yugoslav Peoples Army (YPA) in 1969. This was achieved by the creation of

45 Lapenna, note 25 *supra* at 226-27.

46 SL Burg, "Republican and Provincial Constitution Making in Yugoslav Politics" (1982) 12 *Publius: The Journal of Federalism* 131 at 133.

47 N Pasic, "Constitutional Changes in Yugoslavia After the Second World War" [1977] *Review of the Study Centre for Yugoslav Affairs*, Vol II, No 3, 290 at 297-8.

48 Lapenna, note 25 *supra* at 219; Godtfredsen, note 3 *supra*, pp 416-17.

49 Lapenna, *ibid* at 226; Whitehorn, note 21 *supra* at 352-3.

50 Godtfredsen, note 3 *supra*, pp 418-28.

supplementary territorial forces organised and commanded at the level of the communes as well as that of the republic. This reform was largely inspired by the concern of republic based elites that the republics have some form of military presence to deter the YPA from intervening at some point to reverse and prevent further decentralisation.⁵¹

The most significant amendments to the 1963 Constitution were those adopted on 30 June 1971. These amendments were designed to devolve a wide range of federal powers to the republics in an attempt to cope with the destabilising impact of rapidly escalating nationalism. The competency of the Federal government was confined to defence, foreign affairs, foreign trade and the unity of the economic and social system. In effect, the 1971 amendments recognised the republic as the key unit of government in Yugoslavia.⁵² The most significant of the 1971 amendments was that which gave veto power to all the republics over a wide range of economic matters. Prior assent of all republics was necessary before the federal government could act on matters such as foreign trade and credit relations, the foreign exchange system, customs, the basic elements of the social plan and the financing activities of the federation. Furthermore, the direct taxation powers of the federal government were confined to customs and administrative fees. The bulk of the federal government budget was to come from 'contributions' from the republics. The effect of these amendments was to acknowledge the legitimacy of republic and province efforts to defend their respective, and often mutually contradictory, economic interests.⁵³ Finally, a collective presidency was established consisting of three representatives from each republic, two from each autonomous province plus, *ex officio*, the President of the LCY.

The political environment that led to the 1971 constitutional amendments also saw the official recognition of the Slavic Muslims of Bosnia-Herzegovina as the sixth constituent nation in the Yugoslav community of nations. In the 1963 republic constitution of Bosnia-Herzegovina, the Muslims were referred to as one of the three constituent nations of that republic.⁵⁴ This was followed by calls from various Party organs at the republic level in Bosnia-Herzegovina that the Muslims be recognised as a nation. General acceptance of these calls came with the 1971 census form, which recognised the Muslims as a nation.⁵⁵ On the other hand, calls, especially from Croats and Serbs, for the alteration of republic and provincial boundaries, so that they more closely aligned themselves to existing national boundaries, were rejected by the central leadership.⁵⁶

51 J Gow, *Legitimacy and the Military, The Yugoslav Crisis*, St Martin's Press (1992), pp 45-50.

52 Whitehorn, note 21 *supra* at 354-7; Burks, note 32 *supra*, pp 31-8.

53 Burg, note 46 *supra* at 134.

54 Hondius, note 20 *supra*, p 248.

55 ZT Irwin, "The Islamic Revival and the Muslims of Bosnia-Herzegovina" (1983) 17 *East European Quarterly* 437 at 442-6.

56 Burg, note 46 *supra* at 135.

VIII. THE 1974 CONSTITUTION

The 1971 amendments represented the limits to which Yugoslavia was prepared to go in granting the republics greater autonomy. However the amendments were unable to stifle the forces of nationalism, especially in Croatia. The so called Croatian Crisis of 1971 saw the country in its greatest danger of dismemberment since 1941. Nationalist attempts to transform the existing political order by means of amendments to republic and province constitutions was most pronounced in Croatia. In March 1967, 19 Croatian literary groups and 130 prominent Croat intellectuals called for the official recognition of the Croatian literary language as separate and distinct from the Serbian literary language. Further, the declaration called for the exclusive use of Croatian in Croatia's schools, press and official communications.⁵⁷ Attempts were also made to have Croatia declared as the national state of the Croats only.⁵⁸ Furthermore, it was sought to have the republic of Croatia confirmed as the Croat national state that had existed in various forms for many centuries, thereby implicitly declaring that the republic was a continuation of, rather than a break with, the past. Implicitly this meant that the development of Croatia was not the exclusive right of the LCY. Both proposals were rejected with the suppression of the 'Croatian Spring'. Both Croats and Serbs were declared to be constituent peoples of Croatia.⁵⁹ Similarly in Bosnia-Herzegovina, the Serbs, Croats and Muslims were defined as the constituent peoples of that republic.⁶⁰

Still, the trend toward decentralisation and the 1971 amendments led to the emergence of Serb nationalism amongst segments of the Serb intellectual elite who saw the growing power of the republics as a threat to the Serb nation, especially as nearly 40 per cent of the Yugoslavia's Serbs lived outside inner Serbia (Serbia not including its autonomous provinces).⁶¹ In response to the 1967 call for language reform by Croats, Serb literary figures demanded the use of the Cyrillic script by Belgrade media and the right of Croatia's Serb population (about 15 per cent) to be educated in their own language.⁶² Mihailo Đurić, a Belgrade law professor, took the view that the granting of significant powers to the republics meant that Yugoslavia would be reduced to nothing more than a geographical concept, and that the republics were in effect independent states. In these circumstances, he questioned the validity of republic borders,

57 SP Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, Indiana University Press (2nd Ed, 1992), p 102; Hondius, note 20 *supra*, pp 224-5, 326-8.

58 Ramet, *ibid*, pp 111-15.

59 Burg, note 46 *supra* at 136-7. On the nationalist crisis of the early 1970s see Burg, note 42 *supra*, pp 100-67; Ramet, note 57 *supra*, pp 98-135.

60 Burg, note 46 *supra* at 138. This was consistent with statements during World War II by ZAVNOH, the highest political organ of the Partisan movement in Croatia, in June 1943, which referred to itself as "the expression of the fighting unity of the Croat and Serb peoples in Croatia". In May 1944, ZAVNOH declared that "[t]he Croat and Serb people in Croatia are completely equal": Pleterski, note 18 *supra*, pp 457-8, 484.

61 If Serbia, including its autonomous provinces, is considered, then 27 per cent of Serbs were living in other republics. At that time 22 per cent of Croats lived outside Croatia.

62 Hondius, note 20 *supra*, pp 326-8.

given that they were, with the exception of Slovenia, inadequate as borders for nation-states for the various Yugoslav nations, especially for the Serbs because so many Serbs lived outside Serbia. On this basis, Đurić claimed, that the Serbs were the most disadvantaged of Yugoslavia's constituent nations.⁶³

The response of the LCY was to revitalise the Party and purge Croatia of its nationalist leadership and to suppress Serb nationalist spokesmen such as Đurić. Tito, who alone was able to successfully meet the challenge of, especially Croat, nationalism, was forced to assert his authority to keep the republics in line. This was effectively done through the medium of the LCY. In 1972, Tito reaffirmed the LCY's leading role in Yugoslav society, its right to intervene in all aspects of Yugoslav life and its monolithic unity. He condemned the forces of liberalism, pluralism and spontaneity, and reaffirmed the Party's commitment to "democratic centralism".⁶⁴ The revitalisation of the LCY was further continued at Party congresses in 1974 and 1978, which emphasised and sought to legitimate the leading role of the LCY in Yugoslav society.⁶⁵ This revitalisation of the LCY was of major significance in the context of the nationality problem. As the Soviet and earlier Yugoslav experiences indicated, a strong and disciplined party can dominate and impose its will despite the presence of a federalist constitution. With Tito at the helm, the LCY was able to assert its dominance and keep the republic elites loyal to Tito and Yugoslavia.

Yet Yugoslavia's new Constitution of 21 February 1974 reaffirmed the federal model in a form that gave considerable power to the republics. The Party leadership had come to believe that nationalist antagonisms could be kept under control if republic leaderships made a unique agreement on the division of power amongst federal units.⁶⁶ As long as Tito remained in control, the significant decentralised power arrangements embodied in the 1974 Constitution would not create any problems. Tito was able to maintain the loyalty of republic elites for himself and for Yugoslavia. However, by the late 1970s, the problems of maintaining such loyalty became increasingly difficult. Even Tito sensed that Yugoslavia was facing a difficult future. In 1978, in response to a question about what was wrong with Yugoslavia and the Party, Tito replied: "There is no Yugoslavia ... There is no party any more".⁶⁷ Following his death in 1980, no leader was able to emerge with the authority of Tito. In such an environment, coupled with strained economic circumstances caused by a massive foreign debt, the role of the LCY declined, and the formal structures embodied in the 1974 Constitution facilitated the emergence of republic based nationalism.

The 1974 Constitution continued with many of the features of federalism found in earlier constitutions. In its Introductory Part it reaffirmed the right of

63 M Đurić, "Smišljenje smutnje" (1971) *Anali pravnog fakulteta u Beogradu*, Godina XIX, Broj 3, at 230-233.

64 J Walkin, "Yugoslavia After the Tenth Party Congress" (1976) 22 *Survey* 55.

65 T Oleszczuk, "Convergence and Counteraction, Yugoslavia's 'Antitechnocratic' Campaign and Electoral Results, 1967-1974" (1980) 13 *Comparative Political Studies* 205-33 at 211-12; Spadijer, note 25 *supra* at 527.

66 V Koštunica, "The Constitution and the Federal States" in Dennison Rusinow (ed), *Yugoslavia, A Fractured Federalism*, The Wilson Center Press (1988), p 78 at 84.

67 J Ridley, *Tito, A Biography*, Constable (1994), p 409.

Yugoslavia's nations to self-determination, including the right of secession. The collective presidency was reduced to nine members, one each from the republics and autonomous provinces plus, *ex officio*, the President of the LCY (Article 321).⁶⁸ The Federal Assembly had two chambers, the Federal Chamber (Article 285) and the Chamber of Republics and Provinces (Article 286). However, the composition of delegates to both chambers was based upon each republic having the same number of delegates and the two provinces having an equal, but less than republics, number of delegates (Articles 291-2). Prior to constitutional amendments in 1988, the delegates were representatives of self management and socio-political organisations, but thereafter they were to be directly elected. Another important feature of the constitutional structure was the requirement of unanimity. Amendments to the 1974 Constitution had to be adopted by a two thirds majority of both chambers of the Federal Assembly, and adoption by all of the six republic and provincial assemblies (Articles 398-403). This requirement of unanimity stemmed from the view that Yugoslavia, as a result of the 1974 Constitution, was a contractual federation. From this flowed the principle that variation of the federation's constitution, just like a contract, required the consent of all contracting parties, namely the republics and the autonomous provinces.⁶⁹ In relation to a broad range of matters federal legislation required the consent of both the Chamber of Republics and Provinces and the assemblies of the republics and provinces (Article 286). If such unanimity on these legislative areas was absent, there was scope for temporary measures to be passed by mediation of the collective presidency and government (Article 356). The effect of the unanimity provisions was to give each federal unit a veto over decision making in the significant and wide ranging areas which fell within the jurisdiction of the Chamber of Republics and Provinces.⁷⁰ Increasingly the government was unable to enforce policy and had to be run by temporary measures.

IX. NATIONALISM AND THE DISMEMBERMENT OF YUGOSLAVIA, 1980-1991

By the 1980s, Yugoslav federalism in practice had been dramatically transformed from the practice of the late 1940s. The centralised federalism established in 1946 had, by 1980, become, in Riker's terminology, a peripheralised federal system.⁷¹ With the restraining influence of Tito gone, overt nationalism soon emerged for the first time since the mass Croat nationalist

68 The collective presidency did not function until after the death of Tito who was elected as President of Yugoslavia for life pursuant to Article 333 of the 1974 Constitution.

69 Koštunica, note 66 *supra* at 83.

70 By an amendment to the 1974 Constitution in 1988, the federal budget of the previous year became the budget of a subsequent year if unanimity on the budget for that year was not achieved. However, in high inflationary times the intended beneficial effect of such an amendment was defeated: K Čavoški, *Half a Century of Distorted Constitutionality in Yugoslavia*, Center for Serbian Studies (1997), p 30.

71 WH Riker, "Federalism" in FI Greenstein and NW Polsby (eds), *Handbook of Political Science*, Vol 5, *Governmental Institutions and Processes*, Addison-Wesley (1975), pp 93-172.

movement of the late 1960s and early 1970s. Its first outbreak was the Albanian riots of 1981, where demands were made for constituent nation status for the Albanians and republic status for the autonomous province of Kosovo.⁷² The Albanian demands ignited a Serb nationalist response. Kosovo was seen by many Serbs as the cradle of Serb civilisation and had been a constant Serb nationalist symbol from the early nineteenth century. The Serb fixation on Kosovo could not countenance acceptance of Albanian demands. The Serb response to the 1981 riots was to demand the reintegration of Kosovo into Serbia, this effectively being achieved by amendments to Serbia's republic constitution in February 1989 and July 1990. Kosovo's parliament was suspended and direct rule from Belgrade was imposed.⁷³

The most significant document evidencing the revival of Serb nationalism was a draft memorandum of the Serbian Academy of Sciences and Arts which was leaked to the media in 1986. The document called for a return to centralised federalism and for the reunification of Serbs within a reconstituted Yugoslav state ruled by the LCY. Although it firmly rejected the 1974 Constitution, it did not reject the idea of a Yugoslav state. Only at the end of the memorandum did it concede that, if Yugoslavia's other nations did not accept the Serb solution of reintegration of Yugoslavia, the Serbs would have to consider other alternatives.⁷⁴ Serbia's aspirations to greater centralism coincided with demands for greater central control of the economy made by the international financial community which were responding to Yugoslavia's massive foreign debt.⁷⁵

The response to Serb calls for increased centralism was led by Slovenia, later to be joined by Croatia. The substance of their response sought transformation of Yugoslavia into a confederation. The conflict between these rival conceptions as to Yugoslavia's future proved to be insoluble. This failure was symbolised by the collapse of the LCY at its Extraordinary Fourteenth Congress in January 1990. At the congress, Slovenia initiated proposals to transform the LCY into an organisation of equal League of Communist organisations which would be free to join the LCY. This proposal to confederalise the LCY was rejected.⁷⁶ This rejection led to the Slovenian and Croatian delegations abandoning the congress. In many ways this marked the political end of federal Yugoslavia. With the demise of the LCY at a federal level, there was no force capable of keeping the quarrelsome republics together in one state. In republic elections in all Yugoslavia's republics in 1990, victory went to parties with nationalist platforms, be they led by nationalist dissidents, as in Croatia, or by communists, as in the case of Serbia. In the multinational republic of Bosnia-Herzegovina, no single party emerged victorious. Rather, a fragile power sharing arrangement was reached by the three nationalist parties representing the Muslims, Serbs and

72 A Pavković, *The Fragmentation of Yugoslavia, Nationalism in a Multinational State*, Macmillan (1997), pp 86-7.

73 M Vickers and J Pettifer, *Albania: From Anarchy to Balkan Identity*, Hurst & Company (1997), p 147-8.

74 Pavković, note 72 *supra*, p 89.

75 SL Woodward, *Balkan Tragedy, Chaos and Dissolution After the Cold War*, Brookings Institution (1995), p 59.

76 "Extraordinary LCY Congress", *BBC Summary of World Broadcasts*, 30 January 1990.

Croats that had gained overwhelming support within their respective national constituencies.⁷⁷

In the first half of 1991, a series of summits between republic presidents failed to reach agreement as to Yugoslavia's future. Serbia and Montenegro argued for a centralised federal state. Slovenia and Croatia demanded the transformation of Yugoslavia into a confederation. The presidents of Bosnia-Herzegovina and Macedonia argued for a compromise between these two alternatives that would allow republics to establish mutual relations of varying closeness. Some would establish federal links, others would establish confederal links.⁷⁸ Whilst these summits were in progress, Slovenia and Croatia announced their intention to secede from Yugoslavia on 25 June 1991. These secessions eventually triggered similar actions by Macedonia and Bosnia-Herzegovina. International recognition of these secessions marked the final act in the demise of the Yugoslavia established in 1918.

X. WHY DID YUGOSLAVIA'S FEDERATION FAIL?

In seeking an explanation as to why the Yugoslav federation failed it is important to appreciate that internal or domestic political factors cannot be considered in isolation from external or international factors. Despite Yugoslavia's internal problems and the parlous nature of its federalism, Yugoslavia's collapse was not anticipated by many observers and scholars. This was so because the bipolar international system of the Cold War militated against the collapse of states. However, with the changes to the international order that followed directly from the policies of *glasnost* and *perestroika* in the USSR, a new international order emerged. It was one in which preservation of the territorial integrity of states was not as important as it once had been. It was a time in which Yugoslavia would be allowed to breakup if its internal political structure was incapable of maintaining continued unity of the state.

From the perspective of internal politics, the reason for the failure of federalism in Yugoslavia is relatively simple. Federalism is, as Howse and Knop⁷⁹ argue, an inadequate response to the forces of nationalism in multinational states. The nation, as a group linked by a common history and culture, and bound to a national ideal that the nation should be autonomous, united and distinct in its national homeland, focuses upon an individual's loyalty to the nation rather than to the state as such. It has as its optimal goal a state, the nation-state. The territorial integrity of multinational states is not a nationalist goal. Rather, for the nationalist, the politics of secession and irredentism are legitimate means towards the desired goal of a nation-state. The right to a

77 Anti-nationalist, pro-Yugoslav parties gained only marginal support in these elections: LJ Cohen, *Broken Bonds, Yugoslavia's Disintegration and Balkan Politics in Transition*, Westview Press (2nd Ed, 1995), p 160.

78 Pavković, note 72 *supra*, pp 122-4.

79 R Howse and K Knop, "Federalism, Secession, and the Limits of Ethnic Accommodation: A Canadian Perspective" (1993) 1 *New Europe Law Review* 269 at 271-89.

nation-state is usually justified on the basis of the right to self-determination of peoples.

Federalism entails a division of competencies between the central authority and its constituent units. Nationalism, in seeking its own independent nation-state, does not envisage any sharing of competencies. The nationalist's ideal is for a unitary or centralised state. In seeking to accommodate nationalist groups within a multinational state by means of creating federal units for each national group, the nationalist is, in accepting such an arrangement, accepting what is always the second best alternative. Independent statehood is always the preferred objective. The creating of federal structures in such cases is likely to increase, rather than decrease, the level of dispute and conflict. The federal unit will always claim that the central authority is intruding on the legitimate interests and affairs of the federal unit. If the central authority seeks to exercise powers, it will be branded as hegemonistic and domineering. If it concedes to the federal unit, it will be seen as weak and ineffective, and ultimately unnecessary. Granting a federal unit strong social, political, legal and economic institutions only serves to make nationalism more, rather than less, of a force.

Yugoslavia's post-World War II history amply supports the above arguments. The development of real federalism in the 1960s encouraged nationalism and republic demands for greater rights to such an extent that Yugoslavia's integrity was genuinely threatened in 1971. With the breakdown of central authority during the 1980s, and with an international system with no vested interests in preserving Yugoslavia, the latter came to an inevitable end.

In granting substantial social, political economic, legal rights to various national groups within the framework of federal territorial units Yugoslavia facilitated the nationalism, not only of the Croats, but also the Slovenes, the Bosnian Muslims, the Macedonians and Albanians. All of these groups sought to secede from Yugoslavia within the confines of their federal or sub-federal territorial units. The only mechanism capable of keeping the forces in check was the LCY. Once it collapsed in 1990, it was only a matter of time before one of the republics declared its independence.

The Serbs, and in particular those outside the Republic of Serbia, were the only nation in Yugoslavia with a vested interest in maintaining a centralised Yugoslavia. This interest was motivated by the desire to have all Serbs contained in a common state. It also offered the Serbs of Croatia and Bosnia-Herzegovina a state structure that provided a measure of safety for them against other national groups in those republics. These Serbs had been victims of genocide at the hands of the short lived Croat state, sponsored by the Axis powers during World War II.⁸⁰ However, this form of state structure was consistently resisted by Yugoslavia's other nations. As far back as 1920, the eminent Serb constitutional lawyer and historian Slobodan Jovanović saw that pre-World War I Serbia was not the Prussia of the Balkans, as it had neither the

80 M Shelah, "Genocide in Satellite Croatia During the Second World War" M Berenbaum (ed), *A Mosaic of Victims, Non-Jews Persecuted and Murdered by the Nazis*, New York University Press (1990), pp 74-9.

military might nor the disciplined political tradition to dominate Yugoslavia as Prussia had dominated the unified German state after 1871.⁸¹

What Yugoslavia demonstrates is that in a multinational state, centralism is not a solution, as is illustrated by its experiences from after World War II to the mid 1960s. This is not to say that multinational states cannot survive. They can, and have, where the self-interest of national groups makes the continuation of the common state preferable to its dismemberment. However, there is no justification for maintaining a multinational state against the wishes of its constituent nations. Provided such national groups can fulfil the basic requirements for recognition as states, they should be permitted to secede. Otherwise, such groups would be denied the right to self-determination.

In the process of secession, the critical question will be the borders of the seceding territory. More specifically in the context of multinational federations, such as was Yugoslavia, the question arises as to whether or not secession is within the confines of the borders of constituent federal units. In Yugoslavia, when decentralisation occurred after the mid 1960s and when the breakup of the state was threatened in the early 1970s and late 1980s, the issue of Yugoslavia's existing internal federal borders became important as they cut across national borders. By the late 1980s, Yugoslav politicians on all sides sensed the impending demise of Yugoslavia, and none were totally committed to saving Yugoslavia. In such circumstances the key question was not whether Yugoslavia should be preserved, but rather what would be the borders of her successor states. The wars of the 1990s in former Yugoslavia were fought over this issue.

81 S Jovanović, "Je li federalizam kod nas mogućan" in R Samardžić and Ž Stojković (eds), *Sabrana dela Slobodana Jovanovića*, Vol 1, Bigz (1990), p 363 at 368.