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Croatia and Federalist Ideas

- **ABSTRACT:** *This paper sheds light on different stages of development of the ideas and practice of federalism and the intriguing diversity of actors in the development of constitutionalism in Croatia during the 19th, 20th, and 21st centuries. Constitutional development shows that federal ideas and practices were not unknown in the Croatian national framework. Croatia, until it achieved the independence and sovereignty of which the 1990 Constitution of the Republic of Croatia is a crucial manifesto, participated in various political organisations with federal characteristics. The Preamble of the Constitution of the Republic of Croatia is a concise reminder that Croatia was a member of many alliances over its turbulent history. The common feature of all those, longer or shorter periods of time in which Croatia participated in pseudo-federal or real federal alliances, is their focus on 'constitutional moments'. Historical experience also shows that the interest of the Croatian nation in federalism weakened whenever the chances of overcoming their own status as a mere political etatist fragment in the wider federal entity increased. With the adoption of the Declaration on the Proclamation of the Sovereign and Independent Republic of Croatia and the Constitutional Decision on Sovereignty and Independence of 25 June 1991, the Republic of Croatia was finally realised as a 'unitary and indivisible, democratic, and social state' with the constitutional capacity of entering into different alliances with other states. The result of the accession of the Republic of Croatia to the EU then enabled a different understanding of the federal principle, which is of permanent importance to all constitutional democracies.*

- **KEYWORDS:** Republic of Croatia, Croatian federalists, federalism, federation, EU

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Alice: Would you tell me, please, which way I ought to go from here?

The Cheshire Cat: That depends a good deal on where you want to get to.

Alice: I don't much care where.

The Cheshire Cat: Then it doesn't much matter which way you go.

Alice: ...So long as I get somewhere.

The Cheshire Cat: Oh, you're sure to do that, if only you walk long enough.'

— Lewis Carroll, *Alice in Wonderland*

1. Introduction

The dominant determinant of early research on the establishment of new democratic regimes in ex-socialist countries conducted at the end of the 1980s was 'constitutional choice'. Exactly this syntagm was used, for example by *Arend Lijphart*, to describe a political game in which key actors, in a given moment, legitimately decided on the adoption of fundamental options regarding the electoral system (majoritarian vs. proportional system) and model of relations between legislature and executive (presidential vs. parliamentary government). Among the most important factors that, according to Lijphart, explained the constitutional choice, were the logic of the democratisation process and the problem of ethnic divisions and minority representations.¹ Other authors argue that the democratisation process depends on its complex relation with federalism, as democratisation and federalisation are widely connected through numerous significant constitutional political strands. According to *Sonnicksen*, in the complex of division of powers democracy and federalism represent two distinct dimensions of government based on different constituent powers. Further, in different perspectives of their complex constitutional relation combined in the framework of one polity, both old as well as new tensions and challenges for the state and society are elaborated.² In any case, the relationship between federalism and the democratic process remains an open question that is not outdated and definitely not closed. Conversely, the positioning and application of democratic ideas in a transnational context only prove that this relation will continue to exist.³

Constitutional choice, thus, is an integral part of the more comprehensive and concrete historical processes of 'political choice', 'rational choice', 'social engineering', and so on. In other words, such phenomena constitute reflections of a wide range of causes and dilemmas with which the creators of constitutional law have been confronted repeatedly in the dialogue on a comparative level.⁴ This

1 Lijphart, 1991a, p. 17 et passim; Lijphart, 1991b, p. 72 et passim.

2 Sonnicksen, 2022, pp. 1–17.

3 Dahl, 1983, pp. 97–98.

4 Tribe, 1985; Dorff, 1994, pp. 99–100 et passim.

was also the case in most countries, as well as the ex-socialist world, including Croatia. In the long and never fully completed process of democratisation, *inter alia*, specific issues of the organisation of government in the successive appearances of federal and unitary states were brought up and solved in different ways. The Declaration on the proclamation of a sovereign and independent Republic of Croatia, adopted by the Croatian Parliament (Sabor) on 25 June 1991, reveals dramatic reminiscences in this regard and points us to the conclusion that the question of Croatian 'constitutional choice' (i.e. determination between constitutionality of unitary or federal character) has been a permanent and critical question throughout the Croatian political history. This important document of modern Croatian statehood emphasises that the Croatian people have preserved the self-awareness of their own identity and the right to self-determination in the 'independent and sovereign state of Croatia' for many centuries. At the same time, the tradition of Croatian historical law preserved 'Croatian statehood throughout the history'. However, the Declaration does not forget to remind us that the Croatian nation:

...by a confluence of historical circumstances, being on the border between Eastern and Western Christianity, two often opposing civilizations and cultures and different political, economic and other interests ... was under the rule of Croatian national rulers and the Croatian Parliament, either independently or in personal and contractual unions and state-legal alliances with other nations, but always vigilantly keeping its ancient state selfhood and sovereignty...⁵

'Independence', 'personal union', or 'state alliances with other nations' are permanent and well-known questions for Croatian statehood and its constitutional history. In this article, we try to briefly elaborate on the evolution of both the theory and practice of federalism in Croatia to shed light on its contribution to the realisation of the values of constitutional democracy. This brief analysis of the most significant stages of federal theory and practice in Croatia considers the works of researchers on federalism who believed that federalism is beneficial for maintaining the established democracy, but that it can also be futile, even a nuisance to new political regimes:

'In all federal democracies central governments have a difficulty to credibly commit not to encroach on the benefits promised to minority constituencies. The theoretical solution for credibly enforcing the

5 See Declaration on the proclamation of sovereign and independent Republic of Croatia (25 June 1991), available at: <https://www.sabor.hr/hr/deklaracija-o-proglasenju-suverene-i-samostalne-republike-hrvatske-25-lipnja-1991>

agreed-upon federal terms is to limit the effectiveness of potential coalitions in favour of revising those terms. High-functioning democracies accomplish this by developing complex competitive structures. New and low-functioning democracies resort to imposing direct restrictions on coalition formation thus scaling back democratic competitiveness. This means that in low-functioning democracies the federal form stunts democratic development'.⁶

The following premises formed the starting point for this article as short and critical overview of theory and practice of federalism in Croatia. Federalism is, as summarised by Lijphart, a 'most typical and drastic method of dividing power: it divides power between entire levels of government', that is, in federalism, the power is divided between central and regional governments. Having in mind the work of *William H. Riker*, as modern classic of federal thought, we understand federalism as 'a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions'.⁷

It is thus our intention to demonstrate that Croatia, until it achieved the independence and sovereignty of which the 1990 Constitution of the Republic of Croatia is a crucial manifesto, participated in various political organisations with federal characteristics through a series of historical sequences, as noted by Riker.⁸ The common feature of all those, longer or shorter periods of time in which Croatia participated in pseudo-federal or real federal alliances is their focus on 'constitutional moments', that is, on the projection and realisation of a certain type of 'union of states' (i.e. such federalist modes of political organisation that Croatia formed with the rest of its constituent parts, no matter what they were called).⁹ We consider 'constitutional moments' as such occasions or episodes in history when '... significant steps were taken in the definition or redefinition of polities. Their actors were writers or politicians, rulers or ruled, who found inspiration in a distant past or instead looked towards a future to be drawn anew'.¹⁰

By shedding light on the different stages of the development of federalist ideas and practice in Croatia, we reveal the intriguing diversity of the actors of constitutional thought and their actions in the context of time. Their evident positions and beliefs show that federalist ideas and practice during the 19th, 20th, and early 21st centuries were not unknown to the national framework. Constitutional and political thought in that period always understood federalism, 'essentially, if

6 Filippov and Shvetsova, 2013, pp. 167–184.; Elazar, 1996, pp. 45–62.

7 Riker, 1975; see Dorff, 1994, p. 100; Greenstein and Polsby, 1975, pp. 93–172.

8 Ibid.

9 Forsyth, 1981, p. 3.

10 Gil, 2024.

not exclusively', as a question of structure.¹¹ However, it is also evident that the interest of the Croatian nation in federalism weakened whenever the chances of overcoming the status of a mere political estatist fragment in the wider federal entity grew. An obvious proof of such a conclusion is the realisation of the national referendum on state independence. The referendum on the independence of Croatia was held on 19 May 1991. The turnout was 83.6%, while 93.94% majority of voters who cast their vote opted for Croatia to become a sovereign and independent state. With the adoption of the Constitutional Decision on the Proclamation of the Sovereignty and Independence of the Republic of Croatia and Constitutional Declaration on the Proclamation of sovereign and independent Republic of Croatia of 25 June 1991. the Republic of Croatia was finally realised as 'unitary and indivisible democratic welfare state'.¹²

2. Theory and practice of federalism in Croatia in the 19th and 20th centuries

The process of the formation of nation-states in Europe after the civil wars in England and France represents a differentiated and violent asymmetric process that mostly took place to the detriment of small European nations. One such nation is Croatian nation, which during the 19th century and most of the 20th century was positioned between stronger political powers (Italy, Austria, Hungary, and later Serbia) and their nationalisms; as such, it did not have the strength to fight for the creation of its own nation-state in the sense of an independent and equal subject of newly emerging and more complex international relations. In realistic relations, in which there was no regard at all for lofty revolutionary or democratic ideas and principles of 'liberté, égalité, fraternité' of 1789 and 1848, large post-revolutionary waves of centralisation, politics of power, colonisation and expansion of stronger European states (e.g. France, Germany, Italy, Austria, etc.) prevailed. This state of affairs paved the way for competing, unitary, and homogenising states with ethnic national cores:

The new type of sovereign nation states became closed units with strong boundaries. They pursued centralisation policies in the name of their national interests... The reality is that the sovereign nation states, in their internal and external political practices, often successfully suppressed the autonomy principle of persons and of

11 Dorff, 1994, p. 100.

12 Constitution of the Republic of Croatia (1990), Art. 1., Official Journal Narodne novine 56/1990.

different communities. Federalism was rejected as dismembering force weakening the (nation) state.¹³

However, in contrast to state policies, the ideas of certain political thinkers also developed. Between Rousseau's unitarism and Montesquieu's federalism as fundamental principles of organising new postrevolutionary state and society, they wholeheartedly advocated new and different federalist ideas.¹⁴ Such were also the Croatian 'federalists'.

3. Federalist ideas and their proponents and critics in Croatia from the 19th to the 21st century

It was not prior to the 19th and 20th centuries that federations became widely accepted as a model of the constitutional organisation of a state. Their further global expansion was not halted by the evident and widely accepted nationalism of strong European nations. Obvious inconsistency of these two projects (i.e. nation-state as sovereign political organisation of nation on one side and federation as compound state that had the potential of constitutionally organised coexistence of different ethnic groups on the other side) was a favourable environment for creation of new, important, and complex ideas.¹⁵ In this sense, among Central European federalist thinkers, some of the most important were Hungarian *Eötvös József* (1813–1871), Czech *František Palacky* (1798–1876), German *Friedrich Naumann* (1860–1919), and Austrians *Karl Renner* (1870–1950) and *Richard Nikolaus Eijiro von Coudenhove-Kalergi* (1894–1972).¹⁶ Under the Croatian national framework, the following federalist thinkers, among others absolutely deserve to be mentioned: *Bogoslav Šulek* (1816–1895), *Josip Pliverić* (1847–1907), *Ladislav Polić* (1874–1927), *Stjepan Radić* (1871–1928), *Jovan Stefanović* (1896–1964), *Zvonko Lerotić* (1938), and *Branko Smerdel* (1949). While Šulek, Pliverić, Polić, and Radić lived and worked under the political framework of the Habsburg monarchy (1815–1918) and Kingdom of Serbs, Croats, and Slovenes (1918–1929), Stefanović, Lerotić, and Smerdel elaborated on the position and rights of Croatia as a federal actor inside Federative People's Republic of Yugoslavia (FNRJ) and Socialist Federal Republic of Yugoslavia (SFRJ). The work of Smerdel is of particular importance, as he carefully elaborates on the Croatian position from a constitutional standpoint regarding the process of constructing the 'European Croatia'; hence, it comes its accession to a new alliance which is fundamentally different from the unwanted 'South Slavic

13 Bóka, 2006, p. 311; Ziblatt, 2004, pp. 70–98.

14 Wang, 2013, p. 168; Ward, 2006, pp. 551–577.

15 Hesse and Wright, 1996, pp. 1–6.; Potulski, 2011, pp. 73–87.

16 See, for example, Bóka, 2003.

union, or any form of consolidated Balkan state', as it was plainly stipulated by the Croatian constitution-makers immediately after the war ended.¹⁷

■ **3.1. The federalist ideas of Bogoslav Šulek (1816–1895), Josip Pliverić (1847–1907), Ladislav Polić (1874–1927), and Stjepan Radić (1871–1928)**

The transformation of politics and society in imperial Austria by the end of the 19th and beginning of the 20th century, as well as the basic characteristics of nationalist politics and political crisis that followed the modernisation of the Habsburg monarchy and its constituent parts, structurally determined the growing significance of different nationalities and created conditions for new forms of nationalisms, their ideologies, politics, and movements. In his empirical research, *P. Decker* explains how particular patterns of political modernisation determined the development of nationalism under the monarchy: 'state policies, province-based intellectuals and cultural institutions were critical for explaining the building of the nation in Habsburg Central Europe'.¹⁸ Important actors of these events were 'provincial intellectuals', thinkers coming from different parts of the Habsburg Empire. We will briefly present below the federalist thought of Bogoslav Šulek, Josip Pliverić, and Ladislav Polić.

- (I) Bogoslav Šulek (1816–1895). As a public figure, Šulek mainly shaped his active engagement as a creator and interpreter of political views of the Croatian liberal citizenry before and after the revolutionary 1848.¹⁹ At that time, the Croatian parliament and Ban Josip Jelačić decided to sever political connections with Hungarian government and opted for building closer political links with neighbouring Slovenian and Serbian regions in south Hungary, as well as strengthened the territorial integrity of Croatia. Šulek offered a broader interpretation of successive parliamentary conclusions in the Zagreb press, and - following political events in Monarchy - progressively and cautiously began to advocate the federalist position of Croatia in the Habsburg monarchy.

Šulek believed that all countries of the monarchy should form a federal state 'in which every state would be free as it regards its internal home affairs and would only be in alliance with others as far as general interests are concerned'. Against the centralist politics of Vienna that desired to compress all parts of the monarchy into one whole, 'federalist party wants to transform monarchy into a confederation, i.e. a closer union of all peoples

17 'Any procedure for the association of the Republic of Croatia into alliances with other states, if such association leads, or may lead, to a renewal of a South Slavic state union or to any form of consolidated Balkan state is hereby prohibited' - Art. 142, para. 2 of the Constitution of the Republic of Croatia (consolidated text), Official Journal Narodne novine 85/2010. See also: Bašić, 2015; pp. 1165–1166; Osiander, 2010., p. 1–18.

18 Decker, 2017., p. 1–346.

19 See <https://www.enciklopedija.hr/clanak/sulek-bogoslav> for details.

of the Austrian Monarchy'. After the adoption of the Octroyed Constitution (1849), he still believed that only a federation could achieve political peace in Austria. Every new alliance must consider freedom of Croatia and its national interests.

Advocating an essentially Austro-Slavist policy of restructuring the empire into a federal state, Šulek indeed believed that federalism, following the Swiss model, after Austria's exit from the German alliance and defeat by Prussia, never had better chances of success in that complex multinational state. Šulek thus advocated federalist ideas until the end of his professional and public career.²⁰

- (II) Josip Pliverić²¹ (1847–1907), professor of Constitutional Law at the University of Zagreb, Faculty of Law, was undoubtedly versed in all the facts and difficulties regarding the theory and practice of federalism in German countries which, since the 17th century, have had great difficulties with the application of the federal principle. The famous remark of *Samuel Pufendorf* (1632–1694) is an eloquent evidence on complicated federalist construction of German states: '*Irregulare Aliquod Corpus Et Monstro Simile*'.²² Plivarić first reacted to *Georg Jellinek's* (1851–1911) book on associations of states (*Die Lehre von den Staatenverbindungen*, Haering, Berlin, 1882), in which he characterised Croatia as a 'Hungarian province', while in his later book, *Die Staat Fragmente* (1896), he considers Croatia as an entity that is 'more than a province, but less than a state'.²³ Since Jellinek argued that sovereignty is indivisible and absolute because it can belong to only one entity and cannot be divided, he concludes that there can be only one sovereign in each union, either at the federal or national levels. Sovereignty can belong to independent member states in the case of a confederation, or can belong to a federation (i.e. federal state).²⁴

Unlike Jellinek, for whom Croatia within the Empire before and after Metternich was a 'fragment-state', Pliverić explained Croatian statehood according to the Croatian-Hungarian Settlement (1868) and earlier tradition. In his *Contributions to the Hungarian-Croatian common state law* (*Prinosi ugarsko-hrvatskomu zajedničkom državnom pravu – Beiträge zum Ungarisch-kroatischen Bundesrechte*, 1886). Pliverić tried to prove that Croatia formed a real union with Hungary and, as part of the union, it had all elements of statehood: territory, population, and government. The contractual character of the Settlement from the Croatian side rested on all three elements. According to Pliverić, the Croatian-Hungarian state alliance did not have the legal

20 Markus, 2007, pp. 181–204.

21 See <https://www.enciklopedija.hr/clanak/pliveric-josip> for details.

22 Šmit, 2018, pp. 893–918.

23 Čepulo, 2007, pp. 185–187.

24 See Frost, 2019.

character of a state because both Hungary and Croatia were sovereign states that were contractually associated to jointly perform certain state affairs. In the book *Croatian State (Der kroatische Staat, 1886)*, he argues that the relation between Croatia and Hungary differs from a pure model of real union, while in his last work, titled *Spomenica o državnopravnih pitanjih hrvatsko-ugarskih* (1907), he points to numerous breaches of the original settlement agreements done by Hungary.²⁵

Pliverić's impressive defence of the Croatian projection of federal relations in Austria came after the proclamation of the December Constitution in 1867. Despite the expectations that the new constitutional law would encourage and expand the liberal potential of the Constitution (Croatia is explicitly recognised as a distinct political unit, political nation), real politics demonstrated all illiberal limitations. The Empire thus abandoned the idea of federalism during the 1860s. In the Compromise with Hungarian politicians of 1867 and to gain the consent of Hungarian nation, the aspirations of Czechs, Slovaks, Serbs, Croats, and Romanians, who were still largely loyal to the Empire at that time, were sacrificed. The Dual Monarchy was created and the territorial integrity of Hungary was restored, while the concept of the lands of the crown of St. Stephen was set as the foundation of the Hungarian nation state. The ruling Hungarian oligarchy became dominant vis-à-vis other nations throughout the Dual Monarchy.

- (III) Ladislav Polić (1874–1927). As a European student, educated in Germany under Georg Jellinek, and as the successor of Josip Pliverić at the Department of Constitutional Law at the Faculty of Law, at the University of Zagreb, Polić mainly interpreted and advocated Pliverić's ideas. Its contribution mainly concerns the idea of original statehood of Kingdom of Croatia and Slavonia in relation to Hungary and the rights of Croats as a 'political nation'. These ideas originate from the Croatian-Hungarian Settlement. Polić was regarded as federalist also in the Kingdom of SHS (1918–1931). After 1926, he was one of the leaders of the Croatian Federalist Peasant Party.²⁶
- (IV) Stjepan Radić (1871–1928). One of the most prominent Croatian politicians from the end of the 19th to the first decades of the 20th century and a student of law and political science at different European universities (e.g. Zagreb, Budapest, Prague, Paris), was also a constitutional and political writer who, in a number of his works, left inspiring thoughts about federalism and its significance for the Croatian nation. In this sense, his most important book is *Savremena ustavnost (Modern constitutionality, 1911)*, although he started dealing with the issue of federalism even earlier than that. Namely, inspired by the historical ideas of Austro-Slavism, in his *Slavic Politics in the Habsburg*

²⁵ Jelušić, 2007, pp. 189–203.

²⁶ See <https://www.enciklopedija.hr/clanak/polic-ladislav> for details.

monarchy (1906), he lays out the vision of future Austrian federation which mostly coincides with the programme of Austrian Christian democrats. Monarchy should become federation of five states (Austria, Hungary, Galicia, Croatia, and Czechia).²⁷

After the end of the First World War, when the unification of South Slavic nations became very likely, S. Radić proposed a federation based on national unity and equality. There would be three equal Regents (the crown Prince of Serbia, the Croatian Ban, and the President of the Slovenian National council). Federal government would be composed of three ministries (foreign affairs, defence, production and supply). The highest body of the federal government would be the Supreme council of SHS, and each nation would have its own autonomous government. However, the adoption of the Vidovdan Constitution in 1921 (Constitution of the Kingdom of SHS) marked the complete rejection Radić's idea of 'neutral federative republic of Yugoslavia'.²⁸

■ 3.2. *Federalist ideas of Jovan Stefanović (1896-1964), Zvonko Lerotić (1938) and Branko Smerdel (1949)*

As notable 'constitutional personae' of their time, Šulek, Pliverić, Polić, and Radić directly participated as initiators of:

the most important project of Croatian politics in the 19th century: national program connected with ideas of modern society, and especially with Austroslavism and federalism. That was the program concerning the establishment of Austrian and/or central European federation in which the Croatian nation would acquire political integrity and independence. That was undoubtedly the key Croatian political project in 19th century, fully accommodated to Croatian national program and European model of modernity. That federalist program, which was permanently present in Croatian politics from 1848–1849, enabled the territorial integrity of Croatian lands and the building of Croatian nation.²⁹

Rationalising further the complex issue of federal state in the 20th century, *Jovan Stefanović* (1896–1964), *Zvonko Lerotić* (1938–), and *Branko Smerdel* (1949–) acted in a similar way. All three of them were university professors, remarkably well versed in the evolving issues of federalism, as well as in the place and role of Croatia in the new circumstances of socialist or transnational federalism.

²⁷ See <https://hbl.lzmk.hr/clanak/radic-stjepan>.

²⁸ Antić, 1982, pp. 136–222.

²⁹ Korunić, 2006, p. 45.

- (I) Jovan Stefanović (1896–1964). Professor J. Stefanović held the Constitutional Law Chair at the University of Zagreb Faculty of Law and was well respected as an authority in the field of new socialist federalism in Croatia as well as in Yugoslavia (1945–1963).³⁰ He wrote extensively on federalism, both in his textbooks and in special studies on contemporary federalism. One of his most influential works is *Širenje federalizma i njegovo uporedno slabljenje po sadržaju* (1954). In this book he points out that the worldwide expansion of federalism is accompanied by weakening of its content:

... through successive constitutional changes... These changes are especially noticeable in relations between the competences of central government and federal units; competences of central government are expanded without opposition. The reasons for this must be sought in the expansion of state intervention in economic and social domain.³¹

Having in mind the popular sovereignty principle in the framework of development of socialist statehood, Stefanović fully attributes the characteristic of nation state to Croatia. Croatia is no longer just a 'fragment' in federal mosaic as it was considered in traditional thought. If FNRJ is a 'federal people's republic', then the People's Republic of Croatia is a singular 'nation state'. Nevertheless, Stefanović points out that only a federation can be considered as a state 'in the true sense of the word'. It has undoubtedly higher authority over particular federal units – the authority of the federal state.³²

As the most authoritative expert on federalism in the new national, socialist Croatia, Stefanović in other words saw the strengthening of unitarism in the 'weakening of the content of the federal principle', under which circumstances it was difficult to preserve the healthy seed of federalism. Therefore, statehood and sovereignty of republics – their political autonomy – will continue to be of secondary importance in relation to the democratic centralism of communist party for a certain time.

- (II) Zvonko Lerotić (1938–). In the group of new authors who more intensively observed the development of federalism in Croatia and Yugoslavia after the 'Croatian Spring' in 1971, Professor of political science Z. Lerotić from Zagreb Faculty of Political Sciences stood out. He is one of those Croatian scholars who approached the issue of federalism in Croatia in the open process of 'federating of federation', which emerged after the failure of the Croatian Spring episode as Croatia's attempt to redirect the development of federalism

30 See <https://www.enciklopedija.hr/clanak/stefanovic-jovan> for details.

31 Stefanović, 1954, p. 43.

32 Stefanović, 1950, p. 331.

in the Yugoslav federation on new, more egalitarian bases. He wrote several books on federalism, among which the most known are: *Načela federalizma višenacionalne države* (1985) and *Jugoslavenska politička klasa i federalizam* (1989); these books develop the idea of the so-called symbiotic federalism, in which the constituent nations join together in a federation based on the idea of consensus.

The fundamental determinant of Lerotić's understanding of new federalism is that, in a multinational community, the principle of majority decision-making, as well as the so-called veto-system, must be replaced by consensus as a way of making decisions. The essential characteristics of consensus are establishing the agreement of opinion and behaviour, tolerance, acceptance of other people's beliefs, interests and values as one's own etc. In an intensive exchange of opinions with his integralist contemporaries, Lerotić strongly advocated the ideas of the so-called participatory federalism, that is, a form of federalism based on the participation of all federal units in making federal decisions and laws; he insists on the equal participation of the federal units, that is, on the egalitarian principle that manifests itself as a system of parity.³³ As the crisis of Yugoslav federalism approached its peak, Lerotić finally advocated the idea of Croatia as an independent and free state, which is an equally important subject of international relations in Europe and the world after the collapse of the socialism through the idea of confederalism.³⁴

- (III) Branko Smerdel (1949–). In the long history of the Constitutional Law Chair at the University of Zagreb Faculty of Law, the 'constitutional persona'³⁵ of Professor B. Smerdel represents all the virtues of the tradition of a versatile, competent, and critical interpreter of the theory and practice of modern federalism. Profound knowledge of the issues of 'old' and 'new' (i.e. classical and modern as well as comparative federalism) found its expression in numerous of Smerdel's works on characteristics and nature of federalism and federal relations in which Croatia found itself, both in the past and today. Professor Smerdel is the author of numerous critical projections of Croatia in the web of Yugoslav federalism, but also an authoritative interpreter of the status, rights and perspectives of Croatia in the complex network of federal-confederal-sui generis relations that the European Union has generated over the years. His fundamental premise is that one must take care that political processes in complex state communities constantly generate specific political problems and questions

33 Smerdel, 1985, pp. 1274–1276; Katunarić, 1990, p. 578.

34 Lerotić, 1979, pp. 238–250; Lerotić, 1996, p. 143

35 Sunstein, 2015.

that need to be resolved in a manner that is adequate for application and preservation of the federal principle. This constitutes the very essence of federal solutions, which contain an ambivalence between the requirement to join a wider community and the imperative to preserve autonomy and identity in such a community.³⁶

For this Croatian constitutionalist, every specific federative structure is an institutional expression of contradictory tensions between the reasons why federal units must remain small and autonomous (but not completely) and what is large and unique in the community (but not completely either). The differences between federations arise from the differences in the aforementioned two sets of reasons. Smerdel is one of the few scholars in Croatia who pleaded for a realistic assessment and verification of the national capacities regarding the EU accession, while demanding protection and guarantees of constitutional and national identity. His euroscepticism was based on the conviction that only euro realism can save us from possible disappointments of coexistence in a new alliance. For the same reason, it is important to know the community we wish to join.³⁷

We are about to join a political interstate community in which we will have to protect our identity and stand up for our interests. In any form of interstate integration, the last stronghold is the national constitution. Croatia is no exception. The Constitution will be very important and necessary for us when (and if) the referendum decision of Croatian citizens is finally confirmed by the governments or citizens of all 27 European Union members. This is why those lawyers who believe that real equality in the EU is a privilege of the great and powerful are wrong.

Today, Professor Smerdel is one of the strongest actors in the renewal of the traditionally strong Croatian federalist thought, which was systematically suppressed and even underestimated since gaining state independence, all according to logic that the former Yugoslav federation 'is to blame for all our troubles'. His constant message is that any entry into a complex community of states – and today the EU is such a community – requires knowledge and application of adequate political principles of behaviour, as well as the necessity of systematic and wise action when choosing coalitions and joining alliances, so that the Republic of Croatia as a small state could advocate for its interests and preserve its identity.

³⁶ Smerdel, 2011, p. 8.

³⁷ Smerdel, 2011, pp. 5–16.

4. Concluding remarks

The Preamble of the Constitution of the Republic of Croatia (1990) is a concise reminder that Croatia was a member of many alliances over its turbulent history.³⁸ Nevertheless, among the numerous alliances enumerated in the text of 'Historical foundations' (*Preamble*) of the Croatian Constitution by its author, the first President of sovereign and independent Republic of Croatia, *Franjo Tuđman*,³⁹ there are only

38 In the wording of Historical foundations (i.e. Preamble) numerous entities with which Croatia (Slavonia, Dalmatia) formed an alliance throughout history are enumerated. In those alliances Croatia did not enjoy status of federal unit – it has become true subject of federalism only in socialist Yugoslavia (1945–1990).

39 'The millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and development of the state-building idea grounded in the historical right of the Croatian nation to full sovereignty, has manifested itself: – in the formation of the Croatian principalities in the seventh century; – in the independent medieval state of Croatia established in the ninth century; – in the Kingdom of the Croats established in the tenth century; – in the preservation of the attributes of statehood under the Croatian-Hungarian personal union; – in the independent and sovereign decision of the Croatian Parliament in 1527 to elect a king from the Habsburg Dynasty; – in the independent and sovereign decision of the Croatian Parliament to ratify the Pragmatic Sanction in 1712; – in the conclusions of the Croatian Parliament of 1848 regarding the restoration of the integrity of the Triune Kingdom of Croatia under the authority of the ban (viceroy), rooted in the historical, national and natural right of the Croatian nation; – in the Croatian-Hungarian Compromise of 1868 regulating relations between the Kingdom of Dalmatia, Croatia and Slavonia and the Kingdom of Hungary, resting on the legal traditions of both states and the Pragmatic Sanction of 1712; – in the decision of the Croatian Parliament of 29 October 1918 to sever all constitutional ties between Croatia and Austria-Hungary, and the simultaneous accession of independent Croatia, invoking its historical and natural national rights, to the State of Slovenes, Croats and Serbs, proclaimed in the former territory of the Habsburg Empire; – in the fact that the Croatian Parliament never ratified the decision made by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro in the Kingdom of Serbs, Croats and Slovenes (1 December 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 October 1929); – in the establishment of the Banate of Croatia in 1939, which restored Croatian state autonomy within the Kingdom of Yugoslavia; – in the establishment of the foundations of state sovereignty during the course of the Second World War, as expressed in the decision of the Territorial Antifascist Council of the National Liberation of Croatia (1943) in opposition to proclamation of the Independent State of Croatia (1941), and then in the Constitution of the People's Republic of Croatia (1947) and in all subsequent constitutions of the Socialist Republic of Croatia (1963–1990), at the historic turning-point characterised by the rejection of the communist system and changes in the international order in Europe, in the first democratic elections (1990), the Croatian nation reaffirmed, by its freely expressed will, its millennial statehood; – in the new Constitution of the Republic of Croatia (1990) and the victory of the Croatian nation and Croatia's defenders in the just, legitimate and defensive war of liberation, the Homeland War (1991–1995), wherein the Croatian nation demonstrated its resolve and readiness to establish and preserve the Republic of Croatia as an independent and autonomous, sovereign and democratic state.' Constitution of the Republic of Croatia (consolidated text), Official Journal Narodne Novine 85/2010.

two federative states that had a 'federative indication' in their name and during which Croatia was formally and legally a federal subject. The first one was FNRJ (1946–1963), and the second one was SFRJ (1963–1990), certainly one of only a few socialist federations in the world at that time (USSR, ČSSR). With the formation of Yugoslavia, which included six federal units (republics), each of six republics had its own constitution and its own organisation of state power. Therefore, Croatia as a federal unit existed in all stages of the existence of Yugoslavia.

Of course, this still does not mean that federalism in the countries that joined Yugoslavia in 1945, including Croatia, only began with the adoption of the federal Constitution of the FNRJ in 1945 (i.e. the Constitution of the People's Republic of Croatia in 1946). We have shown earlier that different ideas on federal principles existed in Croatia before the constitutions that provided the federal organisation of government.

Such ideas appeared simultaneously with the manifestation of the desire for the realisation of national independence from the end of the 18th and to the beginning of the 19th century, which was logical to expect considering the situation of the Croats and all other South Slavic nations within the framework of the Habsburg and Ottoman empires. All such (or similar old) alliances in which Croatia found itself due to the force of historical circumstances factually 'disturbed and complicated the national story'.⁴⁰

After the collapse of the federal state, Croatia won its status as an independent, autonomous, sovereign democratic state through the Homeland War (1991–1995), with the legitimate constitutional potential of association into new alliances, which was used in 2013 by joining the European Union.⁴¹ The Croatian membership of the European Union in the same time opened new perspectives for the development of federalist ideas in Croatia and a critical assessment of its new political position and related interests. Over half a century of existence within the Yugoslav federation and long history of Croatian federalist thought should be beneficial in that regard.

40 Frost, 2017, p. 37. Regarding the confusion on names, see Degan, 1991, pp. 3–46.

41 Radelić, 2006, p. 700.

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