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Editor of series: Milan Petrović, e-mail: milan@prafak.prafak.ni.ac.yu
Address: Univerzitetski trg 2, 18000 Niš, YU
Tel: +381 18 547-095, Fax: +381 18 547-950

LOCAL AND RELIGIONAL SELF-GOVERNMENT IN A DEMOCRATIC THEORY

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Vojislav Stanovčić

Faculty of Political Sciences, Belgrade, Yugoslavia

Abstract. *This paper points to a great role the local self-government played in the development of the so-called civilian society and democracy and what its place in the democratic theory is, among the ideas developed in the reformation and in the processes of limiting and overgrowing political absolutism by means of revolutions, uprisings for liberation of people. It is shown that the sense of theories on "separation of power" was establishment of the checks and balance among the various branches and levels (local, regional, state). As the so-called horizontal separation of power was taken as a condition to guarantee freedoms and a hindrance to absolutism, so the local self-government in theory can be observed as an important element of the vertical separation of power serving the same purpose. The importance of the relations, even conflicts, political interests and political wills of parts and wholes were pointed out by the democratic thought. Among the basic differences between the democratic and despotic and authoritarian systems on the other hand, also included are the differences in relations of parts and the whole, narrower communities and the authorities in them towards the authorities of the wider communities. To estimate the character of the government and self-government system, the nature and the scope of the circle of competencies and its character (original or transferred) are taken, whether and how much the separation of competences is based upon the constitution and how much the self-government is implemented, that is, participation of the population and other subjects (of corporate type) in administering or electing rulers. An entire scale of possible relations from the mere deconcentrating or detachment of affairs up to confederalism is given and what place in that scale of forms belongs to the local and regional self-government; also pointed out are the differences between the Anglo-Saxon and the continental European system. A lot depends upon the fact whether the basic principle-goal is administrative efficiency or meeting the population needs (everyday life quality improvement). Supported are the ideas that a truly democratic power is essentially federal and polyarchic in its character, which means that each must have some circle of competences stipulated under the constitution and on the rule*

of law principle which cannot be arbitrarily changed by some higher authorities. This paper points to great social, technological and political (state strengthening) changes that changed the character and position of the local communities in the categories given by the great European sociologists, as well as to the researches which dealt with stipulating the character of relations and decision making in the local communities, atomizing the society and manipulating the mass society within which lives a lonely crowd of people. A conclusion is drawn from this in favour of smaller communes within which everyday questions are resolved and larger units of the regional self-government.

Key words: *self-government, local community, rule of law, Serbia, regionalism*

1. SELF-GOVERNMENT IN A LOCAL COMMUNITY AND DEMOCRACY IN A GLOBAL SOCIETY

Modern democratic theory pays considerable attention to local government and self-government treated as important forms of implementing democracy on the whole. Developed local self-government is not only a matter of understanding for the local population problems, but it also represents participation of the population in electing local authorities and their representatives in the authorities of wider communities partially being a guarantee that power within the wider community will be limited and under greater supervision of those ruled. Also, there were grounds for expectations as well as cases in practice that possible hasty and arbitrary decisions of the central and from the people far-off power in facing realistic conditions in the local communities were mitigated and reduced to those reasonable and bearable to the people. As it used to happen more frequently that the local governments and population, sometimes unsuccessfully and sometimes successfully, resisted violence, subjugation and certain burdens, laws and criteria imposed by the central governments. Over certain periods, the king's central power, for example, could not easily prevent election to the parliament of some individuals representing severe and for the power intolerable critics, because the local communities would frequently re-elect them (in England, it repeated several times under Cromwell and George III). Also, the American revolution was, in fact, a rebellion of the "local" governments in the North America against the unreasonable and for the colonial population very harmful decisions of the King and Parliament in London. The local government and self-government had also a great role in that revolution, its beginning and character.

The local self-government and free cities had a great historical role in overcoming the medieval absolutism and in the development of the so-called civilian society and democracy. This especially in England and Scotland, Switzerland, Holland and the British colonies in America. But, even worldwide since time began, in the process over which a man grew to a "political beast", there were certain local communities, first on the blood, then tribal and after that on the territorial basis. It is well known how much Solon was praised for his reforms by means of which the clan system was abolished and foundations laid for a political community of the citizens of Athens. The Attic poleis, like Sparta and Athens, were the poleis featured by very different systems, that is political regimes. Incidentally, a mention should be made here that classical democracy was idealized in numerous papers written during this century, which reflected with many thinkers and political actors (e.g. Rousseau), and that further research work presents a different picture

on the life even in the "most ideal" democratic polis - Athens.¹

The relations and situations were not always and everywhere such that the local government acted to the benefit of people and that the central government was against them, because it was often that local rulers were even worse than those "superior" and far-off. In certain cases even the rebellion of people in the local and "regional" communities against the violence of the local powerful persons was supported by the central government (after all, it was the case in Serbia by the end of the 18th and at the beginning of the 19th centuries at the times of the reforms of Selim III and at the beginning of the rebellion against the Turkish governors). Again, in certain cases, it turned out that some local governments (communal, state or parish) or the population itself took the "law" in their hands and gave a short shrift to those who would do or were supposed to have done anything against the religion, that is, the church or the local customs, beliefs and values.² In such cases, the accused would sometimes be rescued if came under the jurisdiction of the royal or state's prosecutor or court.

Viewed on the whole, establishment of national states took the course of centralization and strengthening of the state (most frequently royal) absolutism accompanied by abolishing numerous local privileges, customs, rights and particularisms. That process is judged by many authors as creation of conditions for more modern ways of production and trade leading later on to more modern political and legal forms.³ When absolutism

¹ How much the so-called free people in the classical Athens were really free is debatable. Constant, deTocqueville, Fustel de Coulanges et al. thought, as de Coulanges put it, that a "free man" in the classical polis was in fact a state slave. (See: **Fustel de Coulanges, *Classical State***, Beograd, Prosveta, 1956, Book III, chapter XVIII with a characteristic title: "Omnipotence of the State. Individual freedom was unknown to the classical people", page 178). This interesting theme discussed in the 19th and the 20th centuries was initiated by Benjamin Constant, (*De la liberté des anciens comparée à celle des modernes*, Paris, 1819), by the disputed theses similar to these later exposed by Coulanges, who otherwise gives very critical estimations of the classical democracy character and consequences. Also, Werner Jaeger writes on the individual moral autonomy lack in the classical Greece and Athens in the times of greatest prospering of democracy. See: Werner Jaeger, *Paideia: The Ideals of Greek Culture*, New York, 1945, especially volume I. After all, great discrepancy between the democracy which suits equality and the freedom which leads to differentiation was underlined in the 19th and the 20th centuries.

² It probably happened in all times in all countries. In England and America, it was mass lynching, but a crime could also happen by the judiciary (mis)use under the conditions of religious and other intolerance similar to that demonstrated in 1692 in the trial of witches in Salem when 19 of them were hanged. Then, there was in the Bay of Massachusetts local religious and political self-government, appointment of magistrates and judges as well as participation of the people in religious and political processes. But, religious intolerance was great and superstition deep-rooted. In Germany, there was a disreputable drumhead trial so-called *vehmgericht*, in Spain irregular local police units organized in "brotherhoods" (*Hermandad*) were active, which robbed more than they protected, while in France, especially during the religious wars and during the revolution, masses used force on those they considered to collaborate with the devil or enemy.

³ Barrington Moore gives one interesting approach to the social conditions and roots of democracy and dictatorship in the West European history, *The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, Boston, Beacon Press, 1957. Otherwise, certain historical processes provide grounds for a newer thesis different from a long valid interpretation. Namely, according to a deep-rooted understanding, absolutism was established as creation of conditions for the future capitalistic growth. Newer is the thesis of Perry Anderson that, in fact, it was an attempt by strengthening a state and its repression to save feudalism which was disintegrating. In that way the European rulers established their absolutism not only for strengthening their own position, which is a long-standing preoccupation of each power, but also for the purpose of saving feudal hierarchial organization, also to fully use new possibilities of

gained in strength it caused a natural resistance and numerous theories and movements intended to limit it.

Although England was very responsible for the local self-government idea, it was with great resistance that she acknowledged the truth of the idea on decentralization through which Scotland, Wales and Ireland would be granted certain federal forms. Today, devolution attempts are underway, that is, those of transferring power to the bodies to be established in these provinces, but even many who would readily declare themselves as political liberals shrink from this idea and are afraid of it. There were significant occurrences and ideas of the local and regional (cantonal, provincial) self-government in Switzerland, Germany, Holland, Italy and France that played an important role in the process which is the subject of this paper.

In this sense, the Protestant Reformation brought about a series of new ideas and played a strong role. Out of the works the political ideas of which have exerted powerful influence, one has revived classical theories of the social agreement and initiated the ideas which were developing in the Western Europe over the next three centuries, placing the power - citizen relationship upon a quite different theoretical bases.⁴ As a reaction to the situation in France, where the religious war was raging, there appeared Jean Bodin's theory of sovereignty, which still to date serves as a category, the postulates of which, through the later interpreters, are referred to by many authors who oppose decentralization and power sharing even though they have never heard of Bodin.

Johannes Althusius was one of the first who, to a certain sense, drew conclusions on a desirable way of association from the conditions in Germany and Holland. His theory encouraged Otto von Guericke to start advocating a modern variant of pluralism to be soon transferred to England where it produced the best theoretical fruits.⁵ In any case, Althusius advocates the so-called associativistic theory, pluralism, a kind of compound contracting community within which parts participate in establishing and administering

trade, navigation and industry. The result, all over Europe, was establishment of authoritarian, absolutistic national states. Anderson draws a conclusion that this process is important since it demonstrates how a secular battle is being waged within great social changes on a political, but not economic and cultural field, so that building and destroying of states seals changes in production relations and class domination. See: Perry Anderson, *Lineages of the Absolutist State*, London, NLB, 1977.

⁴ That work is *Vindiciae contra tyrannos* (1579) the author of which (signed as Stephen Junius Brutus) is unknown, but the work encouraged many small communities to insist on their self-government and participation in the wider community jobs, especially in Switzerland, Holland and later in England and among the religious oppression refugees in North America. *The Vindiciae* influenced Althusius. The members of an English group of colonists, even on board prior to their disembarkment in the Bay of Massachusetts, made a well known agreement ("Mayflower" Compact, 1620) on the character of the rules they would observe in the new homeland and the power they would establish, which had a symbolic importance for this trend and later events in America. One of the first governors of Massachusetts, John Winthrop, pointed out that the freedom of people was to elect those who would make decisions on their political destiny such as a woman was free to choose her husband. Without such freedom, he used to say, they would have slavery. During the Puritan Revolution several constitution drafts were made, among which the most famous were "Agreement of the People", 1647, and "Instrument of Government", one of the first constitutions in the written form in the new century and the only British constitution in the written form.

⁵ See: Vojislav Stanovčić, "Pluralističko shvatanje društva i slobode" (Pluralistic Understanding of a Society and Freedom") and Harold J. Laski, *Sloboda u modernoj državi* (*Freedom in a Modern State*), Beograd, Radnička štampa, 1985, pp 5-137.

the whole.⁶ Althusius is frequently referred to nowadays by the advocates of the consocial democracy in the pluralistic, divided and multicultural societies.

In France, during the 1789 Revolution, probably as a reaction to the traditional French centralism and strong role of the central government in provinces, the constitutional assembly effected decentralization by dividing the country into departments, districts and cantons governed by the people-elected bodies. Soon there arose a movement of communes, which lasted for short, because it resulted in anarchy and chaos, so that Napoleon, for other reasons as well, introduced centralism and prefects in 1800 as authorized representatives of the central executive government in the administrative departments. The movement towards decentralization was restored in almost every revolution in France up to the so-called Paris Commune (1871) and these ideas rubbed off on several thinkers, particularly on those of the socialist and anarchist orientation, among which Proudhon was probably the most important for our discussion. But, the system introduced by Napoleon has essentially remained to date with certain improvements.⁷

That trend of the Reformation which mostly relied on the influence of Calvinism pointed out the importance of the local communities and parishes, asked for participation of adult masculines in discussing problems and decision making and provided a basis for resistance to that government which would not respect some principles and human rights. But, their religious exclusivity made the Puritans strongly intolerant towards the members of other confessions or towards the questionable behaviour of individuals within small or wider communities which, on the "social agreement theory" principles asked for participation of individuals both in the simplified religious rites and in political businesses of the community.

With the passage of time, spreading was the teaching and the movement which required legal and constitutional restrictions of power and then absolutism to be overcome and replaced by different, more liberal or democratic forms where the local self-government and many other forms of social organizing had their role in the development of the so-called civilian society, liberalized regime of production and trade. All that required stable political conditions and that which was then called the rule of law or Rechtsstaat. David Hume, a great British (Scottish) philosopher and political and law thinker, spoke in the 18th century that democracy was not needed for the economic development, but that the rule of law was necessary for such development.

We will see that not only the just quoted words are actual even today, but also certain

⁶ For more details see: Vojislav Stanovčić, "Poreklo ideje i teorija federalizma u delu Althusijusa i Montesquieu-a" (Origin of the Idea and Theories of Federalism in the Work of Althusius and Montesquieu), *Federacija i federalizam*, Niš, Gradina, 1987; and Ilija Vujačić, *Federalistička alternativa*, Beograd, Institut za političke studije, 1993.

⁷ Departments and communes in France elect their local organs, but central power and prefects can widely interfere with them. In 1981, after winning the elections, the socialist Francois Mitterrand had nationalized some sectors, raised taxes, expanded certain social benefits, increased the number of jobs in the public sector and carried out considerable decentralization of administration. In 1982 the subject decentralization resulted in decrease of the prefect's prerogatives, but his powers as the representative of the central power in the department were and remained enormous. At the beginning of 1998, on the occasion of a murder of the prefect of Corsica by the Corsican nationalists, the West European papers wrote about the "small kings power", that is, about the exceptionally enormous powers and wide scopes of relations and questions into which these high representatives of the executive power interfered.

theories as well, which appeared in the times of these processes and changes at the beginning of the new century and which were dedicated to justify a strong state in the light of its functions and depending on the concrete circumstances and the character of the society itself. Thus, it seems to us that, in spite of the great waves of democratization in this century,⁸ there are problems in many modern societies because of which certain old controversies on the conditions influencing political forms to be democratic or authoritarian go on surviving and keeping in existence.

Included into the basic differences between the despotic and authoritarian systems, on one hand and democratic on the other, must also be the differences existing in the relations of the parts and the whole, that is, narrower communities and their organs as opposed to the organs of the wider communities. To estimate the character of the system, volume of decentralization and the nature of the local self-government, the most important factors are as follows: 1) the nature and the volume of affairs (whether the so-called competence is original or only transferred, that is, that well known question whose competence is to determine the competence and what falls into the so-called original competence); 2) whether and how much the competences sharing is based on the legal grounds (today, under the constitution) or it is a fruit of the political (self)will, and then on the latter depends if it is long-lasting or that its lasting is uncertain; and 3) how much the self-government is implemented, that is, participation of the population and other possible subjects⁹ in administration or in electing those who will govern as well as in making decisions which concern their lives in the narrower community.

The history of constitutionality, as well as that of certain institutions (parliament, "court of the equal", independent judiciary, "fair trial", the corpus of laws covered by the "habeas corpus" principle and many other) is, in fact, the history of endeavours to change the power-to-subject relationship and that the latter should be transformed from a subject to a citizen. But, as Bernard Bosanquet says, a man can make a great progress ahead from being a slave, but there still remains a long way ahead to become a citizen.¹⁰ Within that process of creating a citizen and in overcoming the status of a subject, in gaining political rights and freedoms and in the endeavours to restrict political power and making it less arbitrary, a strong role was that of both the endeavours and the battle of the population of certain cities to win out certain forms of the local self-government, as well as those of

⁸ Comp: Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman: University of Oklahoma Press, 1991.

⁹ As for the "other subjects", it may be the matter of narrower territorial units, such as communes (e.g. representatives of communes in the House of Commons of the British Parliament), but those can also be corporations, professional and similar associations because the elements of corporativism, very much present in the Middle Ages, are proposed from time to time within the frame of different pluralistic ideas on "neocorporativism" and the social system. Although the liberal theory mainly takes into account a man individual, citizen, from the theoretical point of view there are no strong rational reasons to aprioristically exclude corporate elements, because maybe both political parties and associations represent elements of that kind, and they do not exclude each other. Participation of different minorities (religious, national, ethnic) is taken in consocial theories as an important element in power sharing and that usually means participation of representatives of the narrower communities in the representative bodies and organs of the wider communities executive authorities.

¹⁰ Bernard Bosanquet, *The Philosophical Theory of the State* (1899), according to the edition: London, MacMillan, 1958, p.127.

regions to win the right to a certain self-government and its representation in the parliament.

2. EFFICIENCY IN ADMINISTRATING OR THE QUALITY OF MEETING THE POPULATION NEEDS?

There is a whole scale of variants on the line from the unitary centralistically organized state to the federal state or even confederation. Among the key words denoting different types of relations between the narrower and wider parts of a state and their organs are as follows: vassalage, power deconcentration (that is, organizing per narrower territorial units of organs directly subordinate to the central power), decentralization, the so-called double line of the local and central organs relations, local self-government, regionalization and regional self-government, regional state as *genus tertium* between the unitary state and the federation, autonomy, federalism, confederalism.¹¹

As it is known, decentralization in the right sense differs from the deconcentration or detachment of the middle (central) power affairs to the regional organs, first of all, in that that the decentralized forms, noncentral organs (at the level of the narrower territorial units such as provinces, regions, cantons, districts up to communes) have, under the constitution and laws, a stipulated circle of competencies and a definite level of independence in performing affairs within that field, so that the central organs cannot deprive them of the power to do that or to interfere with the performance of affairs from that field. Whether the central organs can evaluate only the legitimacy of the noncentral organs performance or whether they can meritoriously evaluate suitability of decisions and measures of the noncentral organs will greatly depend if there will be a case of a mere deconcentration or decentralization and regional/local self-government.

Surely that local self-government means decentralization, but not only deconcentration of power, for where there is a real self-government, the middle power loses absolute domination and right and the possibility to interfere with all local affairs. It is usually said that, if the self-government is realistic, then higher power may have (usually has) the right to supervise the local self-government performance legality, but cannot estimate suitability of the local organs decisions and cannot prevent such decisions from being executed or cancel them based on the suitability estimation.

There are great differences between the countries of the Anglo-Saxon (England, USA, Canada, Australia) and those with the continental European tradition. These differences are particularly significant as regards the position of the organs at the narrower territorial communities, which are, therefore, expressed in different terminology. The Anglo-Saxon

¹¹ Not only confederalism, but federalism as a form has also completely lost attraction after the destiny of all three communist federations because their history showed that federalism makes easier the way to secession and disintegration of states along the federal units borders. Experiences with the Badinter's Arbitration Committee with regard to the former Yugoslavia is in this case particularly instructive, for if this decision is taken as a precedent (as it may easily happen in the international law if the party concerned has the corresponding power), then withdrawal of the representative of one federal unit from the federal state body gives grounds for a conclusion that that state is in disintegration. Even the arbitrary interpretation by the EC governments of a recommendation of that Committee makes federalism even more unacceptable for politicians in the East Europe who want to preserve territorial entirety of their states. It is all the more likely to suppose that those who support secessionist movements will become ardent advocates of federalism.

system starts from dividing the competencies among different units (small states, that is, federal units, regions, counties and cities). The principle similar to that according to which division of competencies between the federation and the federal units is applied, so that narrower units have a great degree of independence in affairs which are under their jurisdiction while the self-governing organs do not perform the affairs of the small states or federation (or kingdom) organs. For this type of government the term "local self-government" is used.

On the European continent, it is administrative decentralization that is more in question, and the local organs most frequently perform the affairs of the wider units organs as well, which, based on the legal regulations, may be assigned to them, as it was the case earlier with the Principality/Kingdom of Serbia, both the Kingdom of Yugoslavia and the Socialist Federal Republic of Yugoslavia and now the Republic of Serbia. In principle, it is more in the sense of the democratic theory to advocate the Anglo-Saxon type of the local self-government.

Slobodan Jovanović has, as an example of a very developed local self-government being gained over a long period, pointed out the English self-government "within which there was not any representative of the state's bureaucracy, any organ that would correspond to the French prefect or the Serbian district chief" and within which the "local government affairs were not divided to the affairs of *original* or to the affairs of *transferred* competence, but all the local government affairs were considered the affairs of the original competence."¹²

But in England, during the Puritan Revolution, there appeared both the theories defending individual freedoms and the theories of state's sovereignty, like that of Hobbes which provided today's etatists with more closer and stronger arguments in favour of a strong and centralized power. Although these ideas are centuries-old, they have interpreters, advocates and opponents today.

Two principles or goals are in question when territorial division of a state, that is, power organizing is under consideration. These two principles may collide, although it is not inevitable. The first goal-principle is efficiency. Efficiency had priority with the

¹² Слободан Јовановић, *О држави, Основи једне правне теорије, Сабрана дела* (Slobodan Jovanović, *On a State, Basics of a Theory of Law, Complete Works*), Beograd BIGZ-SKZ, 1990, Vol. 8, pp. 403-404. It is interesting and still instructive how Jovanović pointed to the advantages and disadvantages of centralization and decentralization. It is evident that, on one hand, he had in mind French (and German) and on the other hand, English system since he says: "If England is the state of self-government, France is the state of administrative centralization". On the centralization and decentralization systems he says: "Both the centralization and decentralization systems have good sides. The centralization system is simple, not expensive, means strong direct power, being concentrated; it has indisputable superiority over the decentralization system in all affairs where a lot of plans and methods are required; generally, according to that system affairs are done with wider views and stronger feeling of great state interests because they are done from the top and from afar. The decentralization system is more flexible; it makes accommodation of the executive power to the local needs easier and prevents exaggerated uniformity in the state life. According to the decentralization system, affairs are done quicker and easier. Creating, in addition to the state personality, other publicly equal personalities, the decentralization system gives a pretext for legal relations of any kinds, therefore, it can be considered as mainly legal system than the centralization system. As the representative system introduces layman's element into legislature and supreme power, in the same way the decentralization system introduces it into the local self-government. Thus, excessive bureaucracy of the administering power is avoided and permanent interests of citizens for public jobs maintained. (Ibid. pp. 402-403).

authoritarian regimes, the assumptions of which were (frequently wrong) that firmly centralized control over the smaller units contributes to organizing and strengthening the state. Certainly, this can only contribute to concentrating the power and expanding its control over the local human and material resources. How much efficiency was connected in the past with centralism or unitarianism, can also be illustrated by the fact that Dicey, an author responsible for development of the rule of law idea, considered in his well known study on the law of constitution¹³ that the conflict between a unitary state and a federation (of similar human and material potentials) will always result in a victory of the state featured by the unitary system. The second goal-principle is guided by the, worded in the modern terminology, "life quality", that is, by meeting the local population needs and different forms of local and regional (cantonal) self-government are closer to this principle, the synonym of which is almost autonomy.

The local self-government understood and requested the everyday local life to be lived in keeping with the regulations which, within the wider community laws framework, were passed on the local level, according to the concrete circumstances, on the affairs which were, as for their nature, most suitable to perform at the local and regional level. The local self-government is also the point where the power of the wider communities and the narrower communities population participation cross each other, and the form of participation in distribution of one part of the national income (which may be considerable) as well as in improving the quality of *everyday life*, which in certain works is brought to the level of important theoretical category.

One of the investigators in the field of local self-government, William Robson, otherwise one of the first presidents of the International Politics Science Association, cites one ascertainment of Graham Wallace how two different systems of an industrial organization can be equally effective, but that there is an essential difference between them in that one makes the people happy and the other makes them unhappy.¹⁴ We think that this conclusion *mutatis mutandis* can also be applied to the questions of the local self-government, but with one major supplement. It consists in the fact that care must be taken that people do not like uncertainty and anarchy, because their sense of security is thus reduced or endangered, so that they are always ready to renounce their participation in the democratic process in replacement for the security and legal safety.

The territorial and political division itself, that is, drawing of borders can greatly depend upon the two above mentioned goal-principles. Thus, those responsible for the division in one case follow administrative or political, it could be said "state's reasons", and in the other case they respect traditional commune borders and regions which both in social and economic sense represent a certain entirety within which some community of the population life and work has most frequently become accustomed.

¹³ A.V. Dicey, *Introduction to the Study of the Law of Constitution*, London, 1885. Dicey strongly opposed introduction of the Home Rule for Ireland (*England's Case against Home Rule*, 1886; and one more work a few years later) and maybe it was favouring unitarism over federalism that was connected with it.

¹⁴ William A. Robson, *The Relation of Wealth to Welfare*, New York, McMillan, 1925, p. 165.

3. ON THE HORIZONTAL SEPARATION AND "VERTICAL POWER DISPERSION" (CHECKS AND BALANCES")

The history of constitutionalism in the West shows that so-called horizontal separation of power in a democratic and liberal theory, proposed and explained by the thinkers like Harrington, Locke, Montesquieu, and the American "Founding Fathers", was taken as a hindrance to any absolutism and as a condition for establishing human rights and freedoms. The power will neither be restricted nor responsible unless the holders of power are opposed by the real political powers or if the power dispersion is carried out so that, according to Montesquieu, one "power restricts (the other) one".¹⁵ This important thinker saw the society as a very compound, he wrote about the "société de sociétés", considering federalism as a form which guarantees internal republican form, that is, autonomy of parts and integrity of the wider community and its capability of defending itself from outside and as examples he took Holland, Germany and Swiss Union.¹⁶ This political form was seen in the similar way by Rousseau who, on the other hand, was against any particularistic organizing inside the political communities, as this would disable a general will to be expressed and instead would result in particularistic wills domination. Viewpoints of these two thinkers influenced the American Federalists, only that they drew different conclusions from the analyzed experiences of the three above European countries confederalism, that is, they saw great weak points in the confederalism; Hamilton also supported great power centralization in the American system.¹⁷

Article 16 of the famous French "Declaration on Human and Citizen Rights" of 1789, proclaims that there is no constitution in the country in which power has not been separated and where there is no guarantee for human rights and freedoms, the lack, unawareness and scorn of which are taken as the main causes for general misfortunes and corruption of governments under the so-called old regime.

Since, in this country, theoretical discussions were held on the subject whether the power in a certain state is always the only and unique one and whether its "division" is possible, a mention should probably be made here that the terms used in the western countries to denote this institution (separation of power, separation des pouvoirs, Gewaltenteilung/Gewaltentrennung) suggest that, perhaps, it would be more suitable in our language to use the term "separation of power" than the usual "division of power". The term, that is, the concept developed by the American Founding Fathers and which was used when the constitution was made (1787), in a much better way and more precisely establishes the relationship between the power branches (legislative, executive and judiciary) on the principle of their mutual checks and balance particularly developed

¹⁵ Montesquieu, *De l'Esprit des Lois*, Liv. XI, ch. 4.

¹⁶ Ibid., Liv. IX, ch. 1-3.

¹⁷ See, for example, Alexander Hamilton, *The Federalist*, No.9 (see also edition Beograd, 1981). James Madison who had different concepts referred also to some other ideas of Montesquieu (see: Hamilton, Madison, Jay, *The Federalist*, Beograd, Radnička štampa, 1981, essays No. 43, 44 and 47). Criticism of confederalism is particularly given in essays 1, 2, 6, 16-18, 22 and other.

and theoretically explained by James Madison.¹⁸

It seems that Harold Laski - otherwise one of the advocates of pluralism and of one kind of corporativism as well and who at the same time truly accepts the basics of the liberal value - is right when he says that every democratic, that is, creative authority is essentially federal in its character.¹⁹ It means that each one has or must have a certain circle of competences which cannot be changed arbitrarily by some higher authority, but that these relations have been stipulated under the constitution and the rule of law principle.

In other words, in a democratic society, mutual relations of different political and territorial units are not such that the wider or larger units are always superior to the smaller or narrower (or "lower" as it is said in the usual etatistically intoned terminology, which implies a hierarchical relationship typical for the centralistic and unitary structure).

Also, in the times when the founders of the modern democratic theory and its institutions were explaining their ideas, a question of the relationships, even of conflicts, political interests and political wills of the parts and the whole was raised. Here is how Jean Jacques Rousseau saw the relationship of these two levels or two subjects, out of which one is closer to advocating general interests and general will, and the other particularistic interests and wills. All political societies - says Rousseau - are composed of other, smaller societies of different kinds, out of which each has its own interests and maxims, and the will of these separate societies has relations on two sides: for the members of the association (read: narrower society) it is a general will; for the wider society, it is a private will, which frequently can be correct from the point of view of the first, and harmful from the point of view of the second, wider society. Rousseau did not provide the answer to the question how to solve this conflict of interests and wills, but it is less important than the fact that there hardly can be the general and for all the

¹⁸ See: Hamilton, Madison, Jay, *The Federalist*, Beograd, Radnička štampa, 1981; see also our introductory study for the previous book: "O karakteru i političkim idejama Federalističkih spisa" ("On the Character and Political Ideas of The Federalist") (pp 5-189). Very important are the attempts to make a general theory on democracy and its principle out of the American experiences, constitutional principles and political ideas from The Federalist. In addition to the already classical work of Alexis de' Tocqueville, *La Démocratie en Amérique*, translated and published in Serbian in Belgrade in 1872 (Volume I) and in 1874 (Volume II); and after the unsuccessful attempt to be published immediately after the Second World War (one excerpt only was published) it was republished only recently (by Bookstore of Z. Stojanović, Sremski Karlovci, 1990), two parts provide a kind of systematic analysis and excerpt some general theoretical conclusions. It is a question of the works of Robert A. Dahl, *A Preface to Democratic Theory*, Chicago, 1956; and Vincent Ostrom, *The Political Theory of a Compound Republic*, Lincoln and London, University of Nebraska Press (1971; second edition 1987). Based on Madison's analyses Ostrom reports that, as one of thirteen axioms on political institutions: accumulation of the entire power... in the same hands, either of one, several or many people and whether obtained in succession, selfappointment or elections, leads to tyranny (see *The Political Theory*...p. IX and 85). Thomas Jefferson (in *Notes on Virginia*) reported in fact a similar attitude much earlier than Madison.

¹⁹ Harold J. Laski, *Freedom in a Modern State*, Beograd, Radnička štampa, 1985, p.220. Although Laski thought that a national state and federalism are obsolete institutions (see: Harold J. Laski, "The Obsolescence of Federalism", *New Republic*, May 3, 1939), he thought that certain structure and relations of different power levels, similar to the federal structure, are one of the conditions to provide freedom and meeting the needs of those that are governed. Therefore he points out that resistance to any overstepping the power is a basic thing for freedom, because powerful persons permanently tend, if possible, to expand their authorities and that, as he sees it, the goal for which the power is performed is to maximally meet the needs...that wills of those whom the decisions concerns should be considered. (H.J. Laski, *Freedom in a Modern State*, pp.218 and 220.)

circumstances valid answer.

This problem was dealt with by many French and other authors both prior and after Rousseau, simply because it was the situation in France that imposed the subject matter. For example, Montesquieu thought that there inside the state where there is no freedom of speech, even conflict of interests and viewpoints, but everything is "noncontradictory" and quiet for the sake of concord, there is no, in fact, freedom. The real concord is harmony which comes from the coactions of the parts, like in music.²⁰ In his work *De l'Esprit des Lois*, already at the beginning, speaking about the laws of nature and after referring to the quotation from Hobbes, within the context of the idea on positive laws, he also supported the thought of an Italian author that union of all individual powers creates that what is called a political condition.²¹

To solve this problem, constitutionality, that is, the rule of law, may be of help, because it is with their help that distribution of competences can be effected, usually by combining the positive enumeration systems which belongs to the scope of one subject, and the general clause which puts all the rest into the scope of the other subject.

The democratic political theory, ideas similar to that of Harold Laski on the federal structure of the democratic power, all the same the polyarchy concepts developed by Robert Dahl and the consocial democracy initiated by David Apter and Arend Lijphart, points to one significant conclusion. It is that similar to the horizontal organization of separate branches and "separation" of power among them, that is, mutual checks and balance among them, decentralization, and the mere deconcentration of power to a certain degree, the local one in particular, and regional self-government with some theoreticians must, in the theory of democracy and constitutionalism, be regarded as an important element of the vertical separation (dispersion) of power. That dispersion serves the same purpose – restricting the power, that no power becomes absolute, disabling its concentration and providing citizen rights and freedoms.

The decentralization and self-government forms were important institutional forms of widening democratic bases of power and its approaching the people. Through these processes and institutions, the middle power was losing the absolute domination, that is, the right and possibility to interfere with the affairs of certain regions and local communities. The regional (cantonal, provincial) and the local self-government have had a great role in the development of the so-called civilian society and democracy. When, by the end of the 18th century, discussions were held on how to democratize enormous and in authoritarian way organized Russia and China, then it was considered that it was not possible without decentralization and introduction of the local and regional self-governments.

As the so-called horizontal separation of power was considered a condition to guarantee freedoms and a hindrance to any absolutism, so the local self-government can in theory be observed as an important element of the "vertical separation of power" serving the same purpose. The local self-government has a similar role even today in the

²⁰ Montesquieu, *Considerations in the Causes of the Greatness of the Romans and Their Decline*, 1734, New York, Cornell University Press, 1968. Otherwise, this work was translated into Serbian and published way back in 1866 and in Croatian in 1917.

²¹ *De l'Esprit des Lois*, liv. I, ch. 2-3.

process of the so-called transformation or transition of the postcommunist societies to the democratic ones.

4. CHANGES IN THE LIFE OF THE LOCAL COMMUNITIES. WHO ACTUALLY GOVERNS IN THEM?

It seems that certain trends and characteristics of the industrial and urban development influence local communities so that they lose the character and importance they once had. Concurrently, the position and role of the local authorities are being changed, that is, most frequently are reduced compared with the other authorities in the state, but relative to the citizens local government also remains powerful because many power instruments and means upon which a great number of people depends are under their control.

Today, certain local authorities, elected directly by the people or the forms of direct democracy, which have survived as annual assemblies of the inhabitants in certain cantons of Switzerland²² or in certain cities of New England (six federal states in the United States), where the tradition of the annual so-called town meetings of all adults is still maintained, have more symbolic than practical importance. It is easy to conclude based on the daily agendas and the conclusions contents at such gatherings. In Switzerland, however, decision-making through the cantonal referendums is still important and is relatively often practiced. At the cantonal, consequently regional level, it may have not only greater importance, what is natural, but also a higher possibility that it should be practiced with certain sense, which would not be wasting of time. Obsession with the communal system during 2-3 decades in this country was encouraged by the ideological rationalizations and stressed the importance of participation. It was probably politically motivated to atomize the society for the purpose of easier manipulation.

In spite of all social and technical-technological changes and despite bad experiences and abuses of the system of the seemingly wide local self-government, many things of the everyday and actual life are carried out and must be carried out in the local communities. Thence results a lasting importance of the local government and self-government forms.

²² On that, as an important form of citizens' participation, the married couple Sidney and Beatrice Web wrote, by the end of the 19th century, who otherwise greatly dealt with self-government in England, the more taking such forms as an encouragement for their projects that something similar to that self-government should take roots in the trade unions organizations, the general meetings of which, referendums, the right of each member to give "initiatives", that is, proposals and the like, they treated as the new forms of the so-called industrial democracy. See: Sidney and Beatrice Web, *Industrial Democracy*, London, 1897. The Webs, together with Bernard Shaw, the famous writer of comedies and dramas featuring severe social criticism, were among the founders of the so-called Fabian Society (1884), always small in the number of members but very influential society advocating the so-called Fabian socialism which should bring greater social equality by gradual and peaceful improvement of democracy. Improvement in the local self-government was one of many activities of the Fabian Society. Members of this Society were very prominent British intellectuals. Bernard Shaw was awarded the Nobel Prize for literature in 1925, and John Galsworthy, after whom one street in Belgrade was named, also the Nobel-Prize winning writer (1932), was the member of this Society as well. Sidney and Beatrice Web founded the London School of Economics and Political Science, one of today's most famous school of that kind.

Sidney and Beatrice Web wrote a very voluminous *History of English Local Government*, London, 1906-1929. The work was published in 10 volumes, but still remained unfinished because they reached only 1835.

But it will be wrong and harmful not to take into account all changes which occur and the facts referred to by the research work.

Once, decision-making at the local community or the commune level made sense not only as fulfilment of some classical Greek or Rousseauistic ideal of democracy and demonstration of one's civic conscience and duty, but it also resulted from the fact that those really were communities at some past times. The people felt themselves as their members, assumed responsibilities resulting from that feeling, also enjoying certain feeling of familiarity, safeness and solidarity. Today, it is no more like that. Even if people tried that it be so again, one could not say that they would succeed, simply because there occurred great changes.

It is understood that the modern industrial societies are more dynamic. Modernization and dynamism, caused by the industrialization and urbanization, are most tightly connected. This reflects on many areas of the social life, particularly on the great movableness of population and increase in the role of the cities and industrial centres. The population coming from rural to city areas in search for jobs, education, entering the civil service (bureaucracy) shows great vitality and accommodates to the new conditions. But the newcomers bring with themselves the customs acquired under different life conditions. Because of that the newcomers, particularly in case of mass migration from the country to cities (as a known category of "peasants - industrial workers"), disturb or lower the city living standards, they "make the urban environment rural".

The basic reason due to which the local government has lost in importance as an independent factor is that the modern state has strengthen and widen its functions, competences and economic power, including the power as well as the possibility of regulating, taxing, interfering in the economic life and imposing control over it, establishing regional administrative agencies and branch offices. It is a great question what was the role played by the political parties, because they are primarily directed to gaining power at the highest state level, while the local policy is to a great extent subordinate to that primary goal.

In addition to political factors, economic development has resulted in great, sometimes mammoth corporations the capital of which is larger than the budget of certain states, not to mention local communities. They are linked to the state, but again at the highest level, while in relation to the local government and community as if enjoying exterritoriality.

Movableness of people inside the local city communities is high, because the place of work and education, the place of meeting certain needs or acquiring income, spending a great deal of time may often be outside the nominal residence. Megapolises are an acute problem nowadays, small cities take on certain of their features as well. They are governed in a managerial style, that is, professionally. At best, those are certain professional and well trained managers who, if not in position to manage some large company, do not renounce to run, in keeping with similar principles such as managing a company, some of the ruined cities. Ruined in the sense of ecological situation, security of citizens, poor local traffic, health care, education, possibility to take care of children, aged people, mentally and socially handicapped, etc.

That what influences conditions for self-government and attitude of citizens towards the power in bigger cities are broken former ties among the population being rather stationary. The life in cities is being atomized, the people become "the lonely crowd"²³ in cities, that is, there they are a lot that one cannot walk down the street, most frequently they do not know each other, do not communicate, they have no idea that they are particularly tied to something in the given city, because they meet their needs, working obligations, entrepreneur's ambitions, wishes to educate themselves (or "graduate") and the like at different sides so that they are not supposed to feel themselves the members of one community as it was the case when the time crept by with slowness, when it seemed as if there were no changes at all and everything only repeated and the people felt as if they took roots in certain local communities. Perhaps it could be said that it was a transition from wider and local communities to the so-called global and local societies. Those are the processes of different social organizing dealt with by Ferdinand Tönnies, meaning, of course, transformation of organizing based on the kinship, sense of origin closeness,²⁴ solidarity, organic ties, in a word "community" to the "society" which is based more upon the external, legal and forced connections of the "inhabitants". As for the power, it was mainly transition from patriarchal, on the clan ties founded, but personally coloured, cliental relations and structures of influence, and to this corresponding power as well, towards greater institutionalization and bureaucratization.

The "atomization" processes of the society, appearance of the so-called mass society²⁵ within which the people are easier to manipulate and the possibilities of the organized population actions are reduced, are perfectly appropriate to the authorities. The population reacts only when certain conditions greatly become worse, which can be attributed as a fault or incompetence to the local power (as in the case of the public city traffic, heating and supply malfunction and other similar phenomena affecting a great number of people or the complete population). Then the discontent of the population can accumulate to such an extent to result in the local protests or, in modern states, where change of government has been institutionalized, extraordinary local elections. In authoritarian systems, such a situation can serve as a motive to the central government to restrict or abolish the self-government and to take local affairs in its hands through, for such cases, the established local branches, commissars, (as in the times of the French and October Revolutions), delegates, representatives of the central or regional authorities.

In addition to everything else, modern infrastructure, that is, highways, canals, electric

²³ Sociologist David Riesman used this expression in the title of his book (*The Lonely Crowd*) which shows how much a man is lonely and estranged from other people in that city tumult and "crowd".

²⁴ Ferdinand Tönnies, *Gemeinschaft und Gesellschaft*, 1887. transformation processes from the organic to mechanical connection were also seen in a similar way by Émile Durkheim, *O podeli društvenog rada* (On the Division of Labor), Beograd, Prosveta, 1972.

²⁵ The expression "mass society" was for the first time used by José Ortega y Gasset in the famous work *La Rebelion de las Masas* (1930). Contributions to the so-called mass society, that is, mainly to the analysis, then to the critics of certain phenomena in the modern societies and addressing the problem in the context of different situations and ideas (elitism, existentialism, totalitarianism) were also given by E. Lederer, *The State of the Masses*, New York, 1940; Karl Mannheim, *Man and Society in an Age of Reconstruction*, London, 1940; Hannah Arendt, *The Origins of Totalitarianism*, New York, 1951; Karl Jaspers, *Man in the Modern Age*, 1952; Gabriel Marcel, *Man Against Mass Society*, Chicago, 1952; and in this country Jovan Đorđević, *Otvoreno društvo* (*The Open Society*), Radnička štampa, 1985, and others.

power network, railways, food supply systems, special schools and the like - all that has outgrown the capabilities of the local communities and their organs.

Today, it is likely that a great part of the population of great cities has some shapeless and almost business-like relations towards its residence. It is, perhaps, because of that, a natural aspiration that this urban entirety should be effectively ruled, so that the required "offices" could function and provide services, but not to hold meetings hours and days to make certain decisions which would be of no importance or would not be put into effect due to the lack of certain conditions. Out of this results an aspiration to effectively govern cities and local communities in keeping with certain general management theories. Managers of great cities are appointed by some council or a body elected by the citizens, thus, managers are probably elected by some seemingly democratically elected government.

Ideas that citizens as electors make decisions or influence decision-making are denied by both a lot of expertly carried out research work and conclusions made by sober citizens based on their everyday personal observations. Robert Dahl, one of the undoubtedly best American political scientists, attracted a great attention at the beginning of his career when he showed, in an empirical research work, the subject of which was New Haven, a city in which there is one of the most famous American university (Yale), that the widespread ideas on that who governs a city clash with the reality.²⁶ The researcher chose the city of a long-standing history and two parties fighting in it over the local power for more than a century. The basic question posed by the researcher was: who actually governs a city in which each adult citizen has the right to vote, but where the knowledge, wealth, social status, access to official and other sources of influence are unequally distributed.

Dahl rightfully starts from the assumption that the citizens of each city and state probably pose such a question to themselves when they reach a critical selfconscience with reference to the community. That is why, he assumes further, that the citizens of Athens as well had probably posed such questions long before Plato and Aristotle did.

Based on the concrete case, Dahl found out and demonstrated the anatomy of the political influence, development from oligarchy to pluralism, but the concrete distribution of influence as well, forms through which that influence is being exerted, distribution of political means, role of the social status, ready money available, credit being enjoyed, formal legalities of behaviour, popularity, control over information and other factors which made this research work to get the importance of a methodological model for empirical investigations of political processes within the local communities. Considered by the investigation were *homo politicus* and *homo civisus*. An investigation which showed a great discrepancy between that declared "ideally-typical" and that which featured the reality was carried out in this country as well in the times of almost political obsession with the communal system.²⁷

In spite of probably inevitable discrepancy between the normative and the real, in

²⁶ See: Robert A. Dahl, *Who Governs? Democracy and Power in an American City*, New Haven and London, Yale University Press, 1961.

²⁷ See: Radivoje Marković, *Ko odlučuje u komuni (Who Makes Decisions in a Commune)*, Beograd, IDN, 1971.

spite of the probability that inevitable and the so-called iron law of oligarchy acts even at the local level, we again think that the local government and self-government are of direct importance and role not only in regulating numerous activities, provision and fulfilment of a series of functions upon which citizens' needs meeting for public services depends, but also in providing rights and freedoms of citizens and in influencing "higher authorities". The latter can be the more effective the wider is the citizens' support to the local government.

5. OLD AND NEWER CONTROVERSIES CONCERNING THE STATE INTEGRATION OR FRAGMENTATION

The complete question of the self-government nature, direction of its development and maybe even its destiny also depends on that how much it is wished and how much the circumstances permit, that is, allow a radical political even constitutional reform to be carried out. Within the frame of such reform a democratic local self-government can and would have to be established. A resistance to such undertaking can be assumed, and those who do not wish those changes will always find arguments from the ideology arsenal and examples from practice they can refer to, although those arguments may not seem enough strong and convincing.

The idea of constitutionalism and the rule of law as well as numerous practical problems, especially in the ethnically mixed environments, could justify the local and regional self-government concept as a part of the constitutionalism process. But, someone will pose that question which is usually a pretext for a delay - do the conditions allow that?

One of the prominent modern political theoretician of the constitutional democracy and a specialist in the character of both democratic and totalitarian states, Carl Friedrich,²⁸ writes something relevant to our topic and it seems that his opinion, unfortunately, has not lost in relevance when he points to certain political facts. Friedrich writes on different experiences in establishing democracy in the West Europe and America and says that any society must have some form of government, and that constitutionalism is one of the refinement forms, that is, making one common government dignified, civilized. But, according to his opinion "only a strongly founded government can be constitutionalized", and, from the West European experience, he proceeds, this meant that "the national unification must precede constitutionalism".²⁹ In spite of the fact that it is not recommendable, particularly as regards complex things, to easily conclude by analogy, if we start from Friedrich's conclusion as a hypothesis, then a question is raised in connection with our theme and the situation in FR of Yugoslavia whether this major prerequisite for the democratic constitutionality is fulfilled both in view of the

²⁸ See, for example, Carl J. Friedrich, *Constitutional Government and Democracy*, 1937, more recent edition Maltham (Mass.) - London, Blaisdell, 1968; and his works *Man and His Government*, London, McGraw Hill, 1963; *Trends of Federalism in Theory and Practice*, New York, Praeger, 1968; Carl J. Friedrich - Zbigniew Brzezinski, *Totalitarian Dictatorship and Autocracy*, second edition 1965; as well as edition of Althusius with the Friedrich's introduction, published in 1932.

²⁹ Carl J. Friedrich, *Constitutional Government and Democracy*, Waltham - London, Blaisdel, 1968, p. 9.

surroundings of the state and in view of the unsolved problems resulting from its internal heterogeneity. Yet, in our opinion, both the constitutionality and establishment of the rule of law must be approached as soon as possible, and within that framework creation of local and regional self-governments so as to overcome tensions resulting from the mentioned heterogeneity. For, this is a condition for peaceful life of citizens and for the political stabilization which then can be a basis for more developed forms of democracy.

In our opinion, classical theories of sovereignty, neither Bodin's nor Hobbes' advocating the state sovereignty and justifying centralization and concentration of power (Hobbes thinks that theories on separation of power belong to those rebellious ideas which undermine the state), nor Rousseau's which transfers sovereignty to the people, but leaves them equally absolute, cannot be tied in with the liberal theory of democracy as well as with the authentic federalism. Truly liberal democracy is a polyarchy (taking the term in the sense given by Robert Dahl),³⁰ that is, it has a federalistic structure, because it assumes dispersion of power, while the authentic federalism is based on the shared sovereignty as understood by Madison and many of the American Founding Fathers and well noticed by de'Tocqueville when analyzing the American democracy.

Bodin's theory was presented in 1576 with the purpose the state to end the religious war which was raging and which endangered everybody's life. The state should have acted relying on its supreme, that is, sovereign power equally treating each citizen, not taking into account of what religion he was, observing at the same time some principles and laws (so that, in fact, it is here that we have the beginning of a later idea of the Rechtsstaat). Hobbes' theory was written and published (1651) during a very bloody Puritan Revolution in England. According to his theory, the sovereign acts as an expression of the will of the majority which renounces its rights that in return it would enjoy peace and safety.

Rousseau's general will, which is always right and really absolute and unerring, may be expressed only as a will of the majority and that kind of democracy may be totalitarian, because in the name of the public good of the political community (of all together, that is, people) it may even not respect the rights of the minorities (political, religious, national, ethnic, regional, professional and the other). This kind of power demonstrated some of its features under the Jacobins in France and in some other revolutions, and today, in East Europe democracy is rather widely interpreted as the rule of the majority sticking to the inconsistent theoretical frames holding together both the idea of liberal democracy and state sovereignty. Here, it is necessary to stress that such pointing to the authoritarian consequences of the sovereignty theory inside a state in the sense of excessive concentration of power, which makes this absolute, does not mean negation of the state sovereignty as a subject of the international law and international relations towards the outside, that is, other states. The sovereignty and equality principle of the states in their mutual relations is one of the basic principle of the international law. It is well known how severely criticized was at one time the so-called Brezhnev's doctrine on the restricted sovereignty of the socialist states, by means of which, in the name of interests and ideology of the socialist system as a whole, the state sovereignty should be restricted and

³⁰ Robert A. Dahl, *Polyarchy: Participation and Opposition*, New Haven, Yale University Press, 1971 (translated into Serbian and published in Belgrade, Filip Višnjić, 1997); as well as his *Democracy and Its Critics*, New Haven and London, Yale University Press, 1989 (especially chapters 17 and 18).

intervention outside allowed, that is, interference with the internal affairs of certain states.

Here, some viewpoints and facts in favour of the decentralization and autonomization, that is, a wider self-government will be pointed to. Not only that complexity of situation and frequently tense social or ethnic relations and threats representing possible conflicts justify strong power, concentration of great power in the hands of the president of the state, but an understanding is rather spread among the people which may be judged as an expression of the prevailing authoritarian political culture, but this will not change the situation arising out of the mass support to strong personalities. It means that concentration of power is supported by a considerable part of the politically active population. The principal cause of the well known relation between the leader and the followers most frequently is not attachment towards the leader, but fear for the collective identity and existence if the power versus interest conflict results in disappearance of the coordinator or conductor of the group activities.

Despite the fact that authors of the liberal-democratic orientation, dealing with the problem of transformation from authoritarian to democratic political forms in South America, South Europe (primarily Spain, Portugal, then Italy, Greece and Turkey) and East Europe (including the Balkans), point out the advantages which for such transformation would be offered by the parliamentary system, they must ascertain a great spread of presidential system mainly with strong presidents, which, particularly when the authoritarian and political culture is taken into consideration, demonstrates (with certain exceptions) more authoritarianism than any other feature of the political system. It is considered, particularly among the theoreticians of consociation, that parliamentarianism can better meet the aspirations of the ethnic (national) minorities than presidentialism.

In spite of presenting, in scientific studies, the opinions that parliamentarianism better suits development of democracy in these countries and the possibilities that different interests and points of view should be expressed and the possibility obtained to influence the process of political decision-making, democratizing it, in most of these countries there is something called "super presidentialism". That form is justified and partially defended or supported due to the stabilization and safety reasons needs (although other countries are selective whom they will support and are guided in that by their interests, but not by the democracy principles and the need for its improvement).

Some investigations of the public opinion and the prevailing stereotypes in the political culture on the territory of FR of Yugoslavia show that authoritarian political culture prevails. That can also be estimated based on a series of articles, contributions of readers, statements of political activists and certain political programmes. A great number thinks that situation requires acceptance of a strong president as a leader. The danger because of which it is done so may be imagined or realistic, the effects concerning the support are almost the same. It has been known for a long time that the ideas on the dangers or the dangers themselves may be artificially supported/maintained and the dictatorship thus prolonged.

We did not want to bypass the fact that a series of counter arguments from the catalogue of the "state reasons", "national interests", "national safety reasons", the sovereignty theory, needs an obligation of the state to maintain the public order and protect itself as an assumption of the social peace and to prevent trends towards further fragmentation which may not only endanger its territorial integrity, but may lead to a conflict of large scale with exceptionally tragic consequences, can be, tacitly or explicitly,

opposed to all the arguments and reasons we have mentioned above in favour of decentralization, self-government, democracy, power limitation, etc.³¹

Drawn into the controversy between the advocates and apostles of freedom and apostles of the political order is a great number of thinkers from the past.³² Here, we will limit ourselves to explain the essence and partial sources of the conflict by means of the ideas of two great English thinkers, contemporaries of the Puritan Revolution, the viewpoints of which on the nature, sources and power (government) functions were quite different. To a great extent, John Locke could be considered as the originator of ideas and institutions of the liberal democracy we have discussed earlier. And Thomas Hobbes could be taken as the forerunner of many viewpoints which were in the past and are today advocated by the radical defenders of the authoritarian system, public order and safety of the state or national interests. Even though today's repeaters of his ideas do not know much about him or have neither heard of him. Because the authoritarian systems have their own "logic" in the field of commanding, the which sometimes is called legal system and politics.

Lock assumed a situation in which a political body and the government are created based on the reasonable actions and agreement of people on the so-called basic things which concern the character of the mutual life under the elected power and based on the mutual respect of the basic rights and freedoms. It is evident that he started from the human nature concept which greatly relies on the human reason (to the discussions of which he had dedicated his principal philosophical work).

But, if one assumes a different human nature, seeing in it selfishness, greediness and a strong aspiration to dominate as an important feature, and if he thinks that it is demonstrated in different ways in the everyday life (criminal, uncertainty of life and property, corruption, power struggle from the Mafia groups to the top of the state), added also to this that during the whole history a superiority and dominance struggle worldwide is being fought, then such a black picture may lead to different means in solving the problem of the public power and order. That another way is that pointed to by many defenders of a strong and usually unlimited power. A representative quotation for such reasoning is that from *Leviathan* where Hobbes discusses the nature and the way of origin

³¹ On the fragmentation process as a worldwide phenomenon see Ali A. Mazrui, *Post Imperial Fragmentation: the Legacy of Ethnic and Racial Conflict*, Denver: University of Denver Studies in Race and Nations, I, 2, 1969-1970. This researcher says that the explosion of identity helps ethnic self-consciousness to be sharpened worldwide. On the territorial problems but not ethnic identity in the West Europe see a well known proceedings edited by Stein Rokkan & Derek Urwin, *The Politics of Territorial Identity*, Studies in European Regionalism, London, Sage Publications, 1982; thus, regionalization is an important aspect of looking for the basics of non-ethnic identity which will not endanger wider integration; unfortunately, in Eastern Europe even regionalization can be put into service of ethnic fragmentation and in any case certain political powers favourizing secession will also estimate territorial regionalization from the point how much it contributes to the ethnic and territorial fragmentation. On fragmentation that featured Europe during the next century see J.L. Sharpe, "Fragmentation and Territoriality in the European State System", *International Political Science Review*, vol. 10, No.3, 1989, pp. 223-238. where, in addition to integration trends, it was found out that the number of states in Europe doubled over the period between 1875 and 1989, and today, after the disintegration of the three communist federations and establishment of new states the facts confirming that process are ever present. This author states (1989) that there are great potentials for further fragmentation.

³² See: Evgenij Spektorski, *Država i njen život (The State and its Activity)*, Beograd, SKZ, 1993.

of a state: "The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of that Earth they may nourish themselves and live contentedly; is, to conferre all their power and strenght upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therin to submit their Wills, every one to his Will, and their Judgements, to his Judgement. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man...(a)... For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strenght (88) conferred on him, that by terror thereof, he is inabled to forme the wills of them all, to Peace at home and mutual ayd against their enemies abroad. And in him consisteth the Essence of the Common-Wealth; which (to define it) is *One Person*...And he that carryeth this Person, is called SOVERAIGNE, and said to have *Soveraigne Power*; and every one besides, his SUBJECT"³³

Looking at the today's reality, a lot of facts make us conclude that we, in fact, encounter many elements of the authoritarian leviathan state, which, in fact, does not fulfil that role intended to such a state by Hobbes in his theory. That role is to provide peace and safety if already restricts freedoms and rights or makes them uncertain.

In spite of our consideration that it would be desirable FR of Yugoslavia to take the course of democratic decentralization and regional and local self-government, we must point to the fact that there is a group of factors which will act in the opposite direction. Primarily, today's power concepts are determined by the opinions of the state sovereignty and creation of the national state, which are more similar to the authoritarian concepts and institutional solutions from the past than with the liberal-democratic ideas and institutions. Therefore, one of the first moves of today's power by the end of 1980s and beginning of 1990s was administrative centralization and concentration of power and resources.

Then, the interests of today's rulers to maintain the power at a high price for the people makes them spend huge energies and resources for that purpose, taking no care the state to justify and identify itself even fulfilling those aims and obligations for the sake of which Hobbes thinks that it is established, which is to provide order, peace and safety from outside and inside. In such a situation, they would feel very jeopardized if they would initiate real reforms which would "melt" and loosen that established, although ineffective system of control. Then, there come numerous groups of factors that concern the real situation which abounds in a great number of dangers as well as the prevailing authoritarian political cultures. Existence of the widespread feeling of danger to the nation and state acts as an important factor in the electoral and political behaviour no matter if the perception of fear of danger was actual or not, added to which are also the rooted forms of behaviour in such situations of both the rulers and the people. The prevailing ideas are that the internal relations among the nations and the ethnic groups are very tense

³³ Thomas Hobbes, *Leviathan*, Penguin Books, 1979, pp.227-228

and, especially in Kosovo and Metohija, potentially explosive. Tens of foreign radio programmes daily speak about such danger, not only the domestic state-guided media under the control of the ruling party. Maybe those radio stations speak that much about it in order to warn, that is, prevent the worst to happen and maybe suppose that pointing to those dangers they will cause reasonable reactions that the dangers would be eliminated.

Based on certain forms of behaviour and expression of the mass psychology, viewpoints and ways of acting, it can be assumed that over an extended period of time (several decades) a conviction with the majority people was taking hold and increasingly and deeply fixed in their conscience that territorial integrity and destiny of the country and people exposed to fragmentation are jeopardized. Such a tense state of relations, emotions, conscience, worries and fear continuously increases even from the mid-1960s. It has, from an oppositionary discontent during Tito's rule, passed through the phase of national euphoria in the second half of the 1980s and beginning of the 1990s and then has somewhat dwindled to turn into a mass frustration after the destiny experienced by the Serbs in Croatia and Bosnia and Herzegovina. Frustration was in many historical situations an excellent basis for the authoritarian solutions and the authorities which will carry them out.

It could be said that fear is an excellent basis for sprouting of psychological needs to rely upon the leader, even when all the facts show that he is neither expected to fulfil the expectations nor to provide safety against the supposed danger. As for the leader choice, there are no many promising and widely acceptable alternatives. That there would be no alternative and convincing elites visible, it was already a concern of the previous and present authorities, as well as of the opposition leaders who were beaten to fragments by the mutual power struggle and turned each against other. All this maintains and strengthens the authoritarian political culture. In addition to all the rest, many democratic ideas and principles, due to the double standards they are interpreted and applied to, began to look as mere ideological schemes and constructions. That deeply thought out question of Branko Miljković, a poet, - whether freedom would be able to sing as the slaves used to sing about it - did not only imply a critical objection at the expense of actions of the communist authorities, but something like this could also be asked at the antechamber to the paradise of the new freedom described by the old phrase of some authors like the "end of history". That understood as the western democracy seemed wonderful and attractive to many until it was far from their own homes. A domestic writer of theological and law education, wrote a book in which he advocated ecumenism and joint life of people of different religions, but at the same place he writes that great powers or wealthier countries today strive, for their own interests, to smash any structures in small countries, the populations of which consider it as a threat to their freedom even existence. Thus, the reader is guided to the waters of fear, which is a suitable basis for uniformization (*Gleichschaltung*), for mass society, manipulation, establishing of discipline in the name of order and for political authoritarianism. All that has already been experienced (*déjà vu*). In such a situation, both the decentralization and regionalization and even local self-government may seem as splitting and weakening the state.

6. FROM THE HISTORY ON THE TERRITORIAL AND POLITICAL DIVISION AND FORMS OF SELF-GOVERNMENT IN SERBIA

Local self-government has not played the role intended for the internal democratization of Serbia like the local self-government and free cities have in overcoming absolutism and in the development of the so called civilian society and democracy in the Western Europe. But, self-government had an important role in the battle of Serbs to win independence with reference to the Ottoman power. The ideas for the national liberation were connected with the idea of self-government and they were partially achieved through it. Vasa Čubrilović writes how the situation of chaos and anarchy in the Ottoman Empire in the last third of the 18th century resulted in reforms of Selim III by means of which he wanted to strengthen the central power and to weaken local feudal elements (the Turkish governors as well). Therefore, he gave local self-government and that of the principality, which was of great importance for development of the society and economy of Serbia, the same as was also the importance of the participation of tens thousands of Serbs (among which was Karađorđe as well) on the Austro-Hungarian's side in the war against the Turks. Thus, they acquired military skills which proved very useful during the First Uprising, the direct causes of which were in the rebellion of the Turkish governors against the sultan and repeated deprivation of the non-Moslem subjects rights and imposition of the Turkish governors' oppression. Instructive and important was the result of the rebels' wishes concerning the autonomy.³⁴ It is well enough to look at the history of Serbs to understand what the conclusion of one of our researcher implies, who writes: "...It could be said that the principality of Serbia resulted from the persistent diplomatic battle with Sublime Porte on gaining full internal self-government".³⁵

Although Serbia was fighting for internal self-government within the Ottoman Empire, its leaders in both uprisings, princes (later kings) and the executive power as well, both that under the constitutionalists and those prior to and after that period, endeavoured to prevent decentralization and local self-government, and tried to transform the local bodies which had to exist in districts (*nahija*) to the state organs having none or very restricted circle of independent competences. Governing circles liked their power to be increased, aspiring not to report to anybody for having the power.

Political practice of Serbia (and later of Yugoslavia) over the period of two centuries featured numerous forms of territorial and political organizations in the form of villages, towns, communes, quarters, districts, district offices, captaincies, principalities, pash-doms, sanjaks, regions, counties, great sirdardoms, military districts, provinces, border

³⁴ Васа Чубриловић, *Историја политичке мисли у Србији XIX века* (Vasa Čubrilović, *The History of the Political Thought in Serbia in the 19th Century*), Beograd. Narodna knjiga, 1982, (second edition), pp 53-57.

³⁵ Мирослав Ђорђевић, *Питање самоуправе Србије, 1791-1830* (Miroslav Đorđević: *The Question of Self-Government in Serbia*). Beograd, 1972, p.11. Forty years after the so-called Turkish Constitution (1838), the Principality of Serbia gained international recognition and guarantees for independence at the Congress of Berlin in 1878. This was a characteristic and very instructive example on how over a longer period of time, in a step-by-step procedure, autonomy turned into an independent state. A well known contemporary British writer, who devoted several of his works to the relations among the ethnic units, reports that in many cases autonomy as a step on the way to an independent state is a dream of many secessionist. (Anthony D. Smith, *National Identity*, London, Penguin, 1991).

areas, županijas, protectorates, which completes not exhaust the list, because certain papers today deal with possible cantons. With certain exceptions, it could be said that almost through all the divisions the organs in the narrower territorial and political units were dependent on the central authorities, that is, were in different degrees subordinated to the appointed representatives in the persons of district chiefs and other appointed officers.

The very drawing of borders of the narrower territorial and political units was almost regularly motivated by the reasons of administrative nature. Increase in the number of levels among the lowest units of government or self-government and the central power is, as a rule, an expression of aspiration towards the multidegree administrative control and hierarchy. Democracy in this regard also means moderation: to exclude unnecessary mediators and levels, but not leaving narrower communities and units without the possibility to regularly communicate with the corresponding organs at the higher (wider) level. The need for that communication depends on the character of the local (self-) government: if the local organs perform both the affairs of the self-government and the affairs assigned to them by the wider unit power, then that communication is, naturally, more frequent and if the competence of different levels is completely separated (the Anglo-Saxon system) then the communication is less frequent (periodical).

Consequently, during the 19th century Serbia was successfully fighting the battle relative to the Turkish government at the international level for internal self-government (its gaining and expanding). That battle ended by the internationally approved independence of Serbia (and Montenegro) in 1878. As regards the internal self-government, in spite of almost permanent fight to be established, there were no great achievements. When the chiefs under Karađorđe and Miloš resisted the absolutistic power of the leader, it was then that the lower chiefs rather made every effort to preserve their autonomy than to fight for that of the people. Both prior to and after winning the independence, certain layers (at first district rebellious leaders and their followers, later peasants as well, preachers of liberal and socialist ideas imported from the West), areas, cities (like Kragujevac) and political activists of different determinations were also fighting the battle to restrict absolutism of the prince and later (under the constitutionalists) against the bureaucracy, for achieving communal and district self-government, autonomy, right to bear arms and many other rights which they, according to tradition or in the spirit of ideas from abroad, accepted and fought for. There were armed rebellions, conspiracies, mass punishment and pronouncement of capital sentences and later on protests and demonstrations.

Self-government, advocated as a political form, especially in the last third of the 19th century, was not introduced, and the forms established could not be a counterweight to the central power. It can be said that, in addition to the rural self-government, the territorial and political units organs were mainly regional organs and the units of the central power.³⁶

³⁶ When, after the Second Serbian Uprising, Miloš made an agreement with Marashli Ali-Pasha, the police and court power remained in the Turkish hands, 12 districts were established ruled by one Turkish vizier's assistant and Serbian headman each. Nahije were divided into knežinas (after 1830 knežinas were renamed into captaincies and later to districts), and the headmen of nahijas and knežinas were appointed by Miloš. Even the

village headmen under the Miloš reign were appointed by the "higher authorities" and there could be more of them at one place (in 1826, there were about 20 in Požarevac and seven to eight in villages). For the purpose of strengthening the central power Miloš introduced great sirdardoms in 1834 (the then Serbia was divided into five sirdardoms of Raška, Rasina, Timok, Danube and Mačva) and they were divided into regions. Soon the great sirdardoms were abolished and four military regions introduced. According to the so-called Turkish Constitution, that is Sultan's Hatisheriff for the "Province of Serbia" of 1838, the country was again divided into regions (17), regions into districts and these into communes and villages. As the main responsibilities of the region chiefs were those to carry out government's orders, district chiefs to defend and protect people and properties, to check passports and to supervise justices of peace. Both of them had essentially the police function, the district being hierarchically subjugated to the region and these to the interior minister. There were several regulations (Ustrojenje of 1839 and Nastavljenje) precisely stating these police duties and hierarchical subjugation. Yet, organization and authorizations of the territorial and political unit organs were not sufficiently precisely stipulated until 1866 when the Law on Organization of Communes and Communal Authorities was passed under which the structure, organs and their responsibilities were precisely stated, but everybody was deprived of any independence and was strictly subjugated to the higher power, turning into organs of the state power although officially elected and then that election approved by the state power. In short, the power was authoritarian and longed for centralism considerably imposed by the foreign politics and partly by interior circumstances and the need to put them in order for the purpose of faster economic development. The progressives requested division of the country into regions, liberals and later on radicals had local self-government in their programmes asking for it when not in power, but forgetting it when they came to power. In 1869 a constitution was passed, the first constitution passed by the Serbian government without asking the Turkish authorities and obtaining their approval. Under that constitution, provisions were provided concerning the people's assembly, 2/3 of the representative of which were elected by people and 1/3 appointed by the prince. That assembly was very much limited, but certain rights and freedoms of citizens were proclaimed, that is, promised with the possibility of being abolished "in case of pressing danger to the public safety". As for the local self-government, the people who supported it were Svetozar Marković, Adam Bogosavljević, Raša Milošević and others. In their 1881 programme, radicals asked for regional chief offices to be abolished, division to communes and districts which should be organized on the self-government principle. Raša Milošević takes enlarged districts (there were 36 districts in Serbia) as a basic unit and predicts a wide people's self-government for it (see: Раша Милошевић, "Организација среза на начелу самоуправе и изборног права" - Raša Milošević: "A District Organization on the Self-Government and the Right to Vote Principle") with great decentralization and without any state organs in the district. Marković and Milošević criticized bureaucracy conceiving self-government as the act abolishing the state organs (see: Слободан Јовановић, *Светозар Марковић, Београд, 1903* - Slobodan Jovanović: *Svetozar Marković*, Belgrade, 1903; and Complete Works, Belgrade, 1990, Volume 2). The 1888 constitution was very meager and provided a bad solution concerning the local self-government being accepted by the political parties for their own political reasons. It was regulated under the constitution that there would be regional assemblies and regional councils as the self-governing organs in the regions, but that the scope of operation of these self-governments would be stipulated under a separate law. Such a law was passed under the rule of radicals in 1890 (the Law on Regulating Communes and Districts). State (regional district chief) and self-governmental (regional and district assembly and regional council) authorities were established in the districts and regions relative to which the regional chief had the supervising power and could suspend performance of any of their decisions that would be "harmful to the general interests of the state". Presiding over a district assembly was a district chief and he listened to its proposals and requests, both the district and the commune assemblies had a very limited circle of questions they could discuss. When the 1888 Constitution was abolished by the King Alexander Obrenović in 1894, this law was abolished too. In 1898, the Law on Regional and District Assemblies was passed, but its specific was in that those were not self-governing bodies, but they were established to approve district and regional budgets out of which certain local needs were financed, and for the purpose of liberating funds of the state budget for other purposes. To what purposes can serve bicameralism, which otherwise represents an element of the power dispersion can also be demonstrated by the example of the granted constitution, which under pressure, was given by Alexander Obrenović in 1901. As a condition to grant the constitution he requested bicameralism with a senate to be introduced the two fifths of which he would appoint, being mainly motivated for this institution that, as regards the easily predictable conflicts between the two houses, the King could have a reason and basis to interfere with the operation of the legislative body. Such a granted constitution

When the Kingdom of Serbs, Croats and Slovenes was established (1918) and the Vidovadan Constitution passed (1921), it was stipulated under its Article 95 that administration should be done through "governing and self-governing organs" in counties, regions, districts and communes. In 1922 the Law on General Administration and the Law on County and District Self-Government were passed as well as a regulation having a law power under which 33 counties were stipulated (one county could have no more than 800,000 inhabitants). Stipulated under the law was that county assemblies shall be elected by a general, equal, direct and secret-ballot election with the 4-year term, the electoral right being the same as that for the people's assembly. Regions were omitted under this law, while self-government for administrative districts was not more precisely regulated. It was not until 1926 and 1927 that elections according to the Law on County and District Self-Government were held for some cities and counties, while those for the district assemblies were not held at all. Already on January 6, 1929, the assembly was dismissed, dictatorship introduced, county assemblies and county councils as well as communal administrations were dismissed and great župans were ordered to appoint commissars in their counties to run affairs of the dismissed assemblies and councils, as well as communal administrations (except in the three greatest cities where mayors and their deputies were replaced and appointed under the King's decree at the proposal of the interior minister). Further, during 1929, communal, rural and local meetings and assemblies were dismissed and their affairs transferred to the administrations appointed by the great župans.

In the same year (on October 3, 1929) the Law on the Name and Division of the Kingdom was passed. The Kingdom of Yugoslavia was divided into nine provinces which were the "highest administrative and territorial units".³⁷ Their purpose was to weaken the

with a poorly guaranteed citizens rights was also a hindrance to the King. On March 1903 the King terminated performance of the constitution, the which termination was in effect for less than an hour, the time required to the King to dismiss the assembly, deprive the senate members of their position, abolish the law on communes and bring back to effect an earlier law. Completed all these in an hour, he brought back to effect the 1901 Constitution, but legal uncertainty under the whimsical power was a permanent feature, discontent arising from internal and foreign and political as well as dynastic reasons. The May 1903 coup, carried out by the army, brought back to power the Karađorđević dynasty (King Peter I) and after discussions on the constitutional system the Assembly and the Senate made a decision the 1888 Constitution to be taken over with some amendments added to strengthen the elements of the parliamentary system of the constitutional monarchy (added was, for example, the amendment that neither the oral order of the king nor that in written can free a minister or a state officer from the liability, the sentenced minister penalty cannot be reduced by the King without the approval by the Assembly nor investigation interrupted launched against a minister) based on the principles of legitimacy and power sharing with the independent judiciary, principles otherwise taken from the current West European constitutions. But, there were considerable limitations to the right to vote (women, soldiers, electoral census, qualified representatives) as well as limitations to apply certain constitutional provisions to the newly liberated areas. (Serbia was enlarged for 12 regions after the Balkan Wars). In 1905 the Law on Communes and the Law on Organization of Regions and Districts were passed. It was again that under these laws, the organs considered self-governing, that is, regional assemblies and regional councils, district councils and district assemblies and communal councils were under the severe surveillance of the regional and district chiefs presiding over the subject bodies and having legal grounds to supervise them. Such a state remained until the First World War, that is, establishment of the Kingdom of Serbs, Croats and Slovenes (1918).

³⁷ Provinces were introduced under the Law on the Name and Division of the Kingdom of Yugoslavia as of October 3, 1929. According to that division, for example, Kragujevac belonged to the Danube Province having its seat in Novi Sad; Priština to the Vardar Province having its seat in Skoplje; Ivanjica on one side and

influence of, during the history created, regions where religious and national, although other moments as well, played a great role. That is why all the provinces, except one, were named after the rivers flowing through them. It was considered that cutting old regions and dividing some of them, resistance to establishing a unitary state will be weakened and its unity strengthen. That assumption grounds did not prove true. Under the 1931 Constitution, frequently called Granted, provinces were granted double role: they were administering units of the central power (so-called province's aspect, because the province's head was a representative of the King's power in the province) and the self-government unit (so-called province's aspect). But, there were no particular organs for the self-government of provinces, they were also under the competence of the province's head, province's council (having advisory character) and province's administration. Members of the province's council were appointed and dismissed by the interior minister upon the province's head proposal and, on the whole, administering function and unitary concept had precedence. Under the 1931 Constitution communes were stipulated as self-governing bodies. It was not until 1933 that the Law on Communes was passed and it was clear from its provisions that the intention was to create big communes with a communal council, communal administration and a president as a honorary function. There were even local electors meetings.

When, based on the Cvetković-Maček agreement of August 26, 1939, the Sava Province, having its seat in Zagreb, and Primorska Province, having its seat in Split, were united into Province of Croatia, considerable parts of the Dunav, Drina, Vrbas and Zeta Provinces were added to it, so that the Croatian ethnic community was mainly gathered in one provincial unit which, in fact, was vested the status of the autonomous province having a high-degree of legislative, administrative and court autonomy. The then negotiator on the Croatian side, HSS (Hrvatska seljačka stranka - Croatian Peasants Party), was not satisfied with the granted degree of autonomy and separation of Croatia had created an asymmetry that caused great discontent and worries among the Serbs who thought that the newly created situation required particular organization of the Serbian "entity" as well. Further development of the Kingdom of Yugoslavia was hindered by the Second World War.

In the so-called second Yugoslavia (1945-1992), first, centralization was favoured and then decentralization. In spite of under the Constitution (1946) proclaimed federal structure of the state which was introduced by the end of the Second World War, centralization within the system in which the final word was that of one political party (Communist Party, renamed in 1952 into the League of Communists) was factually forced and carried out. That party had political and ideological monopoly and control over the basic economic decisions and resources. The system was to a great extent organized according to the Soviet model. A certain time after the conflict between KPJ (Communist Party of Yugoslavia) and KPSS (Communist Party of USSR) (1948), such system was criticized, so that the development period of Yugoslavia from 1945 to the beginning of

Dubrovnik on the other side belonged to the Zeta Province having its seat in Cetinje while Užice, Čačak and Valjevo belonged to the Drina Province having its seat in Sarajevo and this Province extended to the territory of the Department of the City of Belgrade. From this, it can be seen that parts of the wider areas of Užice and Čačak fell under four provinces. It was only the Drava Province having its seat in Ljubljana that coincided with the Slovenian ethnic space.

1950s was officially estimated as the "administrative centralism period". Experiences from this first period show that the multilevel power organization, that is, introduction of more territorial and political units was motivated by the reasons of stronger administrative control and that it suits such control.³⁸ That must be taken into account when proposing regionalization, that is, territorial division of the republic (or any other community).

After 1950, decentralization course was taken and gradual development of local self-government, when a commune (the number of which was reduced and competences extended) became the basic unit of the local government and self-government.³⁹ A bit later, confederalization came to an extreme, so that the last two decades of this state passed featured by the system of decentralization of power to the member republics within which decentralization was nominally preached, although all the decisions were under the control of the republics and provinces party leaders. Then, many authors estimated that decentralization was purposely favoured as a means of atomization and fragmentation of the society for its easier control - according to the principle of pitting some groups against another inside all micro communities with the purpose "divide and rule".⁴⁰

Analyzing experiences and causes of different results of the Yugoslav, Soviet and Czechoslovakian federalism disintegration, Valerie Bunce points out that the federal structure was the most important cause which lead to disintegration, because it was the one-party federalism within the socialist context that caused proto-nations and proto-states to be established. Disintegration took place "because the political and administrative structure of these federal states was based on the units which were determined in the ethno-territorial categories".⁴¹ Doubtlessly, both the system built-in defects and the confederate characteristics in the form they were established and how they functioned, in addition to other causes, have considerably facilitated falling apart, that is, disintegration as a result.

Experiences with the centralization and decentralization in the former states of

³⁸ Based on the 1946 Constitution a General Law on the People's Councils was passed (May 25, 1946), the which councils, as the state power organs, were established in places, cities, city quarters, settlements, districts and regions and there were two areas (for Dalmatia and Istria). Within the then federal system, after the Autonomous Province of Vojvodina, Autonomous Province of Kosovo and Metohija was established in September, 1945 - both provinces as the units of the Republic of Serbia. Regions were abolished in 1947, but under the General Law on People's Councils (May 28, 1949), that is, other regulations prior to it, areas were introduced all over Yugoslavia (23 areas in total, out of which five in Serbia: Belgrade, Kragujevac, Niš, Timok and Titovo Užice). The Republic of Montenegro and both of the provinces did not have areas. The areas were abolished by the end of 1951. In view of enlarging territories and competencies and reducing the number of communes, districts were gradually abolished. First in Montenegro (1958), then in Kosovo and Metohija (1959), in Vojvodina (1965) and in 1967, under the acts of the Republics, districts all over the then Yugoslavia were abolished.

³⁹ After the 1953 constitutional law was passed, a General Law on Organization of Communes was passed, under which the communes were proclaimed as the basic socio-political units and a great number of affairs transferred to them performed earlier by the state organs.

⁴⁰ We discussed this theme (1985) in the paper "How Political and Constitutional Institutions Deal with a People of Ethnic Diversities", see also Robert A. Goldwin (ed.), *Forging Unity Out of Diversity*, Washington, American Enterprise Institute, 1989.

⁴¹ Valerie Bunce, "The Yugoslav Experience in Comparative Perspective" and Melissa Bokovoy et al., *State - Society Relations in Yugoslavia 1945-1992*, New York, St. Martin's Press, 1997, p. 354.

Yugoslavia (the first 1918-1941) and the second (1945-1992) left a legacy which makes rational approach to this problem difficult, although that experience could be a basis for certain conclusions which would be useful for further creation of the constitutional system, local self-government and regionalization. Too frequent and essentially by the administrative decisions (regardless of being covered by the law) made changes in the territorial and political division had negative consequences, which weakened the aspirations and motives of engagement in the local self-government, except when the people were most directly interested in, which usually occurred when certain arbitrary division moved them away from the centre they were accustomed to or it offered them some economic, transportation or educational advantages, while the new division threw them into some other region, so that they complained, collected signatures and requested different drawing of borders or belonging of their area to some other commune. Or in the case of occurrences such as great forgery of the local election results in 1996 which resulted in daily mass demonstrations of citizens requesting the election results to be approved and accepted. It is, then, a natural thing that interests in the local government and self-government are revived.

The 1992 Constitution of the Federative Republic of Yugoslavia (Article 5) guarantees, in keeping with the constitution of the member republic, the right to the local self-government, while the Constitution of the Republic of Serbia (Article 7) stipulates a commune as a territorial unit where the local self-government is implemented, stipulating further, under several articles (Articles 113 - 118), what the competences of the commune are, what its organs are, what is stipulated under the statute, that citizens make decisions through a referendum and their representatives as well as that for performance of its under the Constitution and law stipulated competences the commune has the right to an income stipulated under the law.⁴²

In spite of these normative provisions, competences of the commune are very restricted as well as financial resources it may dispose of. It is only one law of the Republic, passed based on the constitutional law on changes and amendments to the constitutional law on constitution performance (there are several such laws) that has transformed the so-called social property into the state's property, which practically means the most important assets which, according to the previous laws or based on the older rights, belonged to the communes.

Although the division of Serbia to communes and regions has been changed for several times since the 19th century, and although one of the political slogans of the opposition parties by the end of the 19th century was - communal and regional self-

⁴² Within the Constitution of the Republic of Serbia, the competence which, in keeping with the law, the commune holds is similar to the affairs which usually belong to the local self-government bodies: passing development programmes and city planning; stipulation and performance and development of public works; stipulation and usage of the city construction land and business space; construction and maintenance of local roads, streets and other public buildings of interest to the commune; care of meeting certain needs of citizens in the fields of culture, education, health, social protection, social care of children, physical culture, public informing, handicrafts, tourism, hotel management, environmental protection and improvement; performs the laws and other regulations and general acts of the Republic of Serbia the performance of which has been entrusted to the commune; establishes organs, organizations and services for the needs of the commune and other. See: Constitution of the Republic of Serbia (1990), Article 113.

government - the then and today's regions do not make and, being crumbled, cannot make wholes that would meet the needs of the modern economic and political regionalization.

A practice of making artificial territorial units or drawing unnatural borders among them is known as "gerrymandering".⁴³ Such practice can also be found in our past and present times. It was done with the purpose to supposedly strengthen the integrity of the state and the central power, today being done just as in the times when this neologism was coined, to influence voting results and procure better results for the government and party which decide on the territorial division and draw the borders among the territorial or electoral units. The authorities of former Yugoslavia and today's Serbia (as well as other states on the territory of former Yugoslavia, which will be omitted here) used to tailor territorial-political-administrative units bearing in mind certain state reasons or advantages for the rulers.

In today's Republic of Serbia, territorial division to electoral districts does not coincide with the territorial-administrative division to regions, and neither the first nor the latter do not meet the needs of a modern democratic society. Those divisions rather follow some administrative-state reasons. Current 29 electoral districts (1997) in the Republic of Serbia are a typical example of gerrymandering. Judging by the shape of the electoral districts and statistics on the distribution of the voters' support to certain parties, they have been tailored so as to give priority to the ruling party which has introduced them by passing laws elected by its representatives.

Another phenomenon which endangers the already restricted local self-government and evades the Constitution, law and the people's will is forgery of voting results that the local (at other levels as well) power would remain in the hands of those who had not obtained the confidence of the voters. Earlier, there were cases when opposition parties won the elections somewhere, but there were also very authoritarian actions of the authorities to cancel such elections and retain the power (as was the case in Belgrade in 1920). A great theft of votes, to put it more correctly, forgery of the final results of the local elections in Serbia in 1996 encouraged a great number of people to participate in 100-day mass demonstrations, which, along with the pressure of the European Community, brought about a rather criticized *lex specialis* and return of the stolen mandates to the opposition parties (coalition "Zajedno"), which enabled the coalition to form local governments in 14 cities in Serbia including Belgrade. This, for short, caused both the motivation of the citizens and their engagement and interests in the local self-government to be increased.

It is also important nowadays, and in no way is a technical question, how and on what bases and principles the basic territorial units of self-government, that is, communes and

⁴³ A word "gerrymandering" in the modern political and constitutional history means arbitrary and very artificial division to electoral units intended to provide victory to one side in the greatest possible number of units in an unfair way, that is, establishing electoral units in such a way to form units which, based on the previous elections, investigations or assumptions, will provide majority to one side or to break down units which are supposed that the opponent side might win in them. The expression was coined in 1812 after the name of the governor of Massachusetts (Elbridge Gerry) who, to provide victory, tailored the electoral units in such a way that they looked like *salamanders*, so that the expression was coined out of these two words which took deep roots because this practice is not a rare one. Later, the same expression was used to denote a representative elected by such manipulation.

wider units of that kind (regions, provinces) will be formed. The forms of decentralization and self-government, with the appropriate constitutional and law foundations and forms brought in harmony with the modern democratic ideas and technical and technological achievements, may acquire and play an important role in the current processes of transformation or so-called transition of the post communist societies to democratic ones.

Based on more papers, contributions and analyses intended for scientific meetings dedicated to decision-making decentralization, local self-government and role of wider regions, conclusions may be drawn that present communes and districts, in view of the territory size and in the practice narrow circle of competences, cannot successfully meet the role of the organs of the regional self-government, but with certain changes in the political relations they would perhaps be able to fulfil the role of the local self-government. Regions are, evidently, more non-central organs over which a deciding influence of the central power is exerted, while the communes are in practice deprived of the majority of affairs which in the developed countries usually fall into the scope of the local self-government. A general thing is a complaint that communal power in Serbia today practically has neither significant competences nor resources.

Regardless of the fact how the local government and self-government are organized, (double line, delegation of competencies, subsidiary principle, original competence of the communes on the basis of the Constitution, etc.), the elements of power and self-government would be interwoven at the region level more than in the commune and it is not easy to say in advance who what role and to what degree should go to.

7. REGIONALISM AND REGIONAL STATE IDEAS

It is supposed that a region is just that form which is enough wide to meet many needs that can no more be met at the local level, and which, again, from the democracy development point of view are harmful or nonexemplary and unnecessary to entrust to the power central organs. Both the space and economic reasons speak in favour of regionalization.⁴⁴ There were both earlier and in recent times more projects the starting point of which for the economic development, space planning or political organization was a region as a suitable form of the territorial and political organization. It is a unit big enough within the framework of which different forms of social life can be organized and politically can be enough strong and with a greater number of citizens-voters, so as to be a kind of counterweight to the central power without endangering territorial completeness of the state. The central authorities, according to certain characteristic of them, trends of

⁴⁴ See: M. Радовановић, "Регионализам као приступ и принцип и регионализација као поступак у функционалној организацији географског простора са неким аспектима примене на Републику Србију", Зборник радова, књ. 44-45, Географски институт САНУ, Београд, 1993/94 (M. Radovanović: "Regionalism as an Approach and Principle and Regionalization as a Procedure in the Functional Organization of the Geographic Space with Certain Aspects of Application to the Republic of Serbia, Proceedings of Works, Books 44-45, Geographic Institute of the Serbian Academy of Sciences and Arts, Belgrade, 1993/94); and др Мирослав Оцокољић (Ур.), *Географска структура и регионализација Србије*, Зборник радова, Географски институт САНУ, Посебно издање, књ. 51, Београд, 1997 (Dr. Miroslav Oćokolić (Editor), *Geographic Structure and Regionalization of Serbia*, Proceedings of Works, Geographic Institute of the Serbian Academy of Sciences and Arts, Special Edition, Book 1, Belgrade, 1997).

sprouting and expanding tend to impose their rule over as much facets of life, people and particularly resources as possible. The regional government prevents them in that.

Also, some reasons of technical and technological nature speak in favour of regionalism, especially when development of infrastructure, environmental protection, etc. are in question, as well as some other reasons that concern the multinational communities. The regions may be a particularly suitable form to organize self-government there where ethnic, linguistic and religious structure of the population requires adaptation of the state territorial organization to that structure for the purpose of its more adequate engagement in the political and cultural courses. That form was described and judged as *tertium genus* between the federalism and unitarianism. We particularly have in view that federalism has become undesirable form due to the consequences it may lead to, while unitarianism has discredited itself earlier as a form which is based on the hierarchy and suits to bureaucracy.

Considerable attention has been paid to the idea of regionalism also because great attention is being given to federalism in the European integration and in the future of the continent. Way back in 1960s conferences of scientists and experts dedicated to regionalism began to take place and nowadays there is already an entire network of institutions developed which takes care of this aspect of European integration, while several institutions and centres are dealing with the study of regionalism.⁴⁵ In a number of cases regions are taken and shaped as the way of solving some problems in the areas the population of which have compatriots in two or three countries. So, it is assumed that regionalism for Tyrol (that is, for the Italian and Austrian part, respectively) would solve many questions which have been for long the subject of dispute between Italy and Austria. In the international cooperation of FR of Yugoslavia with the neighbouring countries, Hungary and Romania, a lot is counted upon the cooperation in Banat. That, at one time, a unique region is today divided among three countries – Hungary, Romania and Yugoslavia. Yet, not only in historical but also in economical sense that region makes an entirety within which citizens of the neighbouring areas are supposed to cooperate.

An idea of the "state of regions" became particularly attractive by the end of the 1980s in the time of obvious crisis of the "ethnic federalism" and straining of problems relative to certain forms and aspirations starting from the idea of national states which were given full priority with reference to any solution that would start from regions as the basic constitutive parts of the joint state. By the end of the second Yugoslavia, the idea of regions was first of all the result of an analysis of difficulties the multinational community with the mixed population and with the problems of drawing internal borders, as was the case of Yugoslavia, encountered during the former endeavours to organize itself as a state. That analysis reports how various experienced or newly proposed forms from the unitary state, through the ethnic federalism up to the confederation do not resolve the problems this country faced with and faces now.

At that time, Miodrag Jovičić presented the basics of his regional state concept

⁴⁵ An international round table on the theme of federalism and regionalism was held in Belgrade in 1979, on which occasion the idea of regionalism was advocated as a solution providing regional autonomy (self-government) and encouraging integration on the European scale, as supported by Gita Jonescu, an English professor of Romanian origin.

(1989)⁴⁶. A bit later, Boris Vukobrat (1992) offered his project of the Yugoslav Commonwealth where regions would be the basic units.⁴⁷ Then, different political parties and coalitions (associations), especially in Vojvodina (also in several areas of the former Yugoslavia such as Istria, Macedonia, etc., not to mention here Serbian border areas in Croatia and Bosnia and Herzegovina). Finally, but not the least in importance, there are also projects of groups of scientists.⁴⁸ This concept understands and requires an analysis of foreign experiences such as that, maybe the most successful, of Switzerland with the system based on the cantonal self-government, but also the experiences with different forms. Some kind of cantonal or regional self-government is treated as an important link in the development of democracy and parliamentarianism, that is, as a form of participation of the population in the political processes and, on the other hand, as a barrier and obstacle to the dominance of the centre and a framework to resolve relations among the ethnic groups.

One of the differences between the two projects, which is, in the context of the subject

⁴⁶ Миодраг Јовичић, "Аутономне покрајине у СР Србији насупротив облицима територијалне аутономије у другим земљама", (Miodrag Jovičić, "Autonomous Provinces in S.R. Serbia as Opposed to the Forms of Territorial Autonomy in Other States"), *Opština*, No.9-10, 1986; "Југославија - регионална држава?" ("Yugoslavia - Regional State?") (1989); "Увођење регионалне државе" у *Куда идеш Србија?*, ("Introducing a Regional State" in *Where are you going, Serbia?*), Beograd, Draganić, 1995, pp.141-172; here is also a paper of indicative title "Пледаје за регионалну државу" ("A Plea for a Regional State") earlier published in *Književne novine*, October 1992; *Регионална држава*, Уставноправна студија, (*A Regional State*, Constitution and Law Study), Beograd, Vajat, 1996; *Устав регионалне државе* (*The Constitution of a Regional State*), Beograd, Vajat, 1996. The basic characteristics of this draft constitution, at least in the part concerning our theme are first of all to take into account that new territorial division would suit to natural conditions, tradition, development requirements and modern technology, etc., so that communes at the same time become smaller in territory and the number of inhabitants and closer to the citizens and meeting of their needs. Bearing in mind the above mentioned criteria, the author proposed 13 regions (out of which one would be today's Republic of Montenegro), while Kosovo and Metohija, particular attention to which is being paid in this project, would be divided into two regions those of Kosovo and Metohija. The rest of Serbia would, therefore, consist of 10 regions. The regions are conceived to have two traits: to be autonomous territorial units and communities of all citizens living on the territory of the region. In the author's opinion, a regional state would provide unity of the state but using two major democratic principles: the first principle is decentralization and autonomy of the region, the second one is introduction of democratic forms of the rule both within the state as a whole and within the regions. The people's assembly in the regional state consists of the Council of Citizens and the Council of Regions. By means of a regional system, reconstruction and strengthening of the local self-government system would be carried out, which was given considerable attention in the regional state draft constitution. Instead of the traditional and with us mechanically understood idea of separation of power, this draft advocates the idea of mutual control and in details worked out balance among various branches, that is, institutions of power. In an interesting way, which deserves great attention, the question of the position of and guarantees to national minorities and ethnic groups is resolved as well as their power and administration sharing in proportion to their number in the total population of the state as a whole and certain regions and communes. Also introduced is the institution of ombudsman (supreme and regional) who takes care of protecting human rights on the whole even the rights of the national minorities and ethnic groups. Bicameralism of the regional assemblies in the region of Kosovo and in the region of Metohija, makes an exception in the structure of the representative system, and is proposed bearing in mind multinational composition and bad former practice of multinational relations in both regions.

⁴⁷ Boris Vukobrat, *Proposals for a New Commonwealth of the Republics of ex-Yugoslavia*, Zug-Paris, 1993.

⁴⁸ As one such proposal, see a draft research project "Ustavne pretpostavke za demokratsku Srbiju" (Lidija Basta, Dragoljub Popović, Vesna Rakić-Vodinelić, Zoran Tomić, Goran Svilanović M.A.), Fribourg-Beograd, Institut za federalizam i Centar za ljudska prava, 1997.

discussed, of importance is whether communes and regions will be the only territorial and political units (as stated in the project of Jovičić) or whether, in addition to these, provinces will be included as well. The advantage of this project over the first one is that it probably assumes that the abolished provinces could cause resistance which might undermine the whole project. That is why this second project, that is, consideration of the constitutional assumptions for a democratic Serbia, introduces one more additional, third step - provinces. Because of that the project is more realistic than the previous one, but it also has a disadvantage we have mentioned at the beginning. It is that out of the proposed multilevelness (introduction of provinces as well) bureaucracy is increased and, under our conditions, probably hierarchy, and perhaps another questions would arise, too, such as whether a province as the third territorial and political unit should logically have its own supreme court. Even more important would be the question of its participation in the republic's bodies where, certainly, supporters of the system which had already existed since 1971 would come on the scene.

The power systems presented in the two projects are not far from each other in many details, particularly when the character of the function of the president of the republic and a number of good parliamentary institutions proposed are in question.⁴⁹

Institutional possibilities available must be found out based on the real facts on one hand and comparative study of experiences with the autonomies such as those enjoyed by the population of South Tyrol, Catalonia and Basques Provinces in Spain as well as old but always current ideas of the cultural autonomies with some other elements of "self-administration" or "Home Rule", that is, self-government in certain questions, and inspiration for solution must also be looked for in the literature dealing with the ideas of consocial democracy. Belonging here, naturally, are the questions of the population power sharing modality of certain territories and/or minorities in the wider communities (in certain countries like Hungary and Romania, each minority recognized under the constitution has the right to at least one representative in the parliament although in view of its number and diaspora it could not, in a normal electoral procedure, obtain none mandate), as well as certain measures calculated to vest the minorities with certain guarantees. Such guarantees, however, must be granted to the members of other minorities which live there where a certain minority makes majority in the local territory (such as is the case in Kosovo and Methohija). Some of such possible solutions under discussion have already been included in certain considerations on regionalization, regional state and on its institutions.

Those who support the civilian state principle, that is, who neglect the ethnic origin, national and religious denomination of citizens, but vest everybody with equal rights and

⁴⁹ According to the project "Ustavne pretpostavke za demokratsku Srbiju" ("Constitutional Assmptions for a Democratic Serbia", Basta et al.) the whole Serbia shall have a bicameral assembly with a senate as a second house, that is, representation of provinces and regions. The advantage of and the need for a new institution being proposed - the right to the constitutional complaint is very well explained. It is not, then, advocated that this right should be of the *actio popularis* form because such an institution has already shown great disadvantages in the case of Hungary when introduced there. It will be, surely, very useful and interesting that this research project should be brought to a close as well and that both, probably along with the others, expand the basis for an expert and scientific consideration of ideological and institutional solutions for a good constitution of a multinational and from many aspects very composite state.

freedoms and at the same time with the same obligations in fact underline territorial aspects of the politics, which really are very important, because territory is one the three necessary conditions for the existence of a state. Within the frame of that territorial aspect⁵⁰, its role in creating a state can also be discussed, that is, building a national state and even a territorial identity. But, there where the nations had been formed prior to the states and in resistance to the states considered as foreign states, such as is the case, in addition to other spaces, both of East Europe and the Balkans, there ethnic nations look for the "ethnic space", that is, territory to establish their states. It is a part of the fragmentation process featuring the whole world even Europe.

8. IMPORTANCE OF THE RULE OF LAW AS A CONSTITUTIONAL FRAMEWORK OF THE LOCAL GOVERNMENT AND SELF-GOVERNMENT

Decentralization and self-government forms we are dealing with in this paper - local and regional self-government - can have its full sense and conditions for development only within a frame of a rational, stable, to the citizens acceptable system of the rule of law (or Rechtsstaat) which determines and guarantees competence sharing among the territorial communities, offers and guarantees human rights and precisely defines obligations which cannot be arbitrarily either increased or evaded on the basis of possessing power or by the abuse of the public authority. Wrong are the understandings and interpretations of the nature of the rule of law starting from the fact that this great principle is implemented so that everybody will perform those laws which are "in effect". It is one element only.

Another, equally important and maybe harder to achieve element is that the right should be, as he have said earlier, a rational system of norms (rules) passed under the constitutional way and which will enable everybody, to the purposes not against the law, to use available capabilities and resources, human and material. It must be a system of norms (rules) that will include certain civilizational achievements both regarding the rights and freedoms of citizens and regarding the limits and rights and obligations of the public authorities, but regarding the modern forms and techniques of the economic and legal transactions as well. And the norms (rules) which shall be of long duration, shall guarantee legal safety, certainty, recognize the rights acquired and exclude or minimize and directly or indirectly "punish" in such way that certain burdens or consequences of one's actions shall be born by those who behave on their own against the "game rules".

Within such context of the rule of law and the civilian society, rights and freedoms of citizens, freedom of press and association, restriction of any power, independent judiciary and other elements of the modern democracy - the local self-government may become a means of the society and democracy development and suitable framework of meeting some important human needs as well.

It is quite in keeping with the proclaimed goals of the democratic reforms all over the East Europe, even in Serbia and Yugoslavia, to introduce the rule of law, that is, to

⁵⁰ We have already cited in this respect a very important work: Ivo V. Duchacek, *Comparative Federalism: The Territorial Dimension of Politics*, 1970.

establish a Rechtsstaat. As far back in the late 1980s, a long-standing attitude in effect that anything expressly allowed under the law shall be considered permissible was judged as wrong. Instead, upon the wording of the abandoned paragraph, the newly proclaimed and into the constitution included, but otherwise for a long time well known, principle should be followed that it is free, i.e., allowed anything that for good reasons is not forbidden under the law. It is in conformance with all these changes to implement the idea of decentralization (in view of the exaggerated administrative centralization), deregulation (in view of the earlier exaggerated, irrational and detailed regulating) and both local and regional self-government.

Local and regional self-government should, in fact, be treated as an important form of competences sharing among the various levels of territorial and political organization, thus as a system of vertical "power sharing". It must be taken into consideration for the purpose of establishing adequate institutional solutions of mutual checks and balance among not only different organs but among different power levels. Therefore, it is necessary to try to precisely state, expand and guarantee self-government under the Republic and Federal Constitutions. It has been made narrower in practice or easily limited not only under the law, but also by the arbitrary decisions of certain organs of the executive power.

Such changes would be hard to carry out without resistance referring to the state or national reasons, for fear of further disintegration and endangering the system and territorial entirety of the state. We also know that the idea of decentralization and expanding and strengthening the elements of the local and regional self-government will not be easy to carry out, but that there will be resistance even for the fact that the power at the level of the Republic of Serbia is in the hands of a coalition of a group of parties, while the power in a series of great cities is in the hands of the opposition parties. It is, therefore, that self-governing communes, the more it would be the case if regions would be introduced, appear as the elements of resistance to the centralistic and authoritarian actions, to possible arrogation and usurpation of the organs and certain power executors in the Republic.

It is extremely important for self-government (local and regional) to be laid on the sound constitutional and legal grounds, which means not only the checks and balance of the power to be guaranteed, but also vertical dispersion of power among the local and wider territorial and political communities, as we have already stated earlier to result from the democratic theory, taking care that all these democratic changes do not endanger stability, functioning and vitality of wider communities as well as territorial entirety of the widest political community, that is, joint state.

From the history of certain constitutional projects and constitutions, we know that the constitution text may be in conformity with the latest accomplishments of the democratic thought, but only to serve to hide very harsh reality. In addition to the nominal constitution, also requested is an adequate *constitution* of the society itself. Social, economic and political and cultural pluralism as well is necessary as well as an open civilian society with the liberal political culture, respecting differences, tolerances, dialogues and compromises as a way to come to an agreement. Those are important prerequisites of the fruitful consociation as well as guarantees of human rights. Under pluralism is not understood only the multiparty system, but also pluralism of autonomous economic, cultural, political associations, enterprises, trade unions, ideological, cultural

and religious groups and beliefs, autonomous universities, free and responsible press (which means the press that is not under the one-way influence of power or one party, but which is very responsible for investigation of facts and publishing the truth). This would help the society to become truly pluralistic and the citizens relatively independent of the government in acquiring means of subsistence. Pluralism in the political sense, of course, means political opposition, political "fair play" and parliamentary rules (not only in the parliament), criticism of the government in the parliament (for which, as only one detail of the total changes, it is necessary to introduce representative interpolation) and in the press and the elections to be really the way to replace those into the hands of which the people put resolving of many mutual local and governmental problems and the destiny of the nation as well.

LOKALNA I REGIONALNA SAMOUPRAVA U DEMOKRATSKOJ TEORIJI

Prof. dr Vojislav Stanovčić

Rad ukazuje na veliku ulogu koju je u razvitku tzv. civilnog društva i demokratije imala lokalna samouprava i kakvo je njeno mesto u demokratskoj teoriji, među idejama razvijenim u reformaciji i u procesima ograničavanja i prevazilaženja političkog apsolutizma, revolucijama, ustancima za narodno oslobođenje. Pokazuje se da je smisao teorija o "podeli vlasti" bio uspostavljanje uzajamne kontrole i ravnoteže (checks and balance) između različitih grana i nivoa (lokalni, regionalni, državni). Kao što je tzv. horizontalna podela vlasti uzimana kao uslov za garantovanje sloboda i prepreka apsolutizmu, tako se i lokalna samouprava u teoriji može posmatrati kao važan element vertikalne podele vlasti, koja služi istoj svrsi. Demokratska misao je isticala značaj odosa, pa i sukoba, političkih interesa i političkih volja delova i celine. Među osnovne razlike između demokratskih i s druge strane despotskih i autoritarnih sistema, uvrstavaju se i razlike u odnosima delova i celine, uži zajednica i organa vlasti u njima prema organima vlasti širih zajednica. Za procenjivanje karaktera sistema uprave i samouprave uzimaju se priroda i obim kruga nadležnosti i njen karakter (originerna i prenesena), da li je i koliko podela nadležnosti zasnovana na ustavu, i koliko se ostvaruje samouprava tj. učešće stanovništva i drugih subjekata (korporativnog tipa) u upravljanju ili biranju upravljača. Daje se čitava skala mogućih odnosa od puke dekoncentracije ili detaširanja poslova do konfederalizma i koje mesto u toj skali oblika pripada lokalnoj i regionalnoj samoupravi, a ukazuje se na razlike između anglosaksonskog i kontinentalnog evropskog sistema. Mnogo zavisi od toga da li je osnovni princip-cilj administrativna efikasnost ili zadovoljavanje potreba stanovništva (podizanju kvaliteta svakodnevnog života). Podržavaju se ideje da je istinski demokratska vlast bitno federalna i poliarhijska po svome karakteru, što podrazumeva da svako mora imati neki krug nadležnosti utvrđeni ustavom i na principu vladavine prava, koji ne može arbitrarno menjati neka viša vlast.

Ukazuje se na velike društvene, tehnološke i političke (jačanje države) promene koje su promenile karakter i položaj lokalnih zajednica u kategorijama koje su dali veliki evropski sociolozi, kao i na istraživanja koja su se bavila utvrđivanjem karaktera odnosa i odlučivanja u lokalnim zajednicama, atomizacijom društva i manipulisanjem masovnim društvom u kojem živi usamljena gomila ljudi. Iz ovoga se izvodi zaključak u prilog manjih opština u kojima se rešavaju svakodnevna pitanja i većih jedinica regionalne samouprave.

Ključne reči: samouprava, lokalna zajednica, vladavina prava, Srbija, regionalizam