

# THE DYNAMICS OF CONSTITUTIONALISM AND LEGALITY IN TITOIST YUGOSLAVIA

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The brutal dismemberment of Yugoslavia in the early 1990s forced many scholars to question prior analyses about the integrity of the nation-state and the lasting consequences of a Yugoslav identity. Journalists covered the war extensively and saw in the inter-ethnic struggle decades of pent-up ethnic animosity and rabid nationalism. Some historians have also interpreted events as representative of age-old hatreds, while the great majority has taken a less primordialistic approach to the history of Yugoslavia in the twentieth century.<sup>1</sup> The warfare that Eric Hobsbawm describes as making the twentieth century the “age of extremes” nicely brackets any study of modern Yugoslavia. Warfare served as the uniting force between the Kingdom of Serbia with the Croats and Slovenes in 1919, and as the great divider when German military prowess destroyed Yugoslav unity in 1941. World War II subsequently served as the launching pad for Josef Broz Tito’s Partisan resistance movement. Tito emerged from World War II as the head of the most powerful military-political movement in Yugoslavia having premised his victory on the defeat of the foreign invaders and their domestic collaborators.<sup>2</sup> After the war, Tito’s system operated within a

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<sup>1</sup> For examples of primordialist-based journalism see Anatole Shub, “After Tito—Who Can Keep Together the Serbs, Croats, Slovenes, Macedonians, Bosnian Moslems, Albanians, Hungarians, and Montenegrins?” *New York Times*, January 6, 1972, SM38. “The empire [Hapsburg, to which both Croatia and parts of Serbia fell under] was undermined by the conflicts among the various ‘nations’ ... Even more bitter nationalist conflict – especially between the Croats and Serbs – swept away the interwar Yugoslav monarchy, too, in the fratricidal chaos of World War II.” Also Richard Burt, “Tito is Taken Seriously, and His Succession Even More So,” *New York Times*, October 16, 1977, 172. “Predictably, few of these groups [Serbs, Croats, Slovenes, et cetera] have a history of happy co-existence: The best known and most volatile situation exists in Croatia, where as recently as 1971 local citizens rioted in protest against ‘Serbian rule.’” For an example in scholarship, see: Raymond Duncan, and G. Paul Holman, *Ethnic Nationalism and Regional Conflict* (Oxford: Westview Press, 1994), 28. They argue that the wars of the 1990s resulted from a “combination of economic and political forces [that] intensified ancient ethnic antagonism.”

<sup>2</sup> Tito was described by the Yugoslav press as the model Yugoslav Communist and the father of the nation. See for instance: “Privrženost Titovu putu i njegovu djelu,” *Vjesnik* (Zagreb), February 24, 1987, 4. “Tito je radio i stvarao u ime vremena koje je svojim djelom obilježio, ali i u ime budućnosti svoga naroda i svih naprednih snaga svijeta.” (He took his part for the future of the state and its own people and for everything moving forward as a world force). \*All

world paradigm dominated by the United States and the Soviet Union. The tenuous international situation facing Yugoslavia during the Cold War forced the Yugoslav ruling elites to continually recognize and address their own weaknesses in both domestic and foreign politics. Elites oftentimes employed legal means as part of the wider effort to build legitimacy but this effort fell short of creating a lasting significance. By the end of the Cold War, warfare erupted once again in Yugoslavia, breaking apart Tito's federation and signaling the end of an era.

This essay strives to understand the constant adaptations within Tito's Yugoslavia by analyzing the construction and adaptation of the state vis-à-vis three constitutions from 1946, 1963, and 1974 with an eye towards seeing the role of ideology as paramount in building and maintaining the state through socialism. This analysis speaks to the question of why the study of Yugoslav constitutions is important. Why would a communist regime whose convoluted rhetoric catered to a realization of ideological ends use legal means to enforce law? I argue that Yugoslav elites attempted to use the constitutions as both a guide and as a rational foundation towards constructing a workable socialist reality.

Each successive constitution catered to a different generation and tried to solidify state power. The dynamics of change within all aspects of Yugoslav society can thus be measured in part by the language and usage of the three important constitutions of Tito's Yugoslavia. While the 1946 Constitution took for granted the common struggle of liberation, the 1963 Constitution solidified Yugoslavia's path outside of Moscow's guiding hand, and, by 1974, the constitution developed into a highly legalistic and ideological document that better sought to define the state and its relationship with the people in federal-national terms. The role of ideology fits in with Odd Arne Westad's view of the Cold War as essentially a competition between competing systems, each trying to "prove the

universal applicability” of its ideology.<sup>3</sup> Yugoslavia operated within this Cold War system and tried to forge its identity without alienating either dominant bloc—ideology was but one factor in that constant refashioning. The first part of this paper briefly outlines the broader historical changes in Yugoslav until the last constitution was enacted in 1974, while the second part takes an in-depth look at the key constitutional issues.

#### PART ONE: COMMUNIST YUGOSLAVIA: A BRIEF SKETCH

Chaos and violence marked Yugoslavia in World War II. After Axis forces crushed the Royal Yugoslav Army in April of 1941, the Germans divided the country into zones of occupation and awarded territory to neighboring countries. In Croatia, the Germans installed Ante Pavelić, the leader of the radical Ustaša Party, who then sought to create an ethnically-pure Croatian state. As a result, he killed thousands of Serbs, Roma, Jews, and others, but the situation in nearby Serbia was little better.<sup>4</sup> In Serbia, Draža Mihailović (later General and War Minister) served as head of the army of the government-in-exile and led the so-called Chetnik movement. Mihailović failed to resist the Axis forces effectively and his poor geographical position—mainly centered in the mountains of Southern Serbia and Bosnia-Herzegovina—seriously handicapped his effort to build legitimacy for himself and the exiled government.

Josip Broz Tito not only wrestled power from the Axis occupiers during World War II, but also battled hard against domestic competitors like Mihailović or Pavelić. Tito effectively took control of the Communist Party and made his struggle a war of liberation. The communists needed

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<sup>3</sup> Odd Arne Westad, *The Global Cold War: Third World Intervention and the Making of Our Times* (Cambridge: Cambridge University Press, 2006), 4.

<sup>4</sup> Information on the Pavelić regime continues to cause controversy. The amount of people murdered, remains hotly contested. Some authors argue that hundreds of thousands of Serbs were murdered, while others claim less than 100,000 perished. According to John Lampe, *Yugoslavia as History: Twice there was a Country* (Cambridge: Cambridge University Press, 1996), 204: “From this regime sprang the most savage intolerance seen anywhere in Europe during the Second World War, outside of the Nazi regime itself. Its overriding purpose was to create an ethnically pure Croatian state from which Serbs, Jews, and Gypsies would be permanently cleansed.”

to do far more than beat the Germans and domestic enemies; they needed to win enough support to form a coherent and effective state with popular roots. To accomplish these goals, the Partisan forces staunchly resisted the German occupiers despite stiff reprisals. The Partisans also benefited from fighting the Chetniks and Ustaša, since they both represented controversial and unpopular goals without a pan-Yugoslav perspective. Later, after the Partisans secured victory and Tito ruled Yugoslavia, the new Yugoslav People's Army (JNA) described the Chetniks as possessing a “quisling character” with soldiers of “poor quality, eager for plunder and lacking in ideological convictions;” and, furthermore, the JNA contended that because of “its [Chetnik] archaic forms o[f] organization and unqualified officers, it could not serve as the army of counter-revolution.”<sup>5</sup> The brutal nature of the Ustaša regime also fed communist propaganda, and the struggle for a communist victory was made even easier.

Once Tito secured power in 1945, he firmly established communism in the new Yugoslav state. Communist Yugoslavia at first benefited from a close relationship with the Soviet Union but soon tensions between the two capitals increased. The key problems facing Tito following the end of World War II included his involvement in the Greek Civil War and the struggle with Italy over control of Trieste. In neither case did Tito act in accordance with Stalin’s views and eventually Tito backed down in both cases and pursued other ways of securing legitimacy.<sup>6</sup> In 1948, Yugoslavia faced catastrophic difficulties when the Soviet Union ejected Yugoslavia from the Cominform (Communist Information Bureau) and thus isolated Tito’s government from the communist world. Intellectual bankruptcy in the face of Soviet accusations led Tito to embark on a course of national

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<sup>5</sup> Vitomir Grbac, “Collected Documents and Data on the Liberation War of the Yugoslav Peoples,” *Vojnoistorijski glasnik*, 1:3 (1969): 216.

<sup>6</sup> Tito focused at this time and into the early 1950s on dealing with domestic enemies. An estimated 280,000 Yugoslavs fled Tito’s communist regime in 1945 into Austria, including many Chetnik and other anticommunist fighters. The British forces in control of Austria repatriated these Yugoslavs, which resulted in their wholesale slaughter or imprisonment by Tito’s army. For more, see: Zika Prvulovich, *Serbia Between the Swastika and the Red Star* (Birmingham: Lazarica Press, 1986), 2. While this source is undoubtedly flawed, the fact remains that such things went on and Tito’s regime did violate human rights in order to achieve power after World War II. More balance is found in Ivo Banac, *With Stalin Against Tito: Cominformist Splits in Yugoslav Communism* (Ithaca, NY: Cornell University Press, 1988).

communism, after declaring that “no one has the right to love his country less than the Soviet Union.”<sup>7</sup> As a result, Yugoslav elites needed to reevaluate their policies and the ideological framework towards building socialism. After significantly altering the Soviet-inspired 1946 Constitution, elites turned towards the maintenance of their power. To that end, Yugoslav leaders were not only concerned with their domestic popularity, but also seriously contemplated how to create a true Marxist state.

In crafting a Marxist state, the chief Yugoslav ideologues turned towards a policy of self-management that stressed the nature of a decentralized administration of industry, agriculture, and government. At first, self-management spoke to merely the working class, but the concept expanded to include virtually every sector of society with the exception of the armed forces.<sup>8</sup> Miljenko Živković, a Yugoslav military thinker, reckoned self-management to be the answer to questions of divisions throughout society. Because “self-management and self-directing societal relations form the basis of the unity of the classes, political and national interests, as well as all nations and nationalities,” Yugoslav leaders confidently boasted of their success in uniting the citizenry and building Marxism.<sup>9</sup> While the Tito-Stalin split of 1948 emphasized their proper path towards Marxism, the Yugoslav leaders also worked hard at stemming inter-ethnic tensions within the country and attempted to create a legitimate Yugoslav identity.

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<sup>7</sup> Criticisms by Moscow reached epic proportions, labeling Tito a “fascist stooge” and the LCY as a “Trotskyite organization.” See: Vladimir Dedijer, *Tito Speaks: His Self Portrait and Struggle with Stalin* (London: Weidenfeld and Nicolson, 1954). Tito quoted by Dedijer, 353.

<sup>8</sup> The JNA was cited time and again by Yugoslavs as being the only Yugoslav institution that was not self-managed. Many Yugoslav elites claimed that a military could not function under self-management due to inherent hierarchy issues prevalent in any army. Yet it is interesting to note that one of the justifications for the creation and strengthening of the Territorial Defense Forces (TDF) was the self-management system based on self-directing principles. Namely, the TDF (operating on an equal level with the JNA) allowed Yugoslav citizens to participate in the defense of the country but in an organization that was inherently opposed to self-management. For examples of this consult Colonel-General Viktor Bubanj in *Teritorijalna odbrana* (Beograd: Vojnoizdavački zavod, 1970), 7; Miljenko Živković, *Teritorijalna obrana Jugoslavije* (Beograd: Vojnoizdavački zavod, 1985), 180.

<sup>9</sup> Miljenko Živković, *Teritorijalna obrana Jugoslavije* (Beograd: Vojnoizdavački zavod, 1985), 61. “Samoupravljanje i samoupravni društveni odnosi utemeljuju jedinstvo klasnih, političkih i nacionalnih interesa svih naroda i narodnosti.”

The nature of the national question remains vital in understanding Yugoslav state-building. The first Yugoslavia was created in 1919 under Serbian hegemony—Serbian king, army, and civil-bureaucratic institutions—which ignored the other nationalities in a centralist state.<sup>10</sup> The other ethnic groups within the new Yugoslav state—Slovenes, Croats, Bosnian-Muslims, Macedonians, and Albanians—had no recent history of independence and thus no sovereign state institutions upon which to fall back. Struggles between competing notions of what a “Yugoslavia” should look like prompted many politicians to escape into parochial politics, and even the Communist Party—first established in the early 1920s—fell victim to differing national views.<sup>11</sup> The interwar period was a very difficult time for the Communist Party in Yugoslavia and only during the war did Tito make substantive efforts to create a new federal state representing all groups.<sup>12</sup> While prior to the war the

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<sup>10</sup> Refer to the *Program Saveza Komunističke Jugoslavije: Usvojen na sedmom kongresu saveza komunističke Jugoslavije* (Beograd: Komunist, 1962), 144. “Nerešeno nacionalno pitanje bilo je jedna od osnovnih suprotnosti koje se razdirale društveno-politički život buržoaske Jugoslavije.” (The unsettled national question was one of the elements from the opposition which tormented our social-political life in bourgeois Yugoslavia).

<sup>11</sup> See: Pedro Ramet, *Nationalism and Federalism in Yugoslavia, 1963-1983* (Bloomington: University of Indiana Press, 1984), 48-58. Ramet notes 6 phases in the development of the Communist Party in Yugoslavia regarding the nationalities question, with the last two being pertinent to this study. Those two phases are understood as “(5) 1943-64, formal federalism, characterized by the disjunction of republics and nationalities and the concept of “Yugoslavism”; and (6) 1964 to the present, abandonment of Yugoslavism and the emergence of genuine federalism, expressed by the equation of republics and nationalities and, thus, of interrepublican and interethnic relations.” Ramet further concedes that a seventh phase might be argued beginning in 1974 “with the passage of the new constitution and the introduction of the principle of collective leadership. Certainly, the post-1974 period has seen a renewed emphasis on what is called the ‘Yugoslav socialist patriotism’ as well as a conscious restructuring of decision making ... in effect creating a concert system in Yugoslavia” (48).

<sup>12</sup> There was a difference in how people in Yugoslavia were categorized and thus to what extent they enjoyed certain rights. For example, as early as the 1946 constitution national minorities were allowed to “enjoy the right to and protection of their own cultural development and the free use of their own language.” From part one, chapter three, article thirteen, *Constitution of the Federal Peoples Republic of Yugoslavia* (Washington, DC: Embassy of the Federal People’s Republic of Yugoslavia, 1946), 8. Kosovo was granted in the 1946 Constitution the status of an autonomous region due chiefly to its ethnic composition as having a large Albanian population. As time passed, the Albanian population increased while the Serbian population decreased. Thus, the 1974 constitution saw the increase in status for Kosovo from autonomous region to autonomous province like Vojvodina. The wording of the personal protection afforded to citizens in the provinces was equal with that of citizens in the republics. See: Articles Three, Four, and Five, *Ustav Socijalističke Federativne Republike Jugoslavije* (Zagreb: Narodne Novine, 1975), 23-24. “Socijalistička Republika je država utemeljena na suverenosti naroda i na vlasti i samoupravljanju radničke klase i svih radnih ljudi te socijalistička samoupravna demokratska zajednica radnih ljudi i građana i ravnopravnih naroda i narodnosti.” (The Socialist Republics are states based on the sovereignty of the people and the power of the self-management by the working class and all working people, and are socialist, self-managing democratic communities of the working people and citizens, and of nations and nationalities having equal rights. This classification of nations and nationalities tried to address the multiculturalism present in Yugoslavia). Officially, as stated in the constitution, all people were free and equal.

party suffered from state persecution it also suffered from the breakdown of the international communist leadership following the Nazi-Soviet Pact. World War II led to a thorough reorganization of the party and opened up an avenue of achieving power. The competing views of Yugoslav communists subsided with the war, transcending issues of nationality and striving towards a united front against fascism.

The primary problem for Yugoslav communists once they assumed power rested on how their system would best be administered in a multiethnic state or if the ethnic units should separate and follow communism on their own.<sup>13</sup> The terminology of ethnic classification changed to fit the new outlook of Tito's state. There existed what was called "nations," such as Croats, Macedonians, and Serbs, and "nationalities," such as Albanians and Hungarians. Nationalities in this new sense reflected minorities within Yugoslavia who possessed a titular state outside of Yugoslavia. Most nationalities numbered in the mere thousands without any potential to impact federal politics but Albanians existed as an exception. As the largest non-Slavic group, Albanians saw themselves disenfranchised in Yugoslavia partly because of an official hostility between leaders in Belgrade and Tirana.<sup>14</sup> The meetings that Tito's Partisans held during the war to devise a post-war state system took into account these complex national questions and tried to strike a deal amenable to all. Elites capitalized on these efforts with each new constitution and displayed how thinking could change to face issues such as republican borders, parity among the ethnicities, and the equality of language.

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Eventually, it would be conceivable to imagine that even a primarily Albanian Kosovo would have been granted republic status had Yugoslavia endured and had the nature of the political system been more inclusive.

<sup>13</sup> This problem also plagued communists all over Europe. There was a sharp cleavage between the views of Lenin and Austrian Marxists for example, who saw the answer as federalism. The Soviet Union later developed a solution vis-à-vis Stalin in his 1913 article entitled *Marxism and the National Question (Prosveshcheniye)*. In it, Stalin advocated the right of nations to self-determination and the right of nationalities in a plural-national community to regional autonomy. See Frits Hondius, *The Yugoslav Community of Nations* (The Hague: Mouton, 1968), 119-120.

<sup>14</sup> The changes in the classification of ethnic labels have led some scholars to believe that the consistent refusal by Tito and others to acknowledge minorities laid the basis for the future secessionist claims in the early 1990s. See: Sabrina P. Ramet, "Introduction: the roots of discord and the language of war," in Ramet and Ljubiša Adamovich, eds., *Beyond Yugoslavia: Politics, Economics, and Culture in a Shattered Community* (Boulder: Westview Press, 1995), 5-6.

The regime even created a “Yugoslav” supranationality in the 1960s which could be chosen as a replacement for the traditional labels of ethnicity.

The regime reinforced the concept of a “Yugoslav” identity because elites imagined it as a vehicle to foster cooperation and help combat any antagonisms between ethnic groups. The success of this movement varied over time, having reached its zenith with the 1981 census when over 1.2 million people self-identified as “Yugoslav.”<sup>15</sup> But this idea failed to garner lasting significance in part because many people in Yugoslavia saw it as a potential disruptive force in inter-ethnic affairs. Vlado Beznik, secretary of the Republican Conference of the Socialist Alliance of Working People (SAWP) of Slovenia argued that, “Yugoslavism as a nationality is not only inappropriate but implies also the existence of some sort of supnation;” in contrast, he suggested that overcoming problems between nationalities could be solved only by the “drawing together and binding together of all the national collectivities that live in our community.”<sup>16</sup> In the end, most people continued to identify themselves using traditional markers.

As of 1971, Yugoslav elites revised the classification system again to include Muslims as an option. Prior to that time, Muslims (primarily in Bosnia-Herzegovina) had to choose another ethnic label, such as Serb, Croat, or Yugoslav. Non-Serbs were increasingly concerned by the fact that Muslims overwhelmingly chose to label themselves as Serbs.<sup>17</sup> This phenomenon helped drive Yugoslav leaders to officially recognize various identities and lessen the consequences of problematic issues like ethnic inequality. Ethnicity or nationhood was important for communists

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<sup>15</sup> See: Ramet, 57. 237,077 people identified themselves as Yugoslavs in the 1971 census, a fourteen percent increase over 1961. Ten years later the figure would increase to 1,216,463.

<sup>16</sup> Vlado Beznik in Ramet, 57.

<sup>17</sup> See: Audrey Budding, “Serbian Nationalism in the Twentieth Century: Historical Background and Context,” (29 May 2002) [http://hague.bard.edu/icty\\_info.html](http://hague.bard.edu/icty_info.html) (accessed October, 26 2004): 82. Figures are taken here for example as 61.5% identifying themselves as Serbs according to the 1956 Yugoslav *Who's Who*.

even before they took control in Yugoslavia but it was Tito who tried to realize the inclusive communist message and find a solution to the national problem through constitutional guarantees.<sup>18</sup>

Despite these attempts, national tensions erupted in 1971 in response to many issues that simmered since the establishment of Titoist Yugoslavia. Large-scale protests vocalized dissatisfactions that had emerged since the ousting of intelligence chief and Vice-President Aleksandar Ranković in 1966. Ranković's removal opened up the possibility of reforms because questions arose regarding the composition of the ruling clique around Tito, but also because the intelligence services suffered by losing a degree of control over regime opponents.

The emergence of problems in 1971—encouraged by a refashioning of power at the highest levels—came to center on the controversy over Serbo-Croatian as a literary language. The Croatian cultural organization, Matica Hrvatska, published a manifesto demanding a change in the federal constitution. The Croats sought protection for their variant of Serbo-Croatian (Croato-Serbian or simply Croatian) because many literary scholars felt that they suffered under Serbian hegemony. The cultural organization's demands came in the form of a famous document entitled, "Declaration on the Name and Position of the Croatian Literary Language," which asked for an affirmation of distinctly Croatian culture.<sup>19</sup> While the ruling elites accepted some of the demands as legitimate, Tito ensured that these protests would neither challenge his authority nor threaten to disrupt the cohesion of the state. What is significant is that Matica Hrvatska asked for constitutional protection because they clearly felt that such legal statements would reinforce their position and guarantee against future problems.

Coupled with the nationalist problems in Croatia following Ranković's ouster, tensions in the Serbian province of Kosovo increased from the late 1960s. The removal of Ranković as head of

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<sup>18</sup> Frits Hondius, *The Yugoslav Community of Nations* (The Hague: Mouton, 1968), 120.

<sup>19</sup> Gojko Vučković, *Ethnic Cleavages and Conflict: The Sources of National Cohesion and Disintegration* (Brookfield: Ashgate, 1997), 117.

the secret police liberated Kosovar Albanians from an array of persecutions and harassments by his forces because no other champion of anti-Albanianism took Ranković's place. Further progress occurred in 1974, when Kosovo was elevated to autonomous provincial status, providing the Albanian elite with the hope that further elevation to republican status would come soon. The raising of Kosovo's status in 1974 to provincial status allowed for increased participation by Albanians in local government but failed to win widespread support. In the eyes of Kosovar Albanians, their region merited republic status based on the ethnic distribution that by 1990 consisted of 90 percent Albanians.<sup>20</sup>

From its inception, Yugoslavia was burdened with enormous responsibilities and problems owing to its own internal diversity; but these became more acute by the political environment created by the Cold War. Inside Yugoslavia, Tito needed to first secure and thereafter maintain the legitimacy of his regime. This meant that numerous political schemes such as self-management were used to quell the larger problems of nationalism as well as state and cultural centralism. Outside of Yugoslavia, the Cold War division of Europe between the Warsaw Pact, backed by the Soviet Union, and NATO, backed by the United States, left Yugoslavia with little flexibility in foreign policy. Forced to face difficult challenges, Yugoslavia succeeded throughout this entire period. The following section explores that success under the framework of the various Yugoslav constitutions.

## PART TWO: A LOOK AT THE CONSTITUTIONS

Constitutional rhetoric serves as a gauge for how ruling elites sought to preserve their system in Yugoslavia. The development of the three major constitutions intersects with the evolution of political thought among Yugoslav elites. The 1946 Constitution was heavily influenced by the Soviet Union, owing to the closeness of the two nation's ideologies and an assumed amiable post-war

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<sup>20</sup> See: Duncan and Holman, Jr., 27.

relationship.<sup>21</sup> Chief Yugoslav ideologue Edvard Kardelj, architect of the document (and all other constitutions and amendments), declared in 1946 that, “For us the model was the Soviet Constitution, since the Soviet federation is the most positive example of the solution of relations between peoples in the history of Mankind.”<sup>22</sup> The reverence paid to the Soviets by Yugoslav elites was not uncommon prior to the Tito-Stalin split. As the only successful communist state prior to end of World War II, the Soviet Union had a god-like status among communists in Yugoslavia and elsewhere.

Like its Soviet example, the 1946 Constitution is divided between two main sections: the first is titled *Fundamental Principles*, while the other addresses the institutions of the state. Article One states:

The Federal Peoples Republic of Yugoslavia is a federal people’s state, republican in form, a community of peoples equal in rights who, on the basis of the right to self-determination, including the right of separation, have expressed their will to live together in a federative state<sup>23</sup>

The federal units were proclaimed to include: The People’s Republic (PR) of Serbia; PR of Croatia; PR of Montenegro; PR of Macedonia; PR of Slovenia; PR of Bosnia and Hercegovina; and, within the PR of Serbia, the Autonomous Province of Vojvodina and the Autonomous Region of Kosovo-Metohija.

The importance of this first article stems from its technical ambiguity that later perplexed many scholars both in- and outside of Yugoslavia. The idea that certain *peoples* came together and jointly desired to form a federation is nowhere clear since the broader concept of *people* itself was

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<sup>21</sup> See: for example, Nebojša Popov, *Srpska strana rata: trauma i katarza u istorijskom pamćenju* (Građanska Čitaonica, Beograd: 1996), 447. “Posle Ustava iz 1946, koji je zajedno s (kasnije nepromenjenim) grbom, bio samo neinventivna kopija ‘velikog’ Staljinovog sovjetskog Ustava iz 1936, na nov “samoupravljački” način prihvaćeni su novi ustavi 1953, 1963 i 1974. Oni su znatno izmenjeni 1967, 1968, 1971, 1981. i 1988 godine.” (After the 1946 Constitution, which together with the (later unchangeable) coat of arms, was an uninventive copy of the ‘big’ Soviet Constitution from 1936 by Stalin, while in the new constitutions of 1953, 1963, and 1974 the concept of self-management was added. These constitutions were all amended in 1967, 1968, 1971, 1981, and 1988).

<sup>22</sup> Kardelj in Honduis, 137.

<sup>23</sup> Article One, *Constitution of the Federal Peoples Republic of Yugoslavia* (Washington, DC: Embassy of the Federal People’s Republic of Yugoslavia, 1946): 5.

vague. Was this idea of the *people* merely the still tiny working class, as some supposed, or did it represent the inhabitants of the particular republics? Furthermore, Yugoslav elites scrutinized the issue of separation but they declared secession impossible. The constitution's architects incorporated the idea of separation in recognition of the eventual withering away of the state—they envisioned that secession would serve as the symbolic precursor to the communist paradise of stateless order. The issue of how to break apart would become important later since it was unclear who actually had volunteered to come together.<sup>24</sup>

After 1948, when the Soviet Union and Yugoslavia split, Tito sought a communist system without Soviet interference. It took some time before the Yugoslavs could operate as independent Marxists as seen by the slow transition in removing the cult of Stalin from Tito's message. As late as October 1948, at the Fourth Congress of the Communist Party of Yugoslavia, Tito still declared that Yugoslavs were worthy to carry on the great ideas of "Marx, Engels, Lenin, and Stalin."<sup>25</sup> With time, Tito succeeded in distancing himself from the Soviet leader and by the early 1950s changes to the Soviet-inspired constitution took place. The Constitutional Law of 1953 sought to redefine Yugoslavia as a communist state more in line with what Yugoslav elites regarded as *true* Marxism. However, by the end of the 1950s it was clear that the 1946 Constitution, in service but much amended by the laws of 1953, needed complete refashioning.

The development of a new constitution reflected many critiques both against the Soviet system and Soviet critiques of Yugoslavia. The Soviet Union lashed out against Tito's state as representative of rampant nationalism alongside a lack of democracy in the Communist Party.

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<sup>24</sup> For the sake of comparison with the 1936 Soviet Constitution, see: Aryeh L. Unger, *Constitutional Development in the USSR* (New York: Pica Press, 1982), 140-158. The relevant articles are thirteen and twenty-two through twenty-nine.

<sup>25</sup> *Četvrti Kongres SKOJ-a*, 12-14 Oktobra, 1948 (Beograd, 1948): 9. "Орденом Народног хероја својим дјелима у редовима народне омладине потврди још једанпут да је достојна великог повјерења наших народа, да је достојна и даље носити идеје Марска, Енгелса, Лењина и Стаљина."

Soviet criticisms included describing the Yugoslav police and bureaucracy as arbitrary.<sup>26</sup> Shocked, the Yugoslavs responded by remarking in numerous essays, speeches, and party conferences that the Soviet system was based on bureaucratic centralism. It was argued that the Soviet bureaucracy was a creature unto itself, making the eventual withering away of the state impossible. Stalin had corrupted the Soviet Union and perpetuated rather than weakened the interests of the state. Tito attacked the nature of the Soviet bureaucracy, the secret police (NKVD, later KGB), and the militia which had no resemblance to “state machinery which is withering away.”<sup>27</sup> Kardelj went on to emphasize that a great cleavage existed between Soviet rhetoric and reality. This emphasis pointed out the lack of democracy and the huge bureaucratic regime run from the Kremlin.<sup>28</sup> The Yugoslav elites saw this kind of Soviet system as a form of despotism which suppressed and exploited the people.

Because the initial Yugoslav constitution and state apparatuses mirrored the Soviet example, the criticisms raised by Yugoslav elites such as Kardelj forced them to refashion their own system. Kardelj asserted in 1953 that the Yugoslav Federation had become, “above all a bearer of the social functions of a unified socialist community of the Yugoslav working people.”<sup>29</sup> The assertion of the rights of the working people was deliberate since they were regarded as the backbone of Yugoslavia and the ones who would now take the initiative and work towards communism.

The role of the workers took on a special significance with the implementation of the concept of socialist self-management. In short, self-management triggered the federal state into undertaking significant decentralization. Prior to these reforms, the state was highly centralized and ruled in strict accordance with the Communist Party. All this changed after the split with the Soviet

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<sup>26</sup> See: Pierre Maurer, *The Tito-Stalin Split in Historical Perspective* (Bradford: Postgraduate School of Yugoslav Studies, University of Bradford, 1987), 15.

<sup>27</sup> Tito in Ivo Lapenna, *State and Law: Soviet and Yugoslav Theory* (New Haven: Yale University Press, 1964), 43.

<sup>28</sup> *Ibid.*, 42.

<sup>29</sup> Kardelj in Hondius, 194.

Union because self-management became a means towards distinctive Yugoslav goals. Remaining true to traditional communist ideology, workers were seen as the backbone of life in Yugoslavia—to that end the Constitutional Law of 1953 stated in Article Two that “all power belonged to the working people, who exercised their power either directly (social self-management) or indirectly, through representative organs.”<sup>30</sup> Workers and not the state owned the means of production in Yugoslavia and this difference meant that in order to maintain the logic of devolving authority to local levels, the state apparatuses must also keep pace. But before that change could take place, further developments regarding self-management needed reinforcing.

The decade following the enactment of the 1953 Constitutional Laws displayed to Yugoslav elites that a more thoroughgoing reform platform needed implementation. The resulting constitution in 1963 sought to clarify many of the issues raised during the prior decade and address some of the changing paradigms. The major issue that was clarified in the 1963 Constitution was again self-management. The basics of self-management laid out in 1953 meant that people would work to satisfy both the personal and common needs. The definition of the people was important since the constitution was written to acknowledge them as the cornerstone to the country’s success. The introduction to the 1963 Constitution noted the following:

The peoples of Yugoslavia, on the basis of the right of every people to self-determination, including the right to secession, upon the basis of their common struggle and their will freely declared in the People’s Liberation War and Socialist Revolution, and in accord with their historical aspirations, aware that the further consolidation of their brotherhood and unity is to their common interest, have united in a federal republic of free and equal peoples and nationalities and have founded a socialist federalist community of working people, the Social Federal Republic of Yugoslavia, in which, in the interests of each people and of all of them together, they are achieving and developing<sup>31</sup>

These “peoples” were defined in Article One: “The Socialist Federal Republic of Yugoslavia is a federal state of voluntarily united and equal peoples and a socialist democratic community based on

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<sup>30</sup> Ibid., 196.

<sup>31</sup> *Constitution of the Socialist Federal Republic of Yugoslavia*, (Beograd, 1963): 3-4.

the powers of the working people and on self-government.”<sup>32</sup> Here self-management took center stage alongside the recognition of worker’s predominance in Yugoslavia. Self-management supposedly gave each Yugoslav citizen a stake in the regime and served to boost the popularity of the regime in the wake of ideological contradictions following the split with Stalin. The workers became the *de facto* center point of Yugoslav politics and represented the ideal Yugoslav identity. The ethnic issue is ignored in this article and the ambiguities are apparent with the leveling of *peoples* in the ethnic sense with “community of working people” in a broader sense. According to the constitution, the working people commanded greater authority and transcended ethnic boundaries to help build the nation. In contrast to the Soviet Union, which reserved party membership for only an elite vanguard, the Yugoslavs felt that in making the party more in touch with the workers (i.e., people), internal issues, like the question of nationality would become marginalized.<sup>33</sup>

While self-management commanded primary importance in 1963, the continued decentralization of the state forced further revision. The host of amendments that sprang forth in the later 1960s and early 1970s brought about the desire by the regime to refashion the functioning of the state. In 1971, deliberations began about writing a new constitution which further stressed issues of governance. Furthermore, this last constitution served to establish what a post-Tito Yugoslavia would look like. Based on Tito’s conceptions of community, the Yugoslav Constitution of 1974 evolved into a system where socialism and social progress were inseparable from equality and freedom. The kind of state needed to govern that community was seen as a “multinational,

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<sup>32</sup> Ibid.: 12.

<sup>33</sup> The text of exactly what constituted self-management is important in understanding this concept. This definition is placed as Article Nine of the 1963 Constitution. See: Ibid.: 13-14. “Self-management in the working organization shall include in particular the right and duty of the working people .... In attaining self-government, the working people in the social-political communities shall decide on the course of economic and social development, on the distribution of the social product, and on the matters of common concern .... Any act violating the right to self-management of the working people is unconstitutional.”

equal, self-managing, and cooperative federalism.”<sup>34</sup> This constitution of 1974 was very important since for some historians it foreshadowed the dissolution of the federation.<sup>35</sup> What is important is to recognize that each constitution adapted to a different way of thinking as time progressed and served to continue the legitimate state-building of the Tito regime.<sup>36</sup> The Yugoslav experiment never seemed complete, and while this flexibility might have hampered its overall survivability, no indications point definitively at that playing the key role in the country’s breakup in the 1990s.

When deliberations for the new 1974 Constitution occurred, many Yugoslavs emphasized the continued development of their government.<sup>37</sup> The 1974 Constitution sought significant change in the areas of socio-economic relations and the system of self-management, the communal and assembly systems, the functions of the federation, the participation and direct responsibility of the republics and autonomous provinces in the exercise of federal functions, and with respect to the judiciary and constitutional courts.<sup>38</sup> This constitution sought to clearly outline the realities of self-

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<sup>34</sup> Jovan Đorđević, in *Constitution Makers on Constitution Making: The Experience of Eight Nations*, eds. Robert A. Goldwin, and Art Kaufman, (Washington, DC: American Enterprise Institute for Public Policy Research, 1983), 204.

<sup>35</sup> See: Robert Hayden, *The Beginning of the End of Federal Yugoslavia*, 3-4. Here Hayden says that the “Slovenian amendment crisis” of 1989 [w]as the critical step in the disintegration of federal Yugoslavia” (3). Basing this failure on the 1974 Constitution, Hayden declares, “While the Yugoslav Constitution of 1974 was certainly unique, the issues of federal structure raised by the failure of this constitutional order are general” (4). Also see Robert Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (Ann Arbor: University of Michigan Press, 1999).

<sup>36</sup> The theory behind this is that communist-led regimes introduced constitutions not as empty rhetoric, but rather as a better way to get at the relationship between society and the withering away of the state. Yugoslavia seems to be no exception and in many ways needed to appeal to society more since it came to power via a legitimate revolution and not through a Soviet-inspired regime change. Yugoslavia then had to remain popular and to do so, the government responded to society and adapted. See also: Valerie Bunce, in *State-Society Relations in Yugoslavia, 1945-1992*, eds. Melissa K. Bokovoy, Jill A. Irvine, and Carol S. Lilly (New York: St. Martin’s Press, 1997), 347. Here Bunce argues that that such popular support explains one reason why Yugoslavia died in the violent manner that it did. While it is logical to assume that popular support would afford the regime freedom of movement, just the opposite was true because the state had to cater to its relatively politicized populace for fear of constantly losing support and creating mini-Titos—republican leaders who could wield local support and affect change. The need to not only maintain a popular regime, but a popular federal government was the utmost priority of the Yugoslav elites.

<sup>37</sup> For examples see: Stipe Šušteršič in Othmar Haberl, *Parteiorganisation und die Nationale Frage in Jugoslawien* (Berlin: Osteuropa-Institut, 1976), 145. “Wenn wir den Fonds unserer Erkenntnisse ... betrachten, müssen wir zum Schluss kommen, dass auch das 1958 verabschiedete Programm des Bundes der Kommunisten Jugoslawiens veraltet ist. Unsere kommunistische Bewegung wird daher möglichst bald ein neues Programm verabschieden müssen, um die Konzeption eines Selbstverwaltungssozialismus bis zum Ende zu entwickeln.” (If we possess the appropriate knowledge ... to look at, we must in the end come, that also in 1958 we said farewell to the program of the League of Communists of Yugoslavia. Our communist movement will as soon as possible adopt a new program in the spirit of a self-managing socialism until the end of development).

<sup>38</sup> *The Constitution of the Socialist Federal Republic of Yugoslavia*, (Ljubljana: Dopolna Delavska Univerza, 1974): 8.

management including the importance of “abolish[ing] of any kind of monopoly—either private-capitalist or state—of the means of production.”<sup>39</sup> Like the prior constitution which solidified the role of the worker, the 1974 Constitution claimed outright that, “the socialist social system of the Socialist Federal Republic of Yugoslavia is based on the power of the working class and all working people and on relations among people as free and equal producers and creators whose labour serves exclusively for the satisfaction of their personal and common needs.”<sup>40</sup> The League of Communists was recognized as the prime mover through its guiding ideological and political action in order to safeguard and further develop the socialist revolution and its results.<sup>41</sup> Regarding one aspect of the national question, the 1974 Constitution was clear in Article 170, which stated that any form of national injustice or incitement of hatred was unconstitutional and punishable by law.<sup>42</sup>

The 1974 Constitution also clarified some of the issues regarding the entities comprising Yugoslavia. With Kosovo’s status raised to that of autonomous province status the federation seemed complete and catered to not only the dominant nations but also the biggest nationality groups. Each republic guaranteed its minorities—Serbs in Croatia for instance—the same rights that they would enjoy in their “home” republic. The extension of this to also include Kosovo—on the one hand helping to protect the province’s Serbian minority, while on the other, giving a voice to the Albanian majority at the federal level—was a major step that worked towards improving Titoist Yugoslavia. This coincided with the movement of state power away from the center to elites on the local and republican levels.

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<sup>39</sup> Mijalko Todorović in *The Constitution of the Socialist Federal Republic of Yugoslavia*, (1974): 14.

<sup>40</sup> *The Constitution of the Socialist Federal Republic of Yugoslavia*, (1974): 55.

<sup>41</sup> *Ibid.*, 73.

<sup>42</sup> *Ibid.*, 176-77. “Citizens shall be guaranteed the right to opt for a nation or nationality and to express their national culture, and also the right to the free use of their language and alphabet. No citizen shall be obliged to state to which nation or nationality he belongs, nor to opt for any one of the nations or nationalities. Propagating or practicing national inequality, and any incitement of national, racial or religious hatred and intolerance shall be unconstitutional and punishable.”

The last important issue raised by the 1974 Constitution was the incorporation of a rotating presidency. While Tito ruled as president for life, the 1970s brought about the realization of a post-Tito Yugoslavia scenario. The 1974 Constitution declared that the rotating presidency would include eight members who would rotate and share power. Within this framework, issues affecting the federation required consensus among all members. The most contentious issue that appeared later was the consensus on secession from the federation and the subsequent hijacking of the federal presidency by Serbian (republic) President Slobodan Milošević. In summary, this constitution served as the final opportunity under Tito's guiding hand to clarify the state and its communist goals for society.

The Yugoslav case is unique among the communist regimes of the time because a clear movement toward legality and rights built upon the constitutional rhetoric in place rather than ignored it. The break with the Soviet Union triggered the Yugoslav creation of a *Rechtsstaat*, with public law as the basis for the socialist commonwealth. This broke with the Soviet and Soviet-dominated states which sought roughly a long continuance of a dictatorship of the proletariat, administrative rule by the party and its apparatus, and the temporary maintenance of a strong state system.<sup>43</sup> As a so-called liberal communist state, Yugoslavia enacted many changes that freed the judiciary, made the party's role more in tune with ideological training, and succeeded in making issues of law more than just rhetoric. Because Yugoslav leaders favored an incremental approach to change, the path towards decentralization, rule of law, and self-management occurred with intricate debate and experimentation.

What sets each constitution apart in this respect is the manner in which successive constitutions sought to decentralize and increase the power of nationality-based institutions.

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<sup>43</sup> For a full treatment on this subject see: Winston M. Fisk, "A Communist Rechtsstaat? The Case of Yugoslav Constitutionalism," in Leonard Shapiro, ed., *Political Opposition in One-Party States* (New York: John Wiley & Sons, Inc., 1972), 138-159. The above notes are taken from page 139.

Looking at these constitutions shows an increase in the manner in which these issues were treated and how this progression stands out in a larger context. The method of decentralization continually tried to bring the power of the state onto the local level to affect change there. The federal government, especially after 1974, was to be the glue which kept the union together while allowing the regional units—republics, provinces, and communes respectively—to operate where they best serviced the people.<sup>44</sup> But this move was not without controversy. Dobrica Ćosić, a member of the Central Committee, argued during the 1960s that decentralization led to bureaucratic nationalism and the exaltation of the federal state above the individual Yugoslav citizen. Ćosić claimed that the developmental tendencies of nationalism were not yet resolved in the Balkans and if current trends continued,

[the national question] will remain the torment and the preoccupation of generations to come.... if the democratic forces of socialism do not win the final victory over bureaucratic and petty bourgeois forces and elements, then the Serbian people also might be inflamed by an old historic goal and national ideal – the unification of the Serbian people in a single state. No political imagination is needed to foresee the consequences of such a process<sup>45</sup>

Ćosić railed against decentralization as a method towards maintaining Yugoslav legitimacy. He felt that such efforts would only encourage regionalism and foster ethnic tensions. Ćosić was later dropped from the Central Committee in November of 1968 for his statements concerning not just decentralization, but rather his linkage of decentralization with the bogeyman of Yugoslav politics—nationalism.

Deliberate rhetoric to downplay troubles and acclaim communist accomplishments existed everywhere throughout Yugoslavia. Such was the spirit of the famous “Brotherhood and Unity” slogan Tito popularized. This can be seen also in the deliberate attempt to rein in any dominance by

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<sup>44</sup> See: Vladimir Bakarić in *Ustavna Reforma: Saopćenja sa kolokvija na pravnom fakultetu u Zagrebu* (Zagreb: Centar za aktualni politički studij, 1971), 8. Here Bakarić explains the functions of the federation and how it relates to other questions like those of economics.

<sup>45</sup> Ćosić in Budding, 35.

one group over another. Almost exclusively, Yugoslavs feared a Serbian predominance in Yugoslavia and tried to avoid such situations.<sup>46</sup> This is one of the major differences between the Soviet Union and Yugoslavia—Russians dominated the USSR and at times followed deliberate policies of Russification.<sup>47</sup> Only towards the end of Yugoslavia and after its demise did a virulent Serbian cause manifest itself, but in a very exclusivist manner. The attempt by any group to control or alter the identity of another group did not happen in the Yugoslav case and the constitutions all guaranteed such a case. Serbs were not mentioned as a special group, and the Serbian republic itself was splintered into a rump republic with two autonomous provinces. As a result, *all* peoples were considered to share the same rights and freedoms in Yugoslavia—even non-Slavs like Albanians, Hungarians, Italians, and Romanians.

Finally, the role of the party merits investigation. Even with decentralization, the party's role was continually strengthened with an eye towards emphasis on commonality and inclusiveness rather than competition and hatred.<sup>48</sup> Importantly, the LCY also was weakened at the federal level over time but retained a lot of power in ideological issues. Furthermore, the LCY devolved power to the republic-based parties where political elites had widespread support. In the 1970s, it was already recognized that a regional party position was more important than a federal one and a regional career could yield greater influence. The introduction of the 1963 Constitution provides a good summary of the party's important socio-political role throughout the entire Titoist period:

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<sup>46</sup> See: Hondius, 149. He notes that Serbia covered 34% of all territory while the Serbian population was 43% of the total (presumably, that figure also counts Serbs in Croatia and Bosnia-Herzegovina).

<sup>47</sup> For some examples of the Soviet case see: Eric D. Weitz, "Racial Politics Without the Concept of Race: Reevaluating Soviet Ethnic and National Purges." *Slavic Review* 61:1 (Spring 2002): 1-29.

<sup>48</sup> See: *Program Saveza Komunističke Jugoslavije: Usvojen na sedmom kongresu saveza komunističke Jugoslavije* (Beograd: Komunist, 1962), 201-202. "Savez komunističke Jugoslavije je organizovana politička snaga radničke klase i radnog naroda Jugoslavije .... Savez komunističke Jugoslavije se u svojoj delatnosti rukovodi teorijom naučnog socijalizma .... Za sprovođenje u život svoje linije Savez komunističke se bori političkom i idejnom aktivnošću u svim oblastima društveno-političkog života u svim društvenim organizacijama, organima i ustanovama." (The League of Communists of Yugoslavia is the organization of political force of the working classes and the working people of Yugoslavia ... The League of the Communists of Yugoslavia is with her own activities operating the scientific theory of socialism ... For the conveyance in life of our own line, the League of Communists works towards political and ideological activities in our regions of social-political life and in social organizations, organs, and institutions).

The League of Communists of Yugoslavia, initiator and organizer of the People's Liberation War and Socialist Revolution, owing to the necessity of historical development, has become the leading organized force of the working class and working people in the development of socialism, and in the solidarity among the working people and of the brotherhood and unity of the peoples .... Under the conditions of the socialist democracy and social self-government, the League of Communists, with its guiding ideological and political work, is the prime mover of the political activity necessary to protect and to promote the achievements of the Socialist Revolution and socialist social relations, and especially, to strengthen the socialist social and democratic consciousness of the people<sup>49</sup>

As the so-called prime mover in Yugoslav politics, the party worked to enable all citizens to understand and work for the system. The party was arguably most successful and influential in the army. That branch of society remained the most steadfast proponent of Communist Yugoslavia even after the outbreak of hostilities in 1991.

As the Yugoslav state decentralized with each successive constitution in line with their ideology of communism, the most important state organ recentralized. The army in fact had been under tremendous pressure during the 1960s and was forced to accept the de facto predominance of the regionally-based Territorial Defense Forces (TDF). After 1971, the army managed to gain ground and recentralize while also neglecting the mantra of Yugoslav politics—that is, self-management. This trend continued and during the final months of Communist Yugoslavia, the army even took it upon itself to prepare cautiously for inter-republic fighting.<sup>50</sup> The army high command began a series of reorganization plans named *Jedinstvo* or unity. These operations re-allocated military forces to the re-drawn districts to the disadvantage of Slovenia and Croatia—this also fits within the greater trend of a Serbian dominance of the armed forces.<sup>51</sup> During the 1980s, the army sought to reign in the TDF and ensure the hegemony of the JNA. All this occurred according to the strict rules of and in the name of the LCY—the same LCY that operated towards decentralization and self-management in civil society.

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<sup>49</sup> See: *Constitution of the Socialist Federal Republic of Yugoslavia* (Beograd, 1963), 9-10.

<sup>50</sup> For more see: Davor Marijan, “‘Jedinstvo’—posljednji ustroj JNA,” *Polemos* 6:1-2 (January–June 2003): 11-47.

<sup>51</sup> See: Robert Niebuhr, “Life and Death of an Army: Yugoslavia, 1945-1991,” (MA thesis, Arizona State University, 2004).

## CONCLUSION

The final Yugoslav Constitution drafted in 1974 attempted to serve as a final piece of law confirming Yugoslavia as a *Rechtstaat*.<sup>52</sup> Despite the solidity of the 1974 Constitution, many elites believed in future revisions. According to the Yugoslav jurist Jovan Đorđević, “each constitution maintained continuity with the previous phases of the social and political development of Yugoslavia ... in this continuity each constitution not only extends but also surpasses previous constitutions. In this sense, the present [1974] Yugoslav Constitution is both a new and, to a considerable extent, an original political-legal act.”<sup>53</sup> While new and original, the 1974 Constitution underwent dramatic stresses and eventually new constitutional explanations were sought. The death of Tito, riots and unrest in Kosovo in 1980-1981, and continued inter-ethnic tension (chiefly between Serbs and Slovenes and Croats and Serbs) all tested the 1974 Constitution. But the issues raised in the late 1980s that further propelled Yugoslavia towards dismemberment did not necessarily guarantee war. Numerous issues set apart those debates from prior rewritings; however, one thing is certain: Titoist Yugoslavia continually blazed its own historical course through difficult times and used the various constitutions as a way to garner legitimacy for the regime, both at home and abroad.

The continual refashioning of socialism played a large role in helping elites seek redefinition and a continuation of the separate Yugoslav idea. The strengthening of self-management, openness towards the West to facilitate its own communist development, and decentralization efforts all occurred under the auspices of building socialism.<sup>54</sup> The most important factors of change culminated in 1974 towards modifying the role of the federal government. This emerged in two forms: the first was the continued flight towards the autonomy of the republics; the second was the

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<sup>52</sup> For an exhaustive study of the 1974 Constitution see: Alan Bruce Wambold, “The National Question and the Evolution of the Yugoslav Constitution, 1971-1974,” (doctoral dissertation, University of Virginia, 1976).

<sup>53</sup> Đorđević, 185.

<sup>54</sup> Regarding openness to West, Tito noted in 1949 in a speech in the Croatian town of Pula that, “When we sell our copper to buy machines, we do not sell conscience, but only our copper. With the machines received from the West, we will go on building socialism.” Quoted in Maurer, 27.

issue of Tito's successor and the changing nature of how a rotating presidency would operate without losing too much influence to the republics.

In many ways the changes in 1974 were pragmatic and served limited ends. The evidence shows that pure pragmatism was not solely responsible for the many changes within Yugoslav constitutional law. The Communist Party sought ideological ends and in many ways the pursuit of those ends fostered dramatic changes within Yugoslavia. A terribly accurate pronouncement of the importance of historical ideology during the tumultuous final years of Yugoslavia by Admiral Petar Simić, a member of the LCY Presidium and head of the military branch of the League of Communists, declared prophetically,

The military will confront with all its power and means anyone who wants to play hazardous games with the achievements of our liberation struggle and our socialist revolution.... The Communists in the Yugoslav People's Army express the conviction that they will win over those who are pushing our Yugoslav ship toward the rocks of catastrophe<sup>55</sup>

The army could not allow the extinguishing of their socialist revolution. After all, it was the army that achieved liberation and for a time secured the internal security of the state. The army stood as the gatekeepers to communism in Yugoslavia and served as a bulwark for the regime. When war broke out in Yugoslavia in 1991, the Yugoslav Army was in many respects the only force fighting for communism. In fact, the JNA operated under the letter of the constitution which proclaimed the army as the protector of the state's integrity.<sup>56</sup> This same language came from Tito

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<sup>55</sup> Simić in Henry Kamm, "Yugoslav Military Warns Feuding Politicians," *New York Times*, January 31, 1989, A3.

<sup>56</sup> The initial Yugoslav constitution of 1946 outlined the basic paradigm in which the army could function. Not surprisingly, its language was basic and direct: Article 134 reads, "The Yugoslav Army is the armed force of the Federal People's Republic of Yugoslavia. Its duty is to safeguard and defend the independence of the state and the freedom of the people. It is the guardian of the inviolability of the state frontiers and serves the maintenance of peace and security." Article 135 continues, "The Commander-in-Chief of the Yugoslav Army is appointed by the People's Assembly of the FPRY at a joint meeting of both Houses. The Commander-in-Chief directs the entire military and armed forces of the Federal People's Republic of Yugoslavia." *Constitution of the Federal People's Republic of Yugoslavia*, (Washington, DC, 1946): 46. Also see: Đorđo Novosel et al., *Savezni sekretarijat za narodnu odbranu I*, vol. 7.1, *Razvoj oružanih snaga SFRJ, 1945-1985* (Beograd: Vojnoizdavačka i novinski centar, 1990): 27. "kao garanciju neposredne bezbednosti i aktivnog učesnika u rešavanu postojećih problema." ([The JNA serves] like the guarantor of direct security and activity through the fighting of existing problems). For a later treatment from the 1974 Constitution see Article 240, *Ustav Socijalističke Federativne Republike Jugoslavije*, (Zagreb: Narodne Novine, 1975): 113-114. "Oružane snage Socijalističke Federativne Republike Jugoslavije štite nezavisnost, suverenitet, teritorijalnu cjelokupnost i ovim ustavom utvrđeno društveno uređenje

himself, but Tito emphasized that his understanding included the use of the army to maintain order even against domestic challenges. At the height of the ethnic tension in Croatia, on 22 December 1971, Tito explained that the army's primary task "is to defend our country from external enemies, but also to defend the achievements of our revolution inside the country, should that become necessary." This competing scenario was unimaginable for Tito, "but if it comes to shooting, the army too is here."<sup>57</sup>

After almost 46 years of unity, the situation did resort to shooting—the army desperately tried in vain to hold the country together in the face of the post-Cold War threats and realities.<sup>58</sup> Apparently, the very peoples who stood with Tito to unite in the Yugoslav Communist federation also decided time was ripe for a fresh start—ironically the secessionists used the very legality of the constitution and its ideological underpinnings as a way out, leaving socialism as an idea to wither away.<sup>59</sup>

In an effort to try to understand how Yugoslavia—as a relatively successful and functional state—collapsed alongside Soviet communism and the Cold War, I would point out that while constitutional change signaled greater rights and a positive evolution for a Yugoslav identity, negative factors carried the day. While the scholarly effort to bring nationalism into the equation

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Socijalističke Federativne Republike Jugoslavije. Oružane snage Socijalističke Federativne Republike Jugoslavije čine jedinstvenu cjelinu i sastoje se od Jugoslavenske narodne armije, kao zajedničke oružane sile svih naroda i narodnosti od svih radnih ljudi i građana, i od teritorijalne odbrane, kao najšireg oblika organiziranog oružanog općenarodnog otpora." (The armed forces of the Socialist Federal Republic of Yugoslavia shall protect the independence, sovereignty, territorial integrity, and the social system of the Socialist Federal Republic of Yugoslavia established by the present constitution. The armed forces of the Socialist Federal Republic of Yugoslavia shall make a unified whole and shall consist of the Yugoslav People's Army, as the common armed force of all the nations and nationalities and of all the working people and citizens, and of territorial defense, as the broadest form of organized total national armed resistance).

<sup>57</sup> Tito in Adam Roberts, *Nations in Arms: The Theory and Practice of Territorial Defense* (New York: Praeger Publisher, 1976), 202. Also see: Haberl, 159. "Gleichzeitig konnte sich Tito für Extremfall auf ein Instrument der Macht unbedingt verlassen, auf die Armee." Simultaneously Tito could rely for extreme cases on the instrument of power that really was left on the army.

<sup>58</sup> See: Budding, 64-65. "The JNA leadership's policies were not identical with those pursued by the Serbian leadership: in particular, some JNA leaders pursued the goal of a unified Yugoslavia even after Serbian leaders had abandoned it."

<sup>59</sup> This issue of legality with regard to secession crops up again in the case of Kosovo. Had Kosovo been a republic of Yugoslavia as Kosovar Albanians had demanded—most vocally in the 1981 riots—it is likely that Kosovo would have followed Slovenia, Croatia, and the other republics in their quest for independence in 1991-92. This case has been argued in depth by Robert Niebuhr, "Yugoslavia: The Final Showdown," unpublished conference paper, *Great Lakes Military History Conference*, (Grand Rapids, MI: 21 October 2006).

has its merits at times, Eric Hobsbawm, a contemporary historian of nationalism, argues that “nationalism was the beneficiary of these developments [dissolution] but not, in any serious sense, an important factor in bringing them about.”<sup>60</sup> To him, “nations do not make states and nationalisms but the other way round.”<sup>61</sup> Barry Posen, a political scientist, also argued that nationalism remains largely misunderstood. According to Posen, despite evidence to the contrary, “we invoke folk theories about ancient hatreds, or sorcerer leaders who have miraculously called them forth.”<sup>62</sup> This essay focuses the evaluation of Yugoslav state-building vis-à-vis constitutional change and offers support to those “constructionalists” who see national identity, much like the state itself, as responding to constant refashioning.

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<sup>60</sup> Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 2000), 167.

<sup>61</sup> *Ibid.*, 10. This statement by Hobsbawm draws on Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983), 48-49. “But nationalism is *not* the awakening of an old, latent, dormant force, though that is how it does indeed present itself. It is in reality the consequence of a new form of social organization, based on deeply internalized, education-dependent high cultures, each protected by its own state... Nations as a natural, God-given way of classifying men, as an inherent though long-delayed political destiny, are a myth; nationalism, which sometimes takes pre-existing cultures and turns them into nations, sometimes invents them, and often obliterates pre-existing cultures: *that* is a reality, for better or worse, and in general an inescapable one.”

<sup>62</sup> Barry Posen, “Nationalism, the Mass Army, and Military Power,” *International Security* 18:2 (Autumn 1993): 80.