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December 1992

ISSN 08899-275X

The Carl Beck Papers
Editors: William Chase, Bob Donnorummo, Ronald H. Linden
Assistant Editors: Mitchell Bjerke, Martha Snodgrass
Cover design: Mike Savitski

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Introduction

War broke out in Yugoslavia in the summer of 1991. Like the American war of 1861–65, this war could be interpreted as either a civil war or a war between states. And like the American Civil War, the Yugoslav war of 1991 was the ultimate manifestation of a constitutional crisis, a collapse of constitutional mechanisms for resolving political disputes that produced a showdown over the continued existence of the federal state. In another parallel to the American Civil War, the structure of the conflict was determined by a constitution some of the parties rejected, for the constitutional order that existed until the outbreak of the war had been a loose union of states (in Yugoslav terminology, republics), each of which possessed a fully organized government. Thus, despite the breakdown of the constitutional order of relationships between these republics, their constitutional status as separate polities afforded secessionists the opportunity to manipulate fully developed state structures in their quests for independence from the federation that had hitherto defined those states (Bestor 1964:328-29).

Viewing the Yugoslav civil war as a constitutional crisis may seem naive in light of the longstanding tensions among the different national groups comprising the country, which had made Yugoslavia a tenuous, uncertain state since its inception in 1918 (Banac 1984; Djilas 1991). It is tempting to see the breakdown of federal Yugoslavia as the inevitable result of those national tensions, once the overarching structure of the one-party state, which had served to bind them together, was removed. Yet to stress only those nationalisms is to distort the reality of political, social and economic life in Yugoslavia in the critical years 1989–91. After seven decades of common existence, Yugoslavia contained many cross-cutting ties. As most economists noted, the Yugoslav economy was so tightly intertwined that it could not be broken into its republican components without causing severe disruptions of supplies and markets. In the mid-1980s, 12 percent of marriages in the country were contracted between people of different (Yugoslav) nationalities, with 30 percent in the autonomous province of Vojvodina and 17.5 percent in the republic of Croatia

(*Vreme*, 11 March 1991:32). Since some parts of Croatia are almost completely inhabited by a single nationality, most of these "mixed" marriages were probably in cities like Zagreb and in the regions inhabited by both Serbs and Croats (e.g., Banija and Slavonija), giving these regions much higher rates of intermarriage, and thus giving the lie to the idea of "inherent hatred" between the two groups. The number of people who declared their nationality to be "Yugoslav" (as opposed to Serb, Croat or the other Yugoslav nationalities) had increased fourfold between 1971 and 1981, with indications that young people, particularly, were identifying themselves as Yugoslavs even in the economically unstable 1980s, as the result of increased interethnic contact and education (Burg and Berbaum 1989).[1]

The potential political importance of these cross-cutting ties for post-communist Yugoslavia could be seen in public opinion polls in the spring of 1990. These polls found the federal Prime Minister, Ante Marković, to be the single most popular politician in the country, and his government's economic program to have the support of 79 percent of the people of Yugoslavia, albeit with regional variations (Bosnia–Herzegovina, 93%; Croatia, 83%; Vojvodina and Macedonia, each 89%; Serbia, 81%; Slovenia, 59%; Kosovo, 42%) (*Borba*, 26 July 1990:1, 12; *Vjesnik*, 26 July 1990:3). An earlier poll had found Marković to be more popular than the recently elected presidents of Croatia, Serbia and Slovenia, even within those republics (*Borba*, 21 May 1990:7).

Despite this popularity, however, Marković's government suffered a steady decline in influence and power throughout 1990 and into 1991. In part, this decline was due to the failure of Marković's political party to capture many seats in any republic in the elections of 1990 (Rusinow 1991:8-9). Instead, the voters in Serbia, Montenegro, Macedonia and Bosnia–Herzegovina chose nationalist parties, while in Slovenia and Croatia, nationalist[ic] governments had been elected before Marković had formed his party. However, even in the latter two republics, popular sentiment for secession from Yugoslavia was, at the time of the elections, uncertain. In Croatia, a poorly written electoral law gave the Croatian Democratic Union (*Hrvatska Demokratska Zajednica*, or HDZ) a huge parliamentary majority with only

about 40 percent of the popular vote (Rusinow 1991:7). In Slovenia, the DEMOS coalition took 53 percent of the vote, but the largest parties were outside of the coalition, and a reliable opinion poll in Slovenia in early 1990 showed a majority of the republic's citizens in favor of remaining in a "looser" or confederal Yugoslavia if such a structure could be created (Rusinow 1991:7). Yet Marković could not capitalize on his popularity throughout the country because federal elections were not permitted by Slovenia. Had such elections been held, it is possible that Yugoslavia would have seen an electoral pattern similar to that of India, with local nationalists victorious at the local (republican or state) level, but a federally oriented party winning at the center (Brass 1990:315-18). In the absence of federal elections, however, Marković was denied the possibility of obtaining a mandate for his policies or with which to challenge the aggressive nationalistic policies and anti-federal actions of the elected governments of Slovenia, Croatia and Serbia.

In any event, the prevention of federal elections was only one of the actions by the governments of these three republics that was aimed at destroying federal authority. This authority was first challenged, and effectively eliminated, by the unilateral action of the (then Socialist) Republic of Slovenia in September 1989, which passed amendments to its own constitution that claimed to render the federal constitution irrelevant to Slovenia. Following this act by Slovenia, the survival of the Yugoslav federation became impossible in constitutional terms and, for this reason, politically as well, which made the outbreak of internal war inevitable.

This paper analyzes the "Slovenian amendment crisis" of 1989 as the critical step in the disintegration of federal Yugoslavia. These amendments served to transform what had until then been a working (if clumsy) federation into an unworkable confederation, and this change is important for understanding the dynamics and trajectory of the collapse of the Yugoslav state. But the transformation of the Yugoslav federation in 1989 is of interest for more general reasons as well. At the level of theory, the constitutional positions advanced by the Slovenes in 1989/90 resemble those of some political scientists in their view of the ideal structure of a multi-national state as a "consensual union" in which the components are

connected but not fettered, tied but not bound, and thus free of the potential tyranny of a perpetual ethnic or national majority (Lijphart 1977 and 1984). These Slovenian positions thus provide the opportunity to examine such theoretical structures in the light of a concrete situation, providing a case study for analysis, if admittedly not a test case for proof or disproof. As Ellen Comisso has argued (1979:139), "the case study is presented because the relationship between behavior and structure may be generalizable, not the behavior or structure itself." While the Yugoslav Constitution of 1974 was certainly unique, the issues of federal structure raised by the failure of this constitutional order are general.

Federal Relations in Yugoslav Constitutional Discourse in the Late 1980s

The implementation of the Yugoslav constitution of 1974 turned the country into an extremely loose federation, with little power at the center and much autonomy in the republics and autonomous provinces, and a virtual veto power over federal actions and legislation to each of these federal units (Burg 1983; Ramet 1984). In many ways, the Yugoslav system of nearly independent republics, each except Bosnia-Herzegovina the home of a dominant nation,[2] resembled the "ethnofederalism" of the Soviet Union (Roeder 1991). The federal government was weak, but did retain enough power to play a meaningful role in political life, essentially as a unit equal politically to another republic (Ramet 1984). Granted that this system produced what the Yugoslav political scientist Slobodan Samardžić (1990) has called "combative federalism," in which the veto power afforded each federal unit turned all questions of any importance to the federation into contests between the republics; yet even in this structure the federal authorities could utilize their powers to intercede in deadlocked issues. These powers included promulgation of temporary federal statutes without the consent of all republics (Constitution arts. 301-304 and

356), and until 1989, these statutes were more or less obeyed. The federation was also given jurisdiction over the governance of certain areas apart from the competence of the federal units (Constitution art. 281) and had its own administrative agencies and constitutional and institutional arrangements.

The relative weakness of the central government, however, induced many authors to see the federation more as a confederation. This was heard particularly after the public recognition of the "permanent crisis" (first economic, then political) of the 1980s (Mirić 1984:14-32; Stanovčić 1986:195-218; Nikolić 1989a and 1989b).[3] The difference, as reflected in Yugoslav scholarly and political discourse in 1989/90 (Samardzić 1990:20-27), was that a federation is composed of federal units and a federal government that itself has some acknowledged powers to which the units are subordinated, while in a confederation, the units are each fully sovereign states, under no obligation to respect any federal power. Interestingly, little notice was taken in this discourse of the idea that the federal government's reach must extend to the individual citizen.

The confederal position was stated succinctly by Dr. Jože Pučnik, President of the DEMOS coalition that came to power in Slovenia through the elections of 1990:

> On the level of the confederacy, that is, of the new union, there cannot be any legislative body. Unified [government] organs can be only advisory, and work in them can be only on a voluntary and equal basis. Apart from this, we can agree on joint projects which would be in the interest of all (*Start*, 24 July 1990:9).

Or, as expressed (sarcastically?) by Slobodan Samardzić (1990:25), who rejects the idea, the (con)federation "is not itself a state, in the sense of an independent legal subject, but rather some kind of service for the existing independent states." These depictions were hardly exaggerations: a joint Slovenian–Croatian "model for a confederacy in Yugoslavia," proposed in October 1990, was artfully constructed to

ensure there would be no federal authority of any kind in the envisioned polity despite the existence of central bodies, since they would be literally unable to do anything without the unanimous consent of the republics (Hayden 1990a).

The federation had been placed under considerable stress by the economic and then political pressures of the 1980s, to the point where it was seen by many scholars as "fractured" (Rusinow 1988). One of the causes of these problems was generally seen as the inefficiency and ineffectiveness of the federal structure, since any federal unit could block the adoption of any policy. Thus when, following years of prevarication, a serious initiative to amend the constitution was undertaken, one of the announced goals was to improve the efficacy of the federation by clarifying and widening its jurisdiction over some areas and by giving the federal government greater authority to enforce federal acts (*Borba/Rad* 1988:13; Binns 1989:139).[4] However, in discussion of the amendments proposed for adoption in May 1988, all participants perceived that changing the bounds of federal jurisdiction would likely change the relationships between the federal units. This point was stressed particularly by Slovenian writers and political figures, who argued for a federal structure having even less power then the one then in place (Ribičič and Tomac 1989). Since no agreement on these issues could be reached quickly, the numerous constitutional amendments passed in 1988 dealt primarily with removing the most cumbersome features of the famous (now infamous) self-management system. Further changes, it was generally agreed, would be made in further amendments. Papers in the Marxist Center of the City of Belgrade (1989) make it clear, however, that virtually all observers felt a completely new constitution would be required. This was the constitutional context under which the Slovenian amendment crisis arose in the late summer of 1989.

The political context in which these constitutional debates were carried out was shifting rapidly from questions of economic rationality to programs of national sovereignty, based on increasingly chauvinistic nationalism. The most important centers of this nationalism were Serbia and Slovenia, not coincidentally the standard bearers of the federal and confederal positions, respectively, in the constitutional

discussions. The nationalist revivals in both republics were the result of activities by well-known intellectuals, who developed data and arguments that purported to show how each of their republics had been disadvantaged by the Yugoslav federation. The Serbian position, by a "group of academics of the Serbian Academy of Sciences and Arts" was written in 1986 and widely circulated though not published until 1989 (*Duga* 1989). The "Slovenian national program" was published in 1987 (*Nova Revija*, 57). In October 1987, long-standing Serbian frustration with the increasing Albanization of the autonomous province of Kosovo was used by Slobodan Milošević to stage a nationalist coup within the League of Communists of Serbia (Ramet 1991; Rusnow 1991). In 1988, Milošević used mass demonstrations to topple regimes in the republic of Montenegro and the autonomous provinces of Kosovo and Vojvodina. These developments put fear into the leaderships of the other republics, which were in any event themselves coming under pressure from nationalist forces within their republics. The result was a constitutional stalemate which was broken by the passage of the Slovenian amendments in September 1989.

The Initial Presumption of Federal Supremacy

The Slovenian amendment crisis began in a very non-dramatic, even mundane, fashion. Following the amending of the federal constitution in November 1988, it became necessary for the various republics and provinces to amend their own constitutions, since article 206 of the federal constitution specifies that "republican constitutions and provincial constitutions may not be contrary to" the constitution of the Socialist Federative Republic of Yugoslavia (SFRY). This article and the one immediately following it, which provides that "republican and provincial laws and other regulations...may not be contrary to federal laws" (art. 207, as amended 25 November 1988), are the closest parallels in the Yugoslav federal constitution to the so-called federal supremacy clause of the United States Constitution (art. 6, § 2), and

they had seemed to be sufficient. Professor Jovan Djordjević, the dean of Yugoslav constitutional lawyers, has described the principle of the "supremacy and priority" of the Constitution of Yugoslavia in the following terms: "If a republican (or provincial) constitution differs from the Constitution of the SFRY, the Constitution of the SFRY will be accepted" (Djordjević 1986:355).

The republics and provinces had in the past amended their own constitutions to reflect changes in the federal constitution, and this pattern was continued immediately following the 1988 federal amendments. Thus when the Assembly of the Republic of Serbia passed amendments to the republic's constitution in February 1989, Assembly President Borisav Jović noted that these changes followed on the federal amendments, which were seen as enabling the republican action (Ustav Socialističke Republike Srbije, Službeni List, 1989:6-7). When the Slovenian Assembly began the process of amending the republic's constitution in the spring of 1989, it also apparently operated under the assumption that its amendments were necessitated by the federal ones and must not be contrary to the federal constitution. The materials accompanying the first publicly circulated draft (*Osnutek* [hereafter, Draft])[5] of the proposed amendments noted that they had been prepared with two goals in mind: first, to coordinate with the recently passed amendments to the federal constitution; and second, to shape some "original solutions" in answer to sentiments that arose in discussions of amendments to the SFRY constitution and of some of the amendments to the Slovenian constitution (Draft, Introduction). In fact, the second goal was plainly seen by some if not all of the drafters as the more important of the two; yet the need to describe the amendments as not contradictory to the federal constitution was clearly recognized and addressed using several techniques of presentation and argument.

One approach taken was to phrase provisions that were arguably not in accordance with the federal constitution in terms of basic principles stated in the introductory parts of the federal constitution (though not necessarily in the operative parts of that document).[6] For example, a highly controversial amendment providing the Republic of Slovenia the "complete and unalienable right" to "self-determination,

including the right of secession," which was arguably contrary to the operative parts of the federal constitution,[7] echoed some of the language used in the Basic Principles set forth at the beginning of that document, perhaps in an effort to achieve unimpeachable moral and political, if not legal, authority.

A second tactic was to describe a controversial amendment as either a "supplement" or "completion" of a federal constitutional provision. Thus, for example, an amendment on the right to organize independent labor using private property (Draft, amendment 23) was described in the "explanation" following it as being "equal in wording to Amendment XXI of the Constitution of the SFRY." However, the "explanation" went on to state that certain elements of the proposed Slovenian amendment did differ from the federal constitutional amendment:

> In contrast to the wording of the corresponding amendment to the constitution of the SFRY, however, there are more full examples of different forms of association, which make the regulation clearer and better illustrated as well for practical execution (Draft, amendment 23).

Citing warnings in the constitutional commission that such provisions in the republican constitution would violate article 206, section 1 of the federal constitution (by which a republican constitution may not be in conflict with the constitution of the SFRY), the Draft stated that those provisions potentially in conflict with the federal constitution should be examined, and kept if this were not found to be the case.

A third means of including provisions potentially in conflict with the federal constitution was to justify them on the basis of international agreements to which Yugoslavia was a signatory. Thus an amendment asserting Slovenian economic sovereignty, arguably in conflict with the federal constitution's provisions mandating a unified Yugoslav market (arts. 251 and 253), was justified with reference to article 1 of the International Covenant on Economic, Social and Cultural Rights.[8] This article provides that "all peoples have the right of self-determination. By virtue of that right they...freely pursue their economic...development." The legal argument

implied is that Yugoslavia's acceptance of the international covenant served to incorporate its terms into the basic law of the country, an argument that is given some support by the federal constitution's article 210: "international treaties which have been promulgated shall be directly applied by courts of law" (i.e., once ratified, treaties are applicable without the need for any legislative or administrative authorization). However, the definition of "peoples" in this context is obviously problematic, as is the concept of "economic sovereignty."

All the above approaches recognized, implicitly or explicitly, the supremacy of the federal constitution. Even attempts to counter federal constitutional provisions did so by invoking other elements of the same document. In mid-summer 1989, however, this recognition of federal authority disappeared. Instead, Slovenian political actors virtually uniformly asserted a confederal interpretation that in effect denied any meaning to the federal constitution, or any power to the federation. This change in approach was necessitated by the proposal of new amendments that were plainly contrary to the federal constitution and would thus run afoul of that document's article 206, referred to above.

Amending the Amendments: Summer 1989

The proposed new provisions, described by the Belgrade daily *Borba* as "amendments that divide Yugoslavia,"[9] entered the Slovenian political process during the public discussion of the Draft, in the late spring and early summer of 1989. These revised amendments were published in Slovenia in July 1989 as "proposed amendments" (rather than merely "drafts"),[10] and became (in)famous throughout the rest of the country when a Serbo-Croatian version of them was published by *Borba* on August 7.[11] Essentially, the new version (hereafter, Proposed Text) incorporated a series of new provisions and amended some of those already present in the draft, with both kinds of changes serving to reorient the meaning of the document as a whole.

Some changes were innovative in post-war Yugoslav political life, yet not particularly controversial, since they served to liberalize politics in accordance with principles proclaimed in various international human rights documents. Thus a new amendment 41a would guarantee the right of free, peaceable assembly; and article 42 would prohibit the death sentence and torture and guarantee a long list of freedoms derived from international human rights agreements, such as freedom of movement, the right to judicial process before being sentenced, and the right to privacy. Amendment 43 provided for freedom of religion and guaranteed rights to children. None of these provisions were questioned at the national level.

Other amendments, however, had some potentially disturbing implications. A new amendment 8a, on the right to free participation in politics, transformed the "Basic Principles" of the republican constitution by stating that "the Socialist Republic (SR) of Slovenia is the state of the sovereign Slovenian nation and citizens of the SR Slovenia"; that "the social order of SR Slovenia is based on respect for the rights and freedoms of man and citizen"; that "social, collective and private property are equal"; and removing many standard phrases of communist jargon. Amendment 8a asserted that

> all organizations and movements may freely participate in political life, provided they support humane relations between peoples, *respect for* the rights and basic freedoms of man, *democracy* and a higher quality of life, the principles of a legal order [*pravna država*, or *rechtsstaat*], *the sovereignty of the Slovenian nation and the people of Slovenia and their equal position in the establishment of the joint interests of the nations and nationalities of Yugoslavia* [emphasis added].

While much of this amendment is liberal in implication, the phrases emphasized above could easily be used to stifle political participation by certain individuals or groups. Largely because of this potential difficulty and because of its stress on the "sovereignty" of the Slovenian nation, the amendment was included in a group of

amendments which came to be known as "controversial" (*sporni*) in political discourse in the rest of Yugoslavia in the late summer and early fall of 1989.

Also new in the Proposed Text was amendment 41b, proclaiming the obligation of federal authorities to respect the languages of Yugoslavia and to use Slovenian in Slovenia. On the one hand, this provision was congruent with article 246 of the federal constitution, guaranteeing the equality of the languages of the Yugoslav peoples; but the Slovenian amendment also went on to provide that "acts [by federal agencies] in violation of this provision lack legal effect." This apparent attempt to allow the republican constitution to invalidate federal acts, is an assertion of republican power not to be found in the federal constitution. A further assertion of republican sovereignty to the exclusion of the federation was a new amendment 48, proclaiming, first, that when organs of the federation violate or infringe on the rights of Slovenia, the republic's organs "must undertake measures to defend the republic's position and rights" (amendment 48a); and second, that only the republican authorities may declare a state of emergency in Slovenia.

Another controversial amendment, liberal on its face but not, perhaps, in implication, granted the Italian and Hungarian minority populations in Slovenia, as "autochthonous minorities," the right to use their own language and other cultural rights (amendment 43c). Potential difficulties arise with the addition of the qualifying term "autochthonous," which is new to the constitutional discourse. By specifying that only "autochthonous minorities" possessed cultural rights, the amendment potentially precludes such rights for the largest minority populations in Slovenia, the other Yugoslav nationalities, in violation of articles 154, 246 and 247 of the federal constitution.[12]

Yet another controversial amendment provided that when the Republic of Slovenia was called upon to fulfill financial obligations in connection with the functioning of the federation, the Slovenian Assembly would respect "the material capabilities of the Republic and the requirements of its development" (Proposed Text, amendment 56). The implication of this provision was that the republic would

decide for itself which federal functions it would support, even when those functions had been properly authorized or mandated at the federal level.

The major theme unifying these additions to the Draft amendments was Slovenian sovereignty, as stated in the additions to the Basic Principles of the Slovenian Constitution provided by proposed amendment 8a. Yet the provisions of many of these amendments would be open to challenge under article 206 of the Federal constitution, as the Draft had recognized. The response of political figures in Slovenia to this potential weakness of the amendments was to argue for a new interpretation of the basis of the federal constitutional structure, which would in effect transform what even they had seen in spring 1989 as a federation into a confederation.

The New Doctrine of Republican Supremacy

In part, the attempted transformation of the federal structure exploited ambiguities in the federal constitution in order to deny any jurisdiction to federal judicial or governmental institutions for the determination of the validity of republican constitutions in terms of the federal constitution. At the same time, a new theory of the basic structure of the federation was used to color interpretations of all provisions, including those not previously seen as ambiguous, and not previously seen as fostering confederation.

Ambiguities in the text of the 1974 constitution were in any event not hard to find. That instrument, long criticized for its length, complexity and prolixity, proved on close examination to be even more confusing than had previously been thought. For present purposes, the complications surrounding article 206 may best serve as an example. At first glance, there seems to be little ambiguity in the statement, "republican and provincial constitutions may not be contrary to the SFRY constitution." The difficulties come when the mechanisms for implementing this

unambiguous provision are examined. First, who decides whether, in fact, a republican/provincial constitution is contrary to the SFRY constitution? Article 378 of the federal constitution provides what seems to be an answer: "The Constitutional Court of Yugoslavia gives its opinion to the Assembly of the SFRY as to whether a republican or provincial constitution is contrary to the Constitution of the SFRY." But this provision is more ambiguous than it may seem, because of the word "opinion" (*mišlenje*), which is used in connection with the constitutional court only in this article and only regarding this issue. In other kinds of cases, the court is authorized to give "decisions" (*odluke*) and "rulings" (*rešenja*) by majority vote of all of its members (art. 391), but "opinions" and the means of arriving at them are never mentioned.

It is possible to solve this problem by arguing that since the Court is only authorized to make decisions and rulings, the "opinion" must take one of those forms; and since a "ruling" is not a final order and a "decision" is, the "opinion" must take the form of a "decision" and must reflect, at a minimum, the votes of a majority of the court.[13] Even so, the force of the court's "opinion" remains unclear. While a "decision" by the court is binding and enforceable (art. 394), the "opinion" of the court on a question of conflicting federal and republican/ provincial constitutions is reported to the Federal Assembly, which is only obligated to "discuss opinions and proposals of the Constitutional Court of Yugoslavia concerning the protection of constitutionality and legality by this Court" (art. 285, § 11).

Despite the ambiguity in the text of the constitution, however, this problem is resolvable if the necessary logic of a federal system is taken into consideration. That is, the provisions of the federal constitution must override conflicting provisions in the constitutions of constituent units of the federation. If this rule does not hold, then the federal constitution becomes literally meaningless, since its provisions can be overridden, and hence effectively repealed, by any of the constituent parts of the federation. Further, if the federal constitution is not superior, it can in effect be amended by unilateral action of the federal constituents, in disregard of the express provisions contained within it for its amendment. This logic was set out in its

essentials in the famous American constitutional decision in Marbury v. Madison (1803), a point that was introduced to the Yugoslav debate in an article in *Borba* (Lilić and Hajden 1989), although apparently with little impact.

Despite this logic, in 1989/90 the earlier assumption of federal supremacy appeared to lose general acceptance on grounds that the Yugoslav constitutional structure did not specify how to resolve a conflict between the provisions of the federal constitution and those of a federal unit. This was an opinion shared not only by Slovenes, but also by Dr. Miodrag Jovičić, who appears to have been the constitutional theorist most in favor in official circles in Serbia, judging from the number and prominence of his appearances in the weekly magazine *NIN* (Hayden 1991), which had come under the control of the Serbian government:

> The entire text of the proposed amendments to the Constitution of the SR Slovenia teems with provisions contrary to the Constitution of the SFRY. If such amendments were to be passed, the Constitutional Court of Yugoslavia would have to work for years to determine the instances of contradiction between the Slovenian Constitution and the federal one. But that would be a fruitless task because, by the provisions of the existing [federal] constitution, and unlike the situation in the rest of the world, there is no establishment of a hierarchical relationship between the republican and federal constitutions, with the requirement that in case of inconsistency the provisions of the republican constitution must be brought into alignment with the federal constitution (Jovičić 1989:18).

This seems an implausible construction of the federal constitution, however, both because of the necessary logic of a federation and even in view of the express wording of that document. Article 206 specifies that republican and provincial constitutions "may not be contrary to" (*ne mogu biti u suprotnosti*) the provisions of the federal constitution (§ 1), while "statutes and other regulations...must be in conformity (*moraju biti u saglasnosti*)" with the federal constitution (§ 2). As Professor Djordjević noted in his constitutional law text, the difference in wording

was not accidental; and while statutes are put in a hierarchically inferior position by the requirement of conformity, use of the expression "not contrary to" only states the principle of application of otherwise equal acts (Djordjević 1986:356), or paramountcy. The question is one of validity: if a provision of a republican constitution is not in conformity with the federal constitution, the republican provision is not valid and hence has no legal effect. The republic may then either let the question lapse or try to reframe the impugned provision so that it passes constitutional muster, but it may choose for itself which course to follow. American constitutional history, for example, is littered with state acts that are plainly unconstitutional yet continue to exist in the lawbooks, unenforceable. This type of primacy in application reflects hierarchy in the sense of "the principle by which the elements of a whole are ranked in relation to the whole" (Dumont 1980:66), here the whole being the constitutional order of Yugoslavia. But it removes the implication of command that is often implied by the term "hierarchy," and which was implied by Djordjević. By this logic, and contrary to the reasoning of Jovicić and the Slovenes, the fact that there is no mechanism for bringing a republican constitutional provision into line with the federal constitution is simply irrelevant.

The view that the republican constitution need not be subordinated to the federal one was logical only if one assumed that the sovereignty of a component of the Yugoslav federation was complete. This latter position was, in fact, the one taken by politicians and commentators in Slovenia, particularly at the time of the controversy surrounding the passage of the "disputed amendments" in September 1989. In the two weeks prior to the scheduled vote on the amendments in the Slovenian Assembly on 27 September, federal authorities warned that several amendments were contrary to the federal constitution and thus contrary to article 206, and requested that the Slovenian assembly postpone passage of the disputed amendments. Thus the Presidency of the SFRY, on 15 September, warned of "grievous negative consequences that would follow for the constitutional order of the country, relations within the federation, and respect for the principles of constitutionality and legality" if the disputed amendments were passed, and expressed

confidence that the Slovenian Assembly would not pass them. On 26 September, the Presidency of the SFRY asked the Slovenian Assembly to postpone the amendments, accompanying this request with the warning that, in case of a collision between the constitutional provisions of any member of our federation and the Constitution of the SFRY, the Presidency would "ensure the application of the provisions of the Constitution of the SFRY on the entire territory of Yugoslavia."[14] The Presidency of the League of Communists of Yugoslavia also warned of negative consequences. Similarly, the Federal Executive Council, on 16 September, pointed out the provisions of the Slovenian amendments that were potentially in conflict with the federal constitution, emphasized that in case of a constitutional conflict, the federal constitution would be applied, and asked for reconsideration of the amendments.

The Slovenian Presidency rejected these messages on 26 September, saying that such "pressure" on it was "unacceptable constitutionally and politically." On 27 September, the Slovenian Assembly passed the entire set of amendments, with minimal changes. In regard to the question of conflict with the federal constitution, and the problem of that document's article 206, the position of virtually all Slovenian political actors was expressed by Miran Potrč, President of the Slovenian Assembly and its Constitutional Commission, at the start of the session that passed the amendments: Only the Slovenian Assembly was entitled to enact amendments to the republican constitution, and according to the Yugoslav federal constitution,

> not one federal organ has the authority to participate with its advice in the procedure for amending the republican constitution....It is only when the constitution has been adopted that the Constitutional Court has the authority to give its opinion on the question of whether the republican constitution is contrary to the Constitution of the SFRY. That opinion does not have the effect of a decision of the Constitutional Court on the basis of which the provisions of the republican constitution would cease to be valid....Neither does the Federal Assembly have the authority to confirm that a republican constitution is contrary to the federal constitution. The Federal Chamber

> only discusses the opinion of the Constitutional Court and decides its [the Federal Chamber's] political opinion (*Borba*, 28 September 1989:1).

The Slovenian position thus enunciated took off from an unquestionable constitutional fact — that only the Slovenian Assembly could pass amendments to the republic's constitution — proceeded to a *non sequitor* — that no one other than the Slovenian Assembly could voice an opinion on proposed republican constitutional amendments — and then to an interpretation of the federal constitution that while not impossible, was also not the only possible interpretation of the power and authority of the Constitutional Court and the Federal Executive Council on this type of issue. It was in any case an interpretation that vitiated the ability of the federal constitution to bind republican constitutions, since it would leave the responsibility for assessing the constitutionality of a republican constitutional provision with the same people who enacted that provision, who would then be perfectly free to ignore the federal constitution by the simple expedient of denying that they were doing so. By taking this position, the Slovenian politicians sought to overturn the original assumption of federal constitutional supremacy by making the federal constitution non-binding on the republics.

Action by the Constitutional Court of Yugoslavia

Following the passage of the Slovenian amendments, the Constitutional Court of Yugoslavia, the only body authorized by the constitution of the SFRY to give an opinion on whether the republican constitution was contrary to the federal one, was called into action. On 28 September, the Federal Council, one of the bodies authorized to initiate proceedings in the Constitutional Court of the SFRY by article 387 of the federal constitution, first passed a motion to begin proceedings before the Constitutional Court of Yugoslavia to assess the constitutionality of the Slovenian amendments; and then, following what the newspapers called a "bitter debate,"

broadened the action to include the determination of the constitutionality of all of the amendments to all of the constitutions in Yugoslavia (*Borba*, 29 September 1989:1). The court, for its part, began the procedures for examining the constitutionality of the various amendments on October 4 (*Borba*, 5 October 1989:5). The novelty of the situation was reflected in the newspaper accounts of the court's actions. *Borba* spelled out in some detail the court's procedures, which it had not done in reporting on its activities in the past. Further, *Borba* pointed to several public misconceptions, including the view of the court as a "power" that could resolve the constitutional conflict, saying that it was clear, at the moment, that the court could only give its "opinion" on the matter to the Federal Assembly. At the same time, however, the president of the court was quoted as saying that "the Constitutional Court of Yugoslavia is the only authorized organ which can authoritatively determine whether the constitution of a republic or province is contrary to the Constitution of the SFRY" (*Borba*, 5 October 1989:5).

The court's procedure for determining its opinion was then announced, in *Borba*, and explained as being its regular procedure. First, the task of executing a preliminary assessment of the situation for each constitution was assigned, according to a pre-established order, to individual judges. *Borba* noted that the order was pre-established, standard operating procedure, because a Serbian judge was given the task of assessing the Slovenian amendments, and Slovenia and Serbia had been engaged in increasingly bitter political conflict since the previous February. The procedure was then explained in *Borba*, in an article based on "unofficial sources," as most likely to be one in which the judges would hear from the officials of the various republics/provinces behind closed doors, and would not venture any comments until their official opinion had been determined and announced; and that this procedure would take at least one month.

As it happened, however, the court chose to proceed by scheduling public arguments on each of the constitutions, to be informed initially by the preliminary opinion of the judge who had been charged with examining the particular constitution in question. Accordingly, the court scheduled these arguments, notified each

republican/provincial assembly, and invited participation by each of them. The Slovenian amendments were scheduled to be discussed first, on 5 December 1989. On 21 November, however, the Presidency of the Slovenian Assembly announced that there would not be any Slovenian participation in the discussion scheduled for 5 December, on the grounds that the Constitutional Court's actions were themselves unconstitutional. The Slovenian argument was as follows: although the constitution only empowered the Constitutional Court to give its opinion on the question, the Federal Assembly had asked the court for a judgment; furthermore, the Federal Council could only propose the consideration of acts that had been passed in final form, and such proposals must list the particular sections questioned, providing the name and page of the official document in which the material was published, but the Federal Council had acted on drafts of the amendments rather than on the official published versions (*Borba*, 22 November 1989:3).

Despite this announcement from the Slovenian Assembly, the Constitutional Court met as scheduled to consider the Slovenian amendments on 5 December. At this meeting yet another complication arose: no representative of the Federal Council came to the public discussion. Since the Federal Council had been the initiator of the review process, and the Slovenes, true to their word, had refused to attend, the court was faced with the prospect of holding a public discussion without the participation of either the initiating party or the other interested party to the dispute. After some discussion and examination of its own rules of procedure, the court decided to proceed. The judge who had been charged with examining the Slovenian amendments reported his findings: that some of the amendments were "identical" to the corresponding sections of the federal constitution, that some were similar, and that a third group raised novel questions in Yugoslav constitutional law, concerning the structure of the constitutional system (*Borba*, 6 December 1989:4).

The investigating judge did not view all of the variances from the provisions of the federal constitution as "contrary" to the latter. Some, he said, actually advanced the societal concepts that were introduced and developed in the 1988 amendments to the federal constitution. Others, however, did cause concern. He

mentioned specifically the question of whether a republic could secede, thus changing the borders of the country unilaterally, or whether the agreement of all republics and provinces was required; the question of whether a republic could limit the ability of the federal authorities to declare a state of emergency in the republic; and whether a republic could mandate that the representative from that republic in the Presidency of the SFRY act only in accordance with the specific instructions of that republic. (*Borba*, 6 December 1989:4). Having announced this concern, and in the absence of presentations by representatives from either the Federal Assembly or the republic, the judge adjourned the public discussion.

Over the next several weeks, the court held similar public discussions of the amendments to all of the constitutions of the republics and autonomous provinces. The Federal Assembly did not send a representative to any of these discussions, though the republics and provinces were represented at them.

In its final analysis, the court decided that the constitutions of all of the republics and provinces, except that of Montenegro, contained provisions contrary to the federal constitution (*Borba*, 9 February 1990:9). Most of the controverted provisions were relatively technical and not openly politically dangerous, at least at that moment. The most common flaws were provisions in the constitutions of Croatia, Bosnia-Hercegovina, Macedonia, Slovenia and Vojvodina that implied or stated exclusive republican/provincial control of "large systems" (the power grid, rail system and postal service); provisions in the constitutions of Serbia and the provinces requiring the use of Cyrillic; and a provision in the Serbian constitution limiting private land holdings.

The court had more to say about the Slovenian amendments. On the crucial question of secession, the Constitutional Court of Yugoslavia came down against unilateral decisions. While it found that the republics do have the right to secede, the arrangements and procedures for exercising that right were found to be the concern of the federal constitution. Since that document says nothing on the subject, the provisions of the Slovenian constitution giving itself the right to make its own arrangements and procedures for secession were held unconstitutional. Further,

recognizing the validity of the principle that the external boundaries of Yugoslavia can only be changed with the consent of all of the republics, the court held that the question of secession can only be decided jointly, with the agreement of all of the republics.

The court also found against the republic in regard to the attempt to limit the federal government's power to declare a state of emergency in Slovenia. The court reasoned that the Presidency of Yugoslavia would have both the right and the obligation to declare a state of emergency in Slovenia if some general danger threatened the existence or constitutional order of that republic, on the grounds that such a condition would also threaten the whole of the country. It also ruled unconstitutional the provision of the same amendment that provided for the automatic recall of any member of the federal presidency from Slovenia who voted for the imposition of a state of emergency in the republic without the consent of the republican assembly, on the grounds that such officials were bound only by the federal constitution and laws. Similarly, the court also ruled against a provision that the republican assembly could issue binding instructions to the Slovenian members of the federal assembly. Thus the Constitutional Court of Yugoslavia ruled against the Republic of Slovenia in regard to some of the most important elements of the disputed amendments to the republican constitution.

The decision of the Constitutional Court was reported to the Federal Assembly, which let the matter lie for two months. On 27 March 1990, however, the Federal Assembly passed, by majority vote, a resolution mandating that the provisions of republican and provincial constitutions that had been determined by the court to be contrary to the federal constitution must be brought into agreement with the latter document within three months. Concurrently, the Federal Assembly passed resolutions establishing that it was itself responsible for ensuring the consistent application of the federal constitution and federal laws, and that the Federal Executive Council was responsible for ensuring the consistent administration of these federal instruments (*Borba*, 28 March 1990:1). These actions were opposed by representatives of Slovenia, who asserted that the federation did not have the power

to so act. Thus even after the decision of the Constitutional Court, the issue remained stalemated: while the court rejected Slovenia's claim to confederal status, that republic rejected the court's jurisdiction to decide the question, using reasoning that also precluded action by any other federal institution.

From Federal Units to Sovereign Republics

Attempts to arrive at a new constitutional agreement continued in the winter of 1989/90 but were thwarted by Slovenian intransigence on the issue of federal powers. In late 1989 and early 1990, no less than four concrete proposals for constitutional reforms were put into play (Hayden 1990:35ff.). However, the closest that Slovenia would come towards recognizing federal competence was a proposal from the republic's presidency limiting central jurisdiction to only "foreign affairs, defense, the joint basis of the economic and political systems, the unified market, and the financing of jointly agreed functions." All other matters would remain within the sole jurisdiction of the republics and provinces (*Borba*, 28 January 1990:11). Further, the proposal gave the federation little authority to fulfill even the functions assigned to it. An indicator of this minimal status was a provision that the economic functions of the federation must be established on the basis that "the federation is not a legal subject with its own economic interest; rather, the republics are the authentic and sovereign possessors of economic interests in their own development and in joint development as defined by agreements" (*Borba*, 28 January 1990:11). Another indicator of the weakness accorded by Slovenia to the federation was the provision that, even when acting within the areas of its competence, the Federal Assembly may be required to act only with the consent of all components of the federation if demanded to do so by any republic (*Borba*, 28 January 1990:11).

Following the election in spring 1990, even this minimal recognition of federal authority was rejected by the new DEMOS government of Slovenia and the HDZ government of Croatia. Both adopted the logic of confederacy in the summer

of 1990, when the Slovenian Assembly passed a resolution on 2 July declaring the republic's "complete sovereignty" and that the republic's laws superseded those of the federation. Similarly, on 25 July, the Croatian Assembly passed amendments to the republic's constitution that made Croatia, in the words of its new president, Franjo Tudjman, henceforth "a politically and economically sovereign state" (*Politika*, 29 July 1990:10). Interestingly, neither republic proclaimed its independence from Yugoslavia, although Slovenian Minister for External Affairs Dimitrije Rupel announced to the Italian newspaper *La Repubblica* on the day after Slovenia's declaration of sovereignty that "Yugoslavia no longer exists" (*Borba*, 6 July 1990:7).

In September, Serbia enacted a new constitution that included the following: when acts of the federal government or of other republics that are contrary to the federal constitution threaten the equality or interests of Serbia, the Serbian government must protect those interests (Serbian Constitution of 1990, art. 135). Like the Slovenian amendment 48a, this provision in the republican constitution essentially gave Serbia the right to determine for itself the meaning of the federal constitution. The logic and political rationale for Serbia's position was revealed in an interview by Mihalj Kertes, a member of the Presidency of Serbia, in response to a question about the compatibility to the federal constitution of proposed amendments to the Serbian constitution: "The federal constitution exists only on paper. If the Slovenes can do it [ignore the federal constitution], so can we" (*Borba*, 16 May 1990:6).

With this adoption of confederal positions by the three largest republics, the collapse of the Yugoslav state was inevitable. Each of these republics began increasingly to ignore federal authority and to veto federal activity. With the erosion of federal authority, the "combative federalism" that had obtained since 1974 was transformed into a series of grim zero-sum games, in which each republic sought its own momentary tactical advantage without any recognition of the benefits of cooperation. Despite popular support for Federal President Ante Marković within the country and from virtually all foreign powers, central authority dropped to

virtually nothing between summer 1990, when "sovereignty" was declared by Slovenia and Croatia, and June 1991, when their declarations of independence brought warfare to Yugoslavia (Glenny 1992).

The armed conflict stemmed from the lack of any means to resolve the problems of inter-republican relations. Under the federal understanding, there had been two such mechanisms: the normative pronouncement of the Constitutional Court, and the political power of the Federal Presidency and the Federal Executive Council (FEC) to pass temporary ordinances. In practice, neither mechanism was used very often until 1990, but the possibility that they could be invoked had given the central government enough clout to play a role in the "combative federalism" of 1974-1989. With its adoption of the confederal position, Slovenia (and soon Croatia and Serbia) refused to be bound by the decisions of the Constitutional Court, and began to ignore federal laws, thereby destroying both of these mechanisms and the main source of political power for the federal government. Without these mechanisms, disputes within the federation could be resolved only by force or by capitulation to the intransigent positions of other parties. Furthermore, the sudden apparent acceptance of each republic's "right" to decide whether to obey federal laws was an irresistible tool for political posturing, for showing the republics' sovereignty. In the political milieu of ethnofederalism, where concessions could be attacked by political rivals as betrayals of one's own (ethnic) nation (*narod*) and where there was no longer any central institution authorized to decide disputed issues, escalating threats, displays of armed might and ultimately the use of force could not be avoided.

The Naivete of Consensus

> The principle of majority decision in single-nation communities is the democratic way of decision making. However, this is not valid for decision-making in multi-national communities, particularly in multinational federal communities. The modern development of democracy demands the

> consideration of nationality and the protection and assurance of the minorities through inclusion of the principle of agreement of the members [i.e., unanimity] in decision making in the Federation. (statement on the Slovenian Amendments by the Presidency of Slovenia, *Borba/Rad*, January 1988).
>
> In plural societies...majority rule spells majority dictatorship and civil strife rather than democracy. What these societies need is a democratic regime that emphasizes consensus rather than opposition (Lijphart 1984:23).

The express purpose of the 1974 constitution of Yugoslavia was to resolve the national problem by granting maximal autonomy to each republic, and to protect each by requiring unanimous consent for all major decisions within the federation (Djordjević 1988 and Pašić 1988). Thus, the 1974 constitution was aimed at promoting consensus; indeed, it required it for the state to function. In this way, and as the two quotes given above show, the 1974 constitution had much in common with the consensus model of democracy advocated by Arend Lijphart (1984). The failure of Yugoslavia permits some exploration of the potential limitations and inconsistencies of this idea.

First, the idea of consensual democracy seems to rule out binding mechanisms for resolving problems when consensus cannot be achieved. If each entity in such a consensual structure is truly free to decide whether it will agree on all issues, then it is sovereign — and sovereigns cannot be bound by law. While sovereigns may agree to resolve all disputes by means of some kind of judicial process, there is ultimately no mechanism to make them honor such commitments, which is precisely the weakness of international law, and the source of the impotence of the International Court of Justice. "Consensus democracy" seems to require a consensual constitution, but surely that phrase is an oxymoron. As the Yugoslav experience shows, a constitutional order that renders the meaning of a putatively federal constitution subject to the interpretation of each federal unit destroys,

effectively, the federal constitution (Lilić and Hajden 1989). Chief Justice of the US Supreme Court John Marshall expressed the point perfectly: either the federal constitution is "a superior and paramount act" to state constitutions or else it is nothing. If the federal constitution is binding on federal units, then their own autonomy, and freedom to give or withhold consent, must be limited.

It might be argued that the failure of federal Yugoslavia was due to the specific flaws of the Yugoslav constitution, and not to any fundamental problem with the idea of consensual democracy. After all, Lijphart himself has recognized that, with regard to federalism and decentralization, "the logical extreme on the consensual side would be a federal system in which the component units have all power and the central government none; but this spells partition rather than strong federalism" (1984:208). His prescription is moderation between the extreme possibilities by giving regard to what is practical and "what is appropriate to the conditions of particular countries" (Lijphart 1984:208). Yet this is no help, not only because moderation in politics is often lacking, but because the most immoderate politicians — those who would sacrifice much of public order if not the public good in order to further their personal or narrow ideological ends — are precisely the ones who are most likely to seize on weaknesses in any interlocking system of mutual accommodations. And if a constitution excludes majority rule with the aim of preventing majoritarian rule, it is likely that it will be so complex as to contain the seeds of its own destruction. Such is the case with the interlocking provisions of articles 378, 391, 394 and 285 of the Yugoslav constitution of 1974.

The autonomy of federal units may be self-destructive in another way. It should be recalled that the faults of the constitutional system that were first noticed were in the realm of the economic organization of Yugoslav society. The "confederal" structure did not promote economic rationality, since assurance of the uniformity of the market was difficult in the absence of federal regulatory institutions. It is worth asking whether a "consensual democracy" could develop binding mechanisms for economic regulation. Without binding federal authority, orderly economic competition is in jeopardy, a point recognized by the American

federalists. In Yugoslavia, however, such federal economic institutions could not be developed because each republic wished to protect its autonomy (and, after 1990, sovereignty). There is a logical bind on this point: if "consensus" is to be required for making decisions, regulation is impossible. But if central regulatory agencies are empowered to govern commercial transactions, the requirement of consensus has to be abandoned. In Yugoslavia in 1988, the first set of constitutional amendments was limited in scope and ineffective in result because this contradiction could not be overcome.

This likelihood of structural problems points as well to a conceptual weakness of consensual democracy in a multinational federation: the view that the federation is composed of nations, rather than citizens. This idea, which was basic to the structure of the Yugoslav federation and the touchstone of the Slovenian amendments, renders both the federation and the citizens vulnerable to the majoritarian politics within federal units. Citizens cannot invoke federal protection, and the federation cannot exercise its independent power over individuals to enforce its mechanisms. Both of these possibilities were realized in Slovenia, where amendment 43c to the republican constitution failed to specify minorities other than the "autochthonous" ones as protected by articles 154, 246 and 247 of the federal constitution, while amendment 48 denied the federation's power to act independently in Slovenia.

Finally, the view of a multinational federation as being comprised of nations rather than citizens increases the chances of catastrophe and of the violation of human rights when a constitutional crisis threatens. The constitutional structure then serves as a polarizing symbol, justifying the division of the society and the classification of each person in it into national groups. In social settings in which the populations mix, those who are not ethnically "pure" are not only denied protection of any government, but are likely to be targets of hatred by all.

"Consensus democracy," then, seems a pleasant idea with inherent fundamental weaknesses and dangers. To adopt it in a multinational state — as Yugoslavia did in 1974 — may avoid the problem of majoritarian rule, but at the

likely cost of rendering the polity inefficient economically and politically, and with potentially fatal flaws in the constitutional organism.

Politics and Constitutional Structure

Despite the built-in flaws of the Yugoslav constitution of 1974, the state that it defined managed to function until 1991, albeit in obvious decline for at least its last two years. The political pressures that led the Slovenian government to challenge the federal structure and thereby to start the dissolution of the Yugoslav constitutional order were largely caused by the rise of Serbia's militantly nationalist and aggressive president Milošević, coupled with domestic pressure from Slovenia's own nationalists. Thus it might be argued that the destruction of the Yugoslav federal structure was due to these political pressures and not the weaknesses of the constitution itself. Yet the flaws built into the constitution gave the Slovenes the means to destroy the constitutional order while claiming they were actually following the constitution's provisions. Further, the "confederal" structure of the constitution facilitated the Slovenian willingness to destroy the federal order rather than try to stop Milošević within it. When we recall that in early 1990 a majority of Slovenes wished to remain in a looser Yugoslavia, it is possible that the unclear provisions and inconsistency built into the 1974 constitution gave the Slovenian government's destructive actions a legitimacy that they would not otherwise have had. While perhaps no federal structure could have contained the political pressures of Yugoslavia in 1989/91, the flaws of the 1974 constitution served to ensure that they became unmanageable, thus making civil war virtually inevitable. Responsibility for the war must thus be shared, between the Slovenes, whose actions destroyed the federal structure, Milošević, whose aggressive politics goaded the Slovenes into doing so, and the drafters of the constitution, who made the chimera of a "confederation" seem a reasonable constitutional structure.

Notes

1. Burg and Berbaum, however, were careful to note the fragility of this "Yugoslav" identity, and signs that it might decline as the economy worsened. Their pessimism seems to have been justified, at least for Croatia: the 1991 census for the republic showed a drop in self-identification as "Yugoslav" from 8.24 percent of the population (1981 census) to only 2.2 percent (*Danas*, 6 August 1991:21). Of course, this change in self-identification may have been based primarily on fear of hostility to "Yugoslavs" on the part of the right wing nationalist government elected in Croatia in 1990, and the growing conflict between Croatia and the federation.

2. Bosnia-Herzegovina, of course, was the home republic of the Muslim nation, although Muslims comprised less than half of its population.

3. The dangers of weakening the central authority in a federation were pointed out by scholars on the Law Faculty of the University of Belgrade as early as 1971, before the 1974 constitution was written (*Anali Pravnog Fakulteta u Beogradu*, 19(3) [May-June 1971]). These warnings were not only ignored, but suppressed: the issue of the Belgrade Law Faculty's journal *Anali* that reported a critical discussion of the draft amendments to the 1963 Constitution that set the stage for the 1974 constitution was banned, and the most critical authors were forced from the Law Faculty.

4. The 1988 amendments, numbered 9-47, changed fully a third of the 1974 constitution. These amendments themselves were published in *Službeni List SFRJ* (70, 26 November 1988), and an English translation of the revised constitution was made available in 1989 by *Jugoslovenski Pregled*.

5. The first draft of the Slovenian amendments that was circulated for public discussion was entitled *Osnutek amandmajev k ustavi SR Slovenije*; it was prepared by a committee of the Slovenian Assembly and discussed by the full assembly in March and April of 1989. This draft was released for public discussion, and published in *Delo* later that spring.

6. The Yugoslav Constitution, like most national constitutions, contains material that is prefatory to the operative parts of the constitution, or the constitution proper. In law, such prefatory materials are not considered to be enforceable in the same way as the provisions of the constitution, but rather are considered primarily as aids to interpretation of the constitution proper. This is the position taken by the dean of Yugoslav constitutional theorists, Jovan Djordjević (1982:129-130). The distinction is important in regard to the issue of whether the republics of Yugoslavia possess the right under the federal constitution to secede; see Note 7, below.

7. The right to secession is only mentioned in the introductory part of the constitution, while the stipulation that the external boundaries of Yugoslavia can be changed only with the consent of all republics is in the operative text (art. 5). In this regard the Yugoslav constitutional provision for secession is less clear than that of the USSR. Article 72 of the Soviet constitution clearly grants each republic the right "freely to secede."

8. International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by vote of the General Assembly of the United Nations, General Assembly Resolution 2200 A (XXI) of 16 December 1966. The International Covenant entered into force on 3 January 1976.

9. *Borba, specijalno izdanje: "Amandmani Dele Jugoslaviju."* October 1989.

10. "Delovno Besedilo Predloga Amandmajev k ustavi SR Slovenije," *Poročevalec* (Ljubljana), 17 July 1989.

11. *"Amandmani na Ustav SR Slovenije" (specijalni dodatak). Borba*, 7 August 1989.

12. Lest this seem too extreme an interpretation, it should be noted that in the climate of nationalist fervor in 1990, even these specifically protected national minorities came under attack. In an interview in *Delo* in June 1990, the new Slovenian Minister for External Affairs, Dimitrij Rupel, was quoted as saying that he was concerned by unspecified actions of the Italian ethnic minority in Slovenia and that he warned them not to continue. This

"warning" prompted a protest by Slovene-Italian members of the newly elected Slovenian assembly (*Borba*, 13 June 1990:6).

13. I am indebted to Professor Stevan Lilić for this formulation of a solution to the definitional problem.

14. *Borba, specijalno izdanje: "Amandmani Dele Jugoslaviju."* October 1989.

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