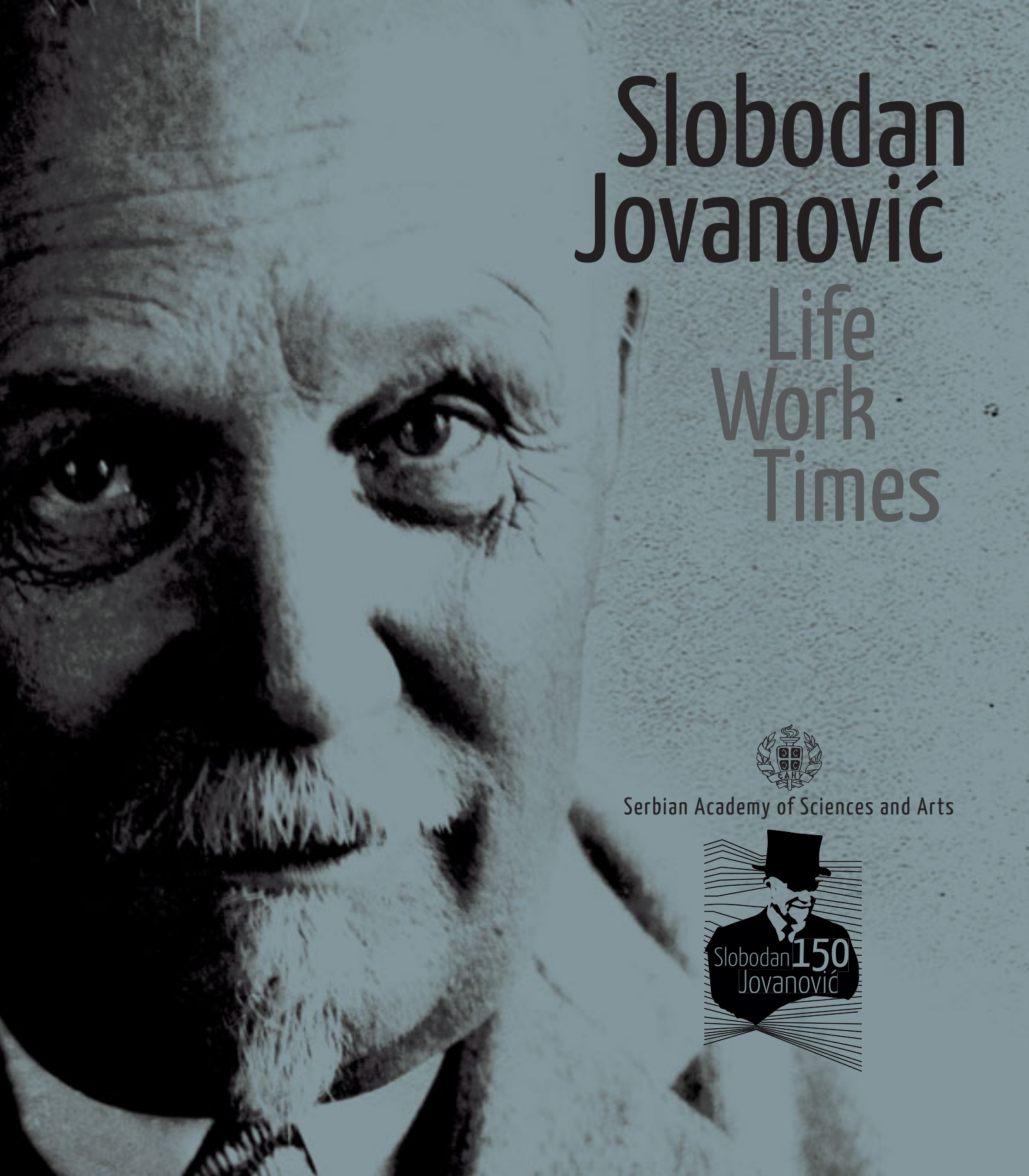

Slobodan Jovanović

Life Work Times

Serbian Academy of Sciences and Arts

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SERBIAN ACADEMY OF SCIENCES AND ARTS

SLOBODAN JOVANOVIĆ: LIFE, WORK, TIMES
ON THE OCCASION OF THE 150th ANNIVERSARY OF HIS BIRTH

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SLOBODAN JOVANOVIĆ
LIFE, WORK, TIMES

ON THE OCCASION OF THE 150th ANNIVERSARY
OF HIS BIRTH

SERBIAN ACADEMY OF SCIENCES AND ARTS

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EDITOR'S FOREWORD

The monograph on Slobodan Jovanović (1869–1958), published on the occasion of the 150th anniversary of his birth, represents a unique account of his life, scientific work, society and the times in which he lived. Jovanović's work and his personality have always attracted the attention of the general public. The work he left behind is remarkably voluminous and versatile. It should be noted that a great number of his works was not included in the volumes of his collected works that have been published to date. Slobodan Jovanović worked as a university professor at the Faculty of Law in Belgrade for over forty years. He performed the duties of the dean of the Faculty of Law and the rector of the University of Belgrade. He was the president of the Serbian Royal Academy, legal expert at the Paris Peace Conference, president of the Commission for drafting the Constitution of the new state in 1920, president of the Serbian Cultural Club, president and vice-president of the Ministerial Council of the Kingdom of Yugoslavia. In view of the duties he performed, social and political activities represent an important part of the picture of this great scientist of ours. As the president of the Serbian Cultural Club and the pivotal personage of the Serbian people he was delegated to assume the responsibilities of the second vice-president of the Ministerial Council in the government of 27 March 1941. He was the president and vice-president of the government in the country and later in exile. He died in emigration in London in the late 1958, almost a hundred years since his father Vladimir Jovanović, one of the leading Serbian Liberals, had first arrived in the British capital as a political emigrant. Even though Slobodan Jovanović advocated parliamentary bicameral multiparty system, he had never participated in party politics. However, he took part in state politics, as Jovan Dučić wrote in 1942: "Slobodan Jovanović has never been a member of a party, a member of government, or a participant in any plot. He always kept himself at a distance from ruling politics, and yet for this very reason he stood close to its side, as its yardstick, its judge, and its state prosecutor. He used to be called 'the conscience of the Serbian people'. He was not a political person, but a statesman: always at the helm, and from there always taking in sweeping views that lie ahead of him." In the aftermath of the war, Slobodan Jovanović was convicted at the political trial organized by the new communist rule in Belgrade in 1946. His personality and work were expelled from the educational system and scientific circles and consigned to oblivion. He was rehabilitated in 2007.

This monograph first presents the biography of Slobodan Jovanović including the chronologically presented works that can be said to represent the milestones of his scientific develop-

ment, as well as his own theoretical viewpoints. Subsequently, the individual chapters trace the scientific areas he dealt with and scientific achievements he accomplished. The account starts with his theory of the state related to the subject he had taught, that is, General and Special Constitutional Law. It is followed by an account of the special legislation, that is, constitutional law, and an assessment of Slobodan Jovanović as a constitutional-legislative writer. The books in which he interpreted the constitutions of the Kingdom of Serbia and the Kingdom of Serbs, Croats and Slovenes (Vidovdan Constitution) are analyzed and reviewed. The following part of the monograph is devoted to the historiography of Slobodan Jovanović, to the multi-volume political history of Serbia of the 19th century, which is often justifiably regarded as his best-known work. If his other works to do with national history are also taken into account, it can be seen that he encompassed a period from the late 18th to mid-20th century. The subsequent part of the monograph deals with Jovanović as a literary scholar and critic. Special praise is given to his sophisticated language and well-known Belgrade literary style. The final part of the monograph contains Jovanović's bibliography.

With a view to making the text of the monograph easier to read, all footnotes, that is, notes, are to be found at the back of the book.

We thank all the authors for the texts published in the monograph dedicated to the 150th anniversary of the birth of our renowned scientist Slobodan Jovanović.

Kosta Čavoški and Aleksandar Kostić

SLOBODAN JOVANOVIĆ AND CONSTITUTIONAL LAW

(Retired) Professor Ratko MARKOVIĆ
Faculty of Law
University of Belgrade

Slobodan Jovanović was a singular personality in many respects, including the fact that in 1897, aged only 28, he became an associate professor at the Great School – the General and Special State Law course, which is practically unimaginable today. When he was 31, he became a full professor at the same course. He also taught at the Law Faculty of Belgrade University (founded in 1905, when the Law Faculty became of one five faculties of the new University) – he led the general course, i.e. subjects General State Law and Constitutional Law of the Kingdom of Serbia, and held seminars in these subjects. He taught these subjects, within the general course, upon the opening of Belgrade University after World War I until the end of the academic 1927/28 year, since when, until his retirement, he led only the doctoral course. Jovanović's entire academic career was associated with constitutional law – both general, i.e. state, and special, i.e. national constitutional law.[804]

Though a prolific writer, one of the best we have had, more than fifty years after his death, Jovanović's name is synonymous with constitutional law among the general public and the academia. However, it is unlikely that so many people would admire Jovanović and that he could last so long and become a classic if such generally accepted judgment of intellectuals was based merely on his scientific papers and two systematic works (textbooks) on constitutional law. Although his formal career of a constitutional lawyer is indisputable, it seems to have become, a long time ago, too narrow to mark his entire scientific

Constitutional law of the Kingdom of Serbs, Croats and Slovenes

and literary oeuvre, which is why he is usually referred to as a state theoretician and historian.[805] Jovanović's greatest scientific merits are those of a state theoretician and the author of a multi-volume political (constitutional) history of Serbia, starting from the Defenders of the Constitution rule until the last Obrenović ruler. In terms of their scientific value, these works are on a par with those about the history of political thought. This probably reflects Jovanović's concept of constitutional law, which left little room for free creativity, refined thinking and the beauty of style – all of which were the features of Jovanović as a writer.

In his *Ustavno pravo* (*Constitutional Law*) of 1907, Jovanović narrowed perhaps to the utmost the subject matter of this branch of law. In this book, he reduced the subject of constitutional law to the organisation of the state – not entire, but only the highest state authorities, excluding courts. The book is plain, almost simplified, as seen already by inspecting its contents. A short description of the Serbian constitutionality of the 19th century, which is at the same time the introduction, is followed by three parts – The Great National Assembly, National Assembly and King. The appendices include "Abbreviations", "Errata" and "Register".

Ustavno pravo (*Constitutional Law*) of 1924 is an extended version of the eponymous book of 1907, reflecting the changed constitutional situation in the country, rather than a change in the writer's position. The introduction elaborates on other topics and the number of chapters increased (from three to five). The chapters include: The Main Principles of the Vidovdan Constitution, Constituent Assembly, National Assembly, King and Legal Position of Citizens. In accordance with his understanding of constitutional law, in both books Jovanović devoted most attention to the National Assembly. In the first 314-page book, 236 pages are about the National Assembly, and in the second 465-page book, 227 pages concern the Assembly. The appendices of the 1924 book include the "Foreword", "Abbreviations", "Literature" and "Errors". Jovanović explained such disproportion in covering individual topics of constitutional law in the foreword to his 1924 book: "As a rule, constitutional law deals with the organisation of the legislature: as regards the administrative authority, only its highest bodies – its president and ministers – enter the scope of constitutional law; the details of its organisation belong to administrative law". As it is also the case today in leading world textbooks on constitutional law, when it comes to state authorities, the judiciary and human rights do not belong to constitutional law, but are separate teaching subjects. In the 1924 textbook, Jovanović covered human rights in a separate part under the political pressure rather than due to his changed convictions (which

he presented in the foreword) given that numerous political parties and movements advocated that human rights be guaranteed by the Constitution. Jovanović analysed them as legal concepts, disregarding their political importance in creation of the liberal political order in the countries where those rights were applied.

The reason why Jovanović's books on constitutional law have a lesser scientific value than his other works is also his method of examination of such a narrow subject matter. He applied the method of a dogmatic analysis of constitutional and legal forms, which excluded theoretical considerations, a comparative legal overview, totality of social relations generating the norms, and a critical attitude towards those norms. When daring to criticise a legal norm, Jovanović does so because of its incompleteness and inconsistency with other norms, difficulties in application and infeasibility, this being his criticism of the legislator rather than scientific criticism. When covering constitutional topics, Jovanović invariably examines constitutions and related laws, rules of procedure and other legal documents. Jovanović's books on constitutional law, perhaps all the more so given that the writer is such a brilliant and learned man, and an unparalleled master of the Serbian language, show a limited value of knowledge gained by applying the dogmatic analysis method.

* * *

Jovanović obviously vacillated about the introduction to the *Constitutional Law*. The introductions to his two books are thematically entirely different. In his book of 1907, the introduction consists of three lacklustre pages delineating in a highly concise manner the order of the adoption of six Serbian constitutions. Each of them is presented succinctly, extricated from the social context, without a focus on the timeline of the constitutional development of 19th-century Serbia. A more complete insight into the constitutions is gained by analysing the historical development of each of the important institutes of constitutional law which, printed in a special font, precedes the institutes valid at the time when Jovanović wrote the book.

Jovanović believes that with the Hatt-i sharif of 1830 Turkey recognised internal autonomy to Serbia (which implied the right to organise itself internally, on its own, by means of its Constitution) and not external autonomy, which it gained only in 1878. However, in another place[806], he believes the constitutional question in Serbia was raised "already during the First Uprising, when a dispute arose between Karađorđe and the nahiye voivodes over whether Karađorđe was merely a generalissimo or a political ruler as well", i.e. over whether the military authority would be separated from civil authority or not. (*Vožd*) Karađorđe maintained his military seniority until the end of the Uprising. "No one disputed his commanding capacity; his adversaries only did not want that his military seniority be transformed into political leadership.[807] Particularly valuable is the author's view that after the dynastic change of 1858, the Constitution of 1838 "is considered earlier abrogated". Instead by a new Constitution, Serbia's internal organisation was regulated by numerous organic laws, which constituted a partial constitution only by their substance, and not their form. A fully-fledged Constitution was adopted only in 1869, but was formally (as well as content-wise) disputed throughout the long period of its validity (1869–1888; 1894–1901) because it was issued while "the Prince was underage".[808] That was the first


СУЛТАНСКІЙ
ХАТТИШЕРИФЪ,


УСТАВ

1838 Serbian Constitution, bestowed by the sultan

1888 Constitution of the Kingdom of Serbia that took effect in 1889 and was valid up to 1894. It was passed by the Great Assembly in its session of 21 December 1888.

Constitution adopted by Serbia without the Porte's interference. Its significance is reflected in its making a break with the hitherto purpose and contents of the Constitution. Instead of defining as the main purpose the limitation of the princely supreme authority with an oligarchical body of people's chieftains, the National Assembly was introduced in the separation of powers, at first with little reputation. In any case, this Constitution marked the start of the institutionalisation of the idea about the sovereignty of people, whose institutional expression was its representation. The legal means of achieving this objective were parliamentary electoral laws, laws regulating the assembly "in the procedure" (hence the "rules of procedure") and the law on ministerial accountability. This changed the type of constitutional legislation. Instead of the State Council, which it concerned in its major or significant part, the National Assembly and ministerial accountability now constituted the most significant part of the legislation.

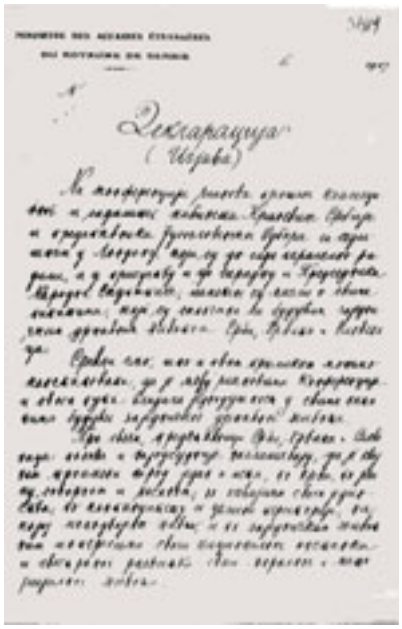
That the focus of the Constitution finally shifted in favour of the principle of popular sovereignty is seen, at least formally, in the entities adopting the Constitution of 1888. Those were the King and the Great National Assembly, which became a constitutional category for the first time with the Constitution of 1869 and was another name for the constituent assembly. This was reflected in the contents of the Constitution and the relating constitutional legislation, which was, however, not the case with the constitutional practice, which had the features of a personal regime. In 1894, the King suspended the Constitution of 1888 and reinstated the Constitution of 1869. This revoked any vestige of parliamentarism from the Constitution of 1888 and restored the personal regime with negligible people's representation. The King adopted the Constitution of 1901 by his will, although the valid Constitution stipulated that the Great National Assembly "decides on changing the Constitution". Such playing with the constitutional power – the abrogation and reinstatement of the Constitution – in addition to other reasons, cost the King his life. After the King was assassinated, the Government with the people's representation compiled the Constitution of 1903, based on the Constitution of 1888, with incorporated necessary

amendments. The relating constitutional legislation and the Assembly's rules of procedure were restored. Jovanović ends here his overview of the development of constitutionality in Serbia as the country stopped being independent with its unification with other Yugoslav states and provinces into a new state, during the period of validity of the Constitution of 1903. Jovanović's overview of the development of constitutionality in Serbia is of factual, rather than synthetic importance.[809]

Jovanović conceived the introduction to his *Constitutional Law* of 1924 entirely differently. The introduction no longer focuses on all constitutions in Serbia, but only the Vidovdan Constitution. It also elaborates on the legal nature of the new state shaped by that Constitution (the second and last Constitution of that state was adopted in 1931 as an imposed Constitution). In his foreword, Jovanović states that he set before him the task to "compile the system of our constitutional law" based on the Vidovdan Constitution and the relating laws. First, it is rare that the thematic unity of the introduction, in the books that have one, is impaired by the division into chapters. The introduction generally contains a single text, not interrupted by chapters. Jovanović, however, divides it into three chapters: the creation of the state, creation of the Constitution, and constitutional amendments of the opposition. The first chapter contains historical facts, chronologically organised with short descriptions, rather in a form of notes. Their main part concerns the legal interpretation that should answer the question "whether the state of Serbs, Croats and Slovenes (SCS) is an old or new state", i.e. "whether the state of SCS is equivalent to the Kingdom of Serbs or represents a new state which emerged after the disappearance of the Kingdom of Serbia".[810] After theoretically surmising when a state, which previously did not exist, is in fact an old state continuing to exist under another name, and when it becomes a new state, which as the newly created state continues to exist in the future, Jovanović concludes: "The creation of the state of SCS did not cause any break with the hitherto system of international treaties of the Kingdom of Serbia – therefore, from the viewpoint of international law, the state of SCS is an old state".[811] Therefore, the state of SCS was "new from the inside and old from the outside".[812] In terms of logic, Jovanović's view is a correct one. He believes the question asked is accurate, which is why he is resolving it by applying legal logic. However, Jovanović's question is not legal, but political, and its answer depends on the interplay of the main political forces in the world, and not on logical legal conclusions. That was the case at the time when Jovanović was writing his book, and that is the case today. When in 1990/91 four federal units separated from the Socialist Federal Republic of Yugoslavia (SFRY), the remaining two federal units

Milan Obrenović (1854–1901), King of Serbia from 1882 to 1889. He enacted the constitution, known as the "Radical Constitution".

Proclamation of the Kingdom of Serbs, Croats and Slovenes at the Krsmanovićs' house in Belgrade on 1 December 1918



First page of the Corfu Declaration signed by the Government of the Kingdom of Serbia and the Yugoslav Committee on 20 July 1917 on the island of Corfu. Pursuant to the Declaration, the representatives of Serbs, Croats and Slovenes agreed to build the joint state under the Karađorđević dynasty.

– based on the valid SFRY Constitution and by introducing necessary changes due to the unilateral leaving of the four federal units from the federation – adopted the Constitution, setting up a two-member federation – the Socialist Republic of Yugoslavia (SRY). Although the international treaties concluded by the SFRY remained in force and although the SRY adopted the Constitution in line with the procedure envisaged by the valid SFRY Constitution, reflecting the new factual situation, the SRY was not recognised the status of the old state, one of the founders of the UN system. Instead, the UN placed it in the same rank with the seceded states, requesting from it, as well as from them, if it wished so, to apply for UN membership. Namely, a part of the then international community, whose voice in the world was decisive, did not consider the reduction of the old state a legal, but a political question, whereas the international community considered the enlargement of the old state a legal question under the Treaty of Versailles. The difference between these two cases is the following. The state of SCS became a single large state out of several small states and provinces, as it also covered the Slavic part of disintegrated Austria-Hungary. The large SFRY broke into several small states, of which the SRY was the largest because, in addition to Serbia – despite Banditer's opinion that the SFRY broke into its constituent parts, i.e. federal units – it also included the federal unit of Montenegro. In the former case, the validity of the international treaties of the Kingdom of Serbia was extended to the large state of SCS, while in the latter case the validity of the international treaties of the large SFRY was reduced to the part remaining from the seceded republics – the SRY. Still, the international community recognised these self-proclaimed banana republics as autonomous and independent states.

Solemn session of the Constituent Assembly held on 28 June 1921, in which the Vidovdan Constitution was passed.

What naturally follows Jovanović's answer to the question posed in the first chapter of the introduction is the chapter about the creation of the Constitution of that, "internally" new state. The main legal question concerning the adoption of the Constitution is whether its legislator, i.e. the constituent assembly, is a sovereign authority or not – whether it decides on its own about the new Constitution or its decisions must be endorsed by another government authority, i.e. the King, given that the new state was proclaimed a monarchy even before the adoption of the Constitution. The unification was carried out in such way that the question of the form of rule was resolved even before the creation of the constituent assembly in favour of the monarchy. Instead of the unification of Serbs, Croats and Slovenes into a single state, the King proclaimed their unification into a single kingdom. This meant that the Constitution of the Kingdom of SCS was to be a joint work of the constituent assembly and the King. However, much more important than this legal question analysed by Jovanović is an essential, basically a political issue. The Vidovdan Constitution received an insufficient number of votes to be considered legitimate, which is an indispensable condition for complying with the Constitution.

In regard to theoretical views about whether the adoption of the Constitution was preceded by king's rule, Jovanović gives a logically impeccable overview of four different opinions and their consequences for the legal interpretation of the state of SCS. On the other hand, his analysis of elections for the constituent assembly, its rules of procedure, the government's draft Constitution and the parliamentary debate on the Constitution, is burdened with the minutest details which, apart from factual importance (there are many paraphrases of regulations and descriptions of party and government disputes), have no theoretical value, nor do they contain subtle logical analyses, which Jovanović made even in the monotonous text of

Postage stamp of the Kingdom of Serbs, Croats and Slovenes

Manifestations in Ljubljana on the occasion of the establishment of the State of Slovenes, Croats and Serbs held on 29 October 1918. That state "lasted" up to 1 December 1918, when the Kingdom of Serbs, Croats and Slovenes was established.

legal regulations. These analyses and the overview of the opposition's constitutional drafts have the value of a historical testimony and source.

The first part of the 1924 textbook (a corresponding part did not exist in the *Constitutional Law* of 1907) is titled "The Main Principles of the Vidovdan Constitution". It does not elaborate on constitutional principles, but on state emblems (the state name, symbols, language) and the constitutional definition of the state and state organisation that enables the "state unity", which is centralistic in state-legal terms. Jovanović outlines the conceptual basis of such centralistic organisation. According to it, the Serbs, Croats and Slovenes are a single people and "all the difference among them concerns the name, faith and alphabet (including other linguistic differences in the case of Slovenes)".[813] Therefore, "the tribal consciousness should disappear as soon as possible so that the state idea could emerge... As a guarantee that such development of 'the state idea' would not result in the hegemony of the Serbian tribe as the strongest in terms of their numbers, the Vidovdan Constitution brought parliamentarism and self-governance... The Vidovdan Constitution is an attempt at organising the Kingdom of Serbs, Croats and Slovenes as a *simple national state*".[814]

While the same institution, in the book of 1907, chapter one, is called the "Great National Assembly", the second part of the book of 1924 is titled the "Constituent Assembly". Jovanović uses both these terms to denote constitutional changes. Nonetheless, there is a difference between these two institutions. The Great National Assembly was envisaged for the first time in the Law on the National Assembly of 1861. It did not have the constituent power at the time. It became a constituent authority only with the Constitution of 1869, which it approved through its vote, exercising the constituent power before the Constitution was adopted. In both parts, these names denote the procedure of exercising the constituent power rather than the power itself. However, due to intentional legal gaps, which exist still today and to which theory has not given a single solution, this procedure should be presented with a general overview, just as Jovanović did, leaving room for free activity of the political factor.

While still very young, Jovanović wrote the work "Velika narodna skupština – studija o ustavotvornoj vlasti" (*The Great National Assembly – Study about Constituent Power*), Belgrade 1900, which already then showed his extensive knowledge and an exquisite writing talent.[815]

The Great National Assembly was an episode in Serbia's legal system (it existed from 1861 to 1901, and was restored by the Constitution of 1903). However, its role was not at all incidental. It deprived the Council of its constituent power, only to later move it out from legislation and then fully eliminate it as one of the holders of legislative power. When the Assembly was introduced by the law of 1861, it was a legal category, until the Constitution of 1869, which abolished it. Of the competences relating to the Prince and his personality, it also gained a constituent authority by this Constitution, participating even in the adoption of the Constitution instead of the Council. When by the Constitution of 1869 legislative power was transferred from the Council to the people's representation, so as to avoid the blending of constitutional and ordinary laws, it was said that the "Constitution (is) *ordinary* and *large*" (Article 42, paragraph 2).[816] "The Great Assembly... is different frm the ordinary one primarily because it is larger." However, as it only votes, its numerosity does not bother it a lot; however, if its task was to deliberate and make decisions, its numerosity would be the reflection of weakness rather than strength. "The broader an assembly, the closer it gets to the populace – meaning it is increasingly less capable of deliberation."[817]

When Jovanović was writing the *Constitutional Law* of 1907, the Constitution of 1903 was in force, according to which the decisions made by the King and the Great National Assembly were valid as a constitution. This means that the Great National Assembly did not meet periodically, but based on the decision made by the King or the Ordinary Assembly. The proposal "to amend, supplement or interpret something" in the Constitution can be made by the King or the National Assembly (Article 200 of the Constitution of 1903). As the Constitution forbade a change in some of its provisions, it meant that the King and the National Assembly could propose a change in "each article of the Constitution individually and all articles in totality". The adoption of the Assembly's proposals was voted on twice. A proposal was considered adopted if the absolute majority of the constitutionally defined number of deputies voted for it both times. The Assembly adopted proposals in the form of resolutions. The King was obliged to inform the Assembly when he decided to propose a change in the Constitution. He could do so by means of a missive or decree, about which the Assembly could not hold discussions, as each of these authorities exercised their constitutional initiative right independently of one another. Both the King and the Assembly stated in their proposals only what, and not how something should be amended, supplemented or interpreted. Their proposals were not formal constitutional amendment drafts.

As soon as the King notified the Assembly about his proposal or the Assembly informed the King about its proposal, the National Assembly would be dissolved and the Great National Assembly would be convened in four months' time. No matter who the proposer was, the Great National Assembly "can make decisions only on those amendments and supplements or interpretations of the Constitution, which contain the proposal based on which it is convened" (Article 200, paragraph 7). Jovanović therefore believes that "nothing could be more wrong than to consider the Great Assembly a sovereign assembly capable of deciding on whatever it wished. On the contrary, it is an ad hoc assembly, strictly adhering to the predefined agenda".[818] The King

1921 Constitution of the Kingdom of Serbs, Croats and Slovenes

convened both the Great and Ordinary Assembly. Unlike the Ordinary, the King could not dissolve the Great Assembly. Miodrag Jovičić also believes ("Leksikon srpske ustavnosti 1804–1918" – *Lexicon of Serbian Constitutionality 1804–1918*, Belgrade, 1999, p. 40) that although it made decisions on constitutional amendments, the Great National Assembly "did not have the character of a constituent assembly because, bound by proposals for constitutional amendments and supplements... it could not decide in a sovereign manner about changes to the Constitution in totality, or about the adoption of a new Constitution". Jovanović, however, believes that given numerous gaps in regulations governing the relations between the King and the Great Assembly, the regulations about the relations between the King and the Ordinary Assembly were in force, with the difference to be made due to the narrow and special authority of the Great Assembly.

As already mentioned, the constitutional initiative of the King and the Ordinary Assembly was partial. They only proposed the articles of the valid Constitution to be changed, without proposing the text of the amendment. The second part of the initiative belonged to the Great Assembly. It could wait for individual deputies to submit the draft text of amendments upon their initiative, but could also elect a separate constituent board tasked with defining the method of change. In general, constituent, as well as legal regulations were decided upon article by article, and in their totality. The Great Assembly would make decisions by the absolute majority of the constitutionally defined number of deputies. Its validity was endorsed by the King's decision.

In general, Jovanović was not a proponent of the Great Assembly, which, however, regardless of limitations and its partial constituent power, was a constituent assembly. Based on the comparative legal material he had at his disposal, Jovanović noted three methods of constitutional changes in the world: "either an appeal was made with voters, or a special assembly was called, whose attributions were exclusively or mainly constituent, or, finally, constitutional changes were entrusted with a legislative body. Of course, such methods are combined with one another in some states".[819] In his opinion, the Constituent Assembly was an even more dangerous experiment than a direct appeal with the electorate.[820] Both Napoleons – Napoleon I, and after him Napoleon III, "embraced from the French Revolution... the principle of appeals with the people; and rejected the institute of a convention".[821]

The part of the *Constitutional Law* of 1924 concerning the constituent assembly contains a treatise about the course of the constituent procedure under the Vidovdan Constitution, with side comments which testify to the author's solid knowledge of the prevailing attitudes in the

legal literature of the time. Such is Jovanović's opinion about the prohibition of a partial or complete change of the Constitution, contained in some constitutions in the world. Jovanović believes "its character is purely platonic, because there are no higher authorities over constituent bodies which could prevent them to completely change the Constitution.[822] He believes that the Constitution could have, in addition to formal, greater essential legitimacy of the supreme law if only a single assembly did not decide upon it. This is because, at the moment of its election, it was not known that it would change the Constitution. At the elections for a new assembly, which was to change the Constitution, parties presented to voters their ideas for a new Constitution, which was the main part of a party's election propaganda. This means that the assembly arising from such elections was to a greater extent the expression of people's will compared to an ordinary representative body. An assembly elected to decide on a constitutional change would have no right of initiative – it decided only on those items of the constitutional change covered by the proposal of the authorised proposers of the constitutional change.

Except in a logical way, which is the path Jovanović's takes, it is hard to accept his view that the Constitution as the supreme law is binding only upon administrative authorities. The understanding that he consistently upholds, back from his *Constitutional Law* of 1907, is the following: "The judicial power is in principle bound only by law, and not by the Constitution. The Constitution states that courts make judgments only in accordance with laws. Such provision is also contained in earlier Serbian constitutions, and was always interpreted in such a way that courts are obliged to apply a law, even if it is not constitutional in terms of its contents".[823] At the time, there was no universal attitude in interpreting the relationship between the Constitution and the judicial power either. There were in theory significant persons whose opinions deferred from Jovanović's.[824] No less disputable is Jovanović's opinion that "the legislative power is not bound by the Constitution in the real sense"[825] because "there is no oversight over the constitutionality of legislative acts". "Unconstitutional laws have the same force as constitutional laws, because courts apply both. As the legislative branch can also pass laws contravening constitutional regulations, it cannot be considered bound by the Constitution".[826] It is simply incredible that such a discerning and knowledgeable lawyer as Slobodan Jovanović did not understand that with these conclusions he entirely devalued the definition of the Constitution as the supreme law in the country, which was customary in theory.

The major part of Jovanović's books on constitutional law which pertains to the National Assembly concerns two scientific disciplines that are separate today – electoral law and parliamentary law. The structure of this most voluminous part of both books rests on the following conceptual pattern: the Assembly is the people's representation and the first relating question is who could be a deputy, who elects him and how. Only when the people's representation is elected is the organisation of its work analysed – convening, postponing, conclusion and dissolution, formation, rights and duties of deputies, internal organisation and discipline, parliamentary procedure and competences (authorities). Out of parliamentary procedures, the book of 1924 examines the legislative procedure in a separate chapter.

Given that Jovanović considers the assembly a legislative body, one would expect that he would first explain why it became such only in the last decades of the 19th century, and not from

Knez Mihailova Street in 1925

the moment Serbia gained the right to internal autonomy. The Assembly obtained the legislative competence for the first time in 1869, though partial. It is possible to speak about the National Assembly as a legislative authority only starting from 1888. Until then, the legislative power was exercised, for more than three decades, together with the Prince, by the grand council, which "was not a people's representative in today's representational sense, but represented the oligarchic ownership elements of our people".[827]

The answer to the question as to why the council had an ownership-oligarchic composition and character, rather than people's representational, entailed more in-depth examination of internal circumstances in Serbia, as well as external influences which could explain why such solution remained in Serbia for such a long time. Jovanović obviously believed that such examination was inappropriate for positive constitutional law, although the National Assembly – which, according to him, was the main institution of constitutional law in 1907 – was for a short time in Serbia a legislative body together with the Prince, rather than the Council together with the Prince (King).

All issues covered by Jovanović in relation to the National Assembly, in his both books on constitutional law are still today classic constitutional and legal matter. Among them, for the sake of presenting Jovanović's views, it is necessary to present those that are of more general and durable nature, and in relation to which Jovanović had his own, original opinion.

First, when it comes to the right to vote, Jovanović says "it is not only a single right, but also a public service"[828], while deputies are government authorities. However, the prevailing opinion is such that this feature belongs only to a body elected with the legal number of deputies, rather than by an individual deputy. Jovanović gives no explanation or gives only a naïve

explanation for the so-called electoral censuses. He merely states that women did not have the right to vote "because it would be natural for the Constitution to explicitly nominate women if it intended to recognise to them a voting capacity".[829] In any case, Jovanović believes that the Constitution, and not a law, should determine the conditions for gaining and losing the right to vote. In his opinion, the granting and revocation of the right to vote by means of a law "would be inappropriate also because the People's Representation would then determine for itself the electorate: instead of having voters who derive their right directly from the Constitution to appoint deputies, deputies would, by means of a law, determine the persons who would elect them" (*Constitutional Law*, Belgrade, 1924, p. 81). He knowingly comments on each of the conditions for exercising the right to vote, but does not expound on them. Thus, by analysing the constitutional system based on the Constitution of 1903, he does not explain the difference that the Constitution makes between voters in terms of exercising the passive right to vote. For some voters, the condition to be elected is "to have graduated from a faculty in the country or abroad, or from a post-secondary school ranked with a faculty" (Article 99, paragraph 2). By fulfilling this condition, stunted or false bicameralism is created in the National Assembly, so as to avoid dividing the Assembly into two chambers.

Jovanović explains with solid arguments the incompatibility of the deputy's duty with the civil servant status: "The Constitution has adopted the principle of the separation of powers, deriving from this the rule that the authorities discharging administrative or judicial functions of government authority cannot discharge at the same time legislative functions. When already serving the state in another status, he cannot serve it as a deputy as well".[830] In his *Constitutional Law* of 1924, these explanations are expanded (p. 86–93) and overburdened with details taken from valid regulations. By changing one of them, these remarks become obsolete. It is unusual that an exceptional lawyer, with advanced abstract reasoning skills, which he confirmed in his theory of the state, gets lost in such way in the multitude of regulations whose validity is transient and depends on the current parliamentary majority.

By defining the concept of a voter, Jovanović starts to determine the course of "electoral actions", which lead to the election of deputies. In fact, the "electoral action" is the procedure of using the active voting right, implying the election of a deputy and exercise of the voter's passive voting right. In both textbooks, Jovanović applies his tripartite division of electoral actions into the following: 1) actions which determine voters, deputy candidates and electoral management bodies; 2) actions during voting, which consist of accepting votes from voters; 3) post-election actions consisting of determining the persons elected as deputies.

Election campaign posters in the 1930's

However, before the start of "electoral actions", it is necessary to call elections and determine the election day. This is because voters are not a single organised body to be able to act upon their own initiative.[831] This is the task of the head of the state, which he performs by means of a decree. Jovanović claims with great certainty: "Nowhere do voters choose all together the entire number of deputies".[832] He could not assume at the time that his country, Serbia, would be such case, at the end of the century in which Jovanović expressed such an irrevocable truth for him. Given that not all voters elect all deputies, "voters are divided into groups, of which each elects only a particular number of deputies. The Constitution calls these groups electoral units, and electoral law calls them electoral bodies or electoral counties".[833]

An "electoral action" before elections also implies determining the persons with the right to vote. They are entered in a special list – the voter list. "Voters not entered in the voter list cannot vote; their right to vote is considered not proven, as for electoral authorities only the voter list has the strength of evidence about the existence of the right to vote".[834] The person not entered in the voter list is not deprived of the right to vote, but of the possibility to vote".[835] Therefore, entry into the voter list is not the condition for the exercise, but for the use of the right to vote.[836]

Elections are carried out based on candidates' lists because, "for someone to be a deputy candidate, it is not sufficient that he enjoys the deputy capacity; a certain number of voters should guarantee for him, by accepting him as their candidate".[837] Jovanović does not mind that this is not done by political parties directly, because their main function is to win state power for the purpose of implementing the ideas of their political programme. The number of voters who can propose the candidates' list depends on the number of deputies elected by an electoral body (electoral unit). Jovanović believes that "candidature is the start of voting: therefore, only those who can vote can also stand as candidates".[838]

"The electoral action during voting consists of the acceptance of votes." The place where votes are received is called the polling station".[839] Electoral commissions are necessary bodies which receive votes and, later, according to the votes received, determine the result of the election.[840] "The electoral material consists of ballot boxes with balls". In these passages, Jovanović goes beyond measure in presenting regulations, which is inappropriate for an author's text.[841]

Voting means the use of the right to vote, in a free, direct and secret manner. This is how Jovanović explains these concepts: "Free use means the authorities must not force voters as to how to vote, nor must they influence them".[842] "Direct use of the right to vote means voters must vote personally, i.e. not through another person".[843] "The secret use of the right to vote means the voter votes under such conditions that it is not known how he voted".[844] Jovanović then presents in detail the rules about the first meeting of the electoral commission on the eve of elections, and its work during and after voting. This section is also burdened with superfluous details from regulations.[845]

In regard to the electoral action after voting, when votes are counted and election results determined (representative mandates allocated), Jovanović, particularly in his textbook of 1924, knowingly goes into "arithmetic operations" as in this area there are no major legal dilemmas. Here one may only ask the question of the accuracy of accounting operations and the determination of numbers. These analyses are much simpler than in the *Constitutional Law* of 1907 and are typical for Jovanović's skill of clear and concise explanation of the essence of general

questions, which would be hard to understand without this Jovanović's trait. The electoral commission counts the votes and determines the election results. The commission carries out "a purely arithmetic operation: it calculates what candidates received the number of votes requested for the election of deputies".[846] It is not upon the commission to examine whether law was violated or not. It only ascertains that a candidate was elected, whereas the Assembly determines whether the election was lawful. Jovanović first states the general rules for the determination of election results, only to later present the rules for the election of the so-called qualified deputies and the manner of the distribution of the remaining ones from the application of general rules. To better understand these abstract explanations, Jovanović corroborates them by examples. The rules are the following: "The entire number of voters is divided by the number of deputies coming to that electoral body. The quotient obtained in such way is called the electoral quotient; it is used to further divide the number of voters for individual candidate lists. The number of times the quotient is contained in the number of votes of one list equals the number of candidates taken from the list for deputies. According to the principle of absolute, i.e. relative majority, the list for which a half plus one of the total number of voters would vote, i.e. for which more than the total number of voters would vote compared to any other list – would succeed with all its candidates".[847] To avoid the alteration of the will of voters, Jovanović emphasises that the constitutional rule is such that candidates are taken for deputies by the order of their registration on their lists, which means that "it depends on the proposal of the list what candidates would become deputies first".[848] The same rule was recently introduced in Serbia, while beforehand the party leadership within the number of the obtained mandates in elections selected what candidates from the list, regardless of the order, would become deputies. The main commission issues "authorisations" to the selected deputies, thus ending the third and last "electoral action".

The thematic, first part of the longest text on the National Assembly, which we tentatively called electoral law, ends with the topic on electoral offences. This topic is more suited for criminal rather than constitutional law. It concerns criminal offences relating to elections, subject to rules of criminal law in prescribing the substance of a criminal offence, perpetrators, investigations and sanctions. At the end of this analysis, Jovanović notes: "If not simultaneously envisaged by criminal law, electoral law offences are considered violations. Otherwise, the principles of criminal law apply... From the moment of submission of the complaint, the provisions of criminal law apply to the statute of limitations".[849] Electoral offences generally consist of violations of the electoral procedure or trading in one's vote.

While the first thematic circle of the part of books about the National Assembly relates to the election of deputies, others relate to the National Assembly as an institution. We called it parliamentary law, again tentatively. It consists of parliamentary organisational law, parliamentary procedural law and parliamentary material law (the assembly's "authority").

The organisational assembly matters concern the Assembly's "working hours", which are affected by several concepts – the convening, postponing, concluding and dissolution of the Assembly. This is how Jovanović sees their justification. He correctly notes that deputies are not the Assembly. They become the Assembly only after meeting. This is because the Assembly is a collegiate body. The day of the meeting must be determined by the Constitution (there are cases when this is done by law) or by the order of other authorities, as a rule, the head of the state.

Nikola Pašić with his associates in front of the Assembly building under construction

Jovanović notes a contradiction that the Assembly as an autonomous government authority can start to work only when another authority convenes it. He eliminates it with the following reasoning: "The Assembly does not come out of elections ready; truly, voters nominate deputies, but deputies are still not the Assembly. They are yet to be constituted as the Assembly. The constitution of the Assembly is their own act, but they cannot embark on it before the King authorises them to do so".[850] The time elapsing from the moment of convening the Assembly, until its conclusion, constitutes the convocation. Convocations are held during the assembly period, which means the time from one to another parliamentary election. Concluding the Assembly is also an act of the royal authority, when it is ascertained that the convocation ended because the Assembly completed the activities of that convocation. Unlike the conclusion of the Assembly, with its postponement, its activities are not concluded, but suspended, to be continued at the place where they were interrupted, once the Assembly meets again. "The period of one Assembly ceases once the period of the other Assembly starts".[851]

The dissolution of the Assembly means the cessation of its existence by the act of the royal authority, before the expiry of its period. Jovanović believes that the Assembly which was dissolved cannot meet again, just like the Assembly whose period expired: "It is a rule that the Assembly that dissolved no longer exists".[852] This is the difference between the conclusion and dissolution of the Assembly. Although the Constitution, rather than theory, is authoritative for taking the stance about the dissolution of the Assembly, it is hard to accept Jovanović's view because the Assembly is a body whose existence is envisaged by the Constitution and in the event of whose absence the Constitution is severely violated (this is why the Government that resigned

Assembly building upon completion of construction works. The edifice was completed and consecrated on 18 October 1936.

or was denied support, remains until the election of the new Government) because the state without an assembly is the same as a state without a constitution. Jovanović gives one of the best definitions of the dissolution of the Assembly: "In democracies, the dissolution of the Assembly means the King's right to appeal with the people against the Assembly".[853]

Voters elect people's representatives, but the act of the creation of the people's representation – the assembly, is not in the hands of the people's representatives. Three conditions must be fulfilled for such an act: 1) elected deputies should gather in sufficient numbers in order to decide as an assembly; 2) it should be determined whether these persons who have gathered are truly people's deputies (the verification of their mandate) and their oaths should be taken; 3) deputies should elect the presidency leading to assembly meetings (assembly committee). "By verifying the authorisations, the Assembly discharges an oversight function: it assesses the regularity of elections as an already completed matter".[854] Namely, "deputy authorisations are verified first by the verification committee, and it is only based on the report of this committee that the Assembly issues its decision on the regularity of elections".[855] In both studies, the analyses of the verification of the deputy mandate have the scope of longer legal articles (19 pages in the *Constitutional Law* of 1907 of total 314 pages of the book). They contain no theoretical attitudes and discussions, as Jovanović's article is more of a paraphrase of regulations accompanied with the author's opinion about how disputable issues in their application can be solved.

The chapter about the rights and duties of deputies elaborates on the elements of the so-called deputy situation, i.e. position of deputies. They all can be reduced to four main ones, although Jovanović does not count them in such way, but this is the number of those features,

based on his analysis. These include: 1) independence in the work of deputies (a free deputy mandate); 2) deputy unaccountability; 3) deputy impunity (immunity); and 4) permanence of the deputy mandate. Although deputies are elected by voters in a single electoral unit, they represent the entire people and not only their voters. They are not the proxies of their voters within the meaning of private law. A deputy is fully independent in exercising his function, "similarly to judges, who judge according to their own free understanding of law, rather than according to the instructions of those who appointed them".[856] "Although nominated by voters, deputies are not below them..."[857] The second element of the position of deputies concerns their unaccountability – a deputy is not answerable for his official work. Deputy's unaccountability does not cover only the deputy's speech, but his entire official work. "However, as soon as his official duty ends, he becomes accountable as any ordinary citizen".[858] A deputy's unaccountability is full (absolute) as he can never be held accountable, even after his mandate expires. The third element of the deputy's position is his impunity (immunity). It means a deputy cannot be without the National Assembly's authorisation "held accountable or placed in custody for any offence or debts". A deputy enjoys such protection because he is more than other citizens exposed to the danger of tendentious accusations – it is called the deputy immunity. This "does not eliminate the deputy's responsibility for his actions; immunity is only a warranty that his accountability will not be abused".[859] When abrogating the immunity, the Assembly must assess whether the complaint filed against the deputy is serious or tendentious (aimed at political defamation of the deputy), rather than going into the legal question about the grounds of suspicion. "This is a privilege of the public law character, granted to the deputy in his official status – not for the sake of his personal interests, but for the interests of the very Assembly, so that its members are not prevented in discharging their duties".[860] In contrast to later constitutional arrangements, Jovanović believes a deputy cannot renounce the privilege of unaccountability because it is "of public law character, granted to the deputy in his official duty, as a member of the National Assembly".[861] Deputies are elected for the period of four years. Before the expiry of this term, they cannot lose their mandate "either due to the acts of voters or the acts of the Assembly. Voters do not have "the right of revocation", i.e. they do not have the right to revoke an elected deputy. The Assembly also does not have the right to deprive deputies of their mandates.[862] This is the feature of the constancy of the deputy mandate. The remaining elaboration about deputies is either a paraphrase of the Constitution and regulations related to this topic, or contains proposals for the resolution of dilemmas that already occurred or may logically occur in their application.

The chapter about the parliamentary organisation and discipline, which is largely a rules-of-procedure matter, is covered under the constitutional law system so as to round off the topics about the Assembly. These include the following: 1) parliamentary presidency; 2) divisions and committees; 3) deputations; 4) administrative staff; 5) parliamentary police; 6) parliamentary authority over deputies; 7) parliamentary authority over the public. Although many of these issues are the motive for filling legal voids and successful logicising, Jovanović's analyses of the parliamentary authority over deputies stand out with useful explanations and solid comments. The matter concerns the disciplinary authority that the Assembly exercises over its members for the purpose of maintaining order. Given that this concerns the disciplinary penalty due to the infringement of

the special parliamentary, and not general legal order, which is applied to deputies as members of parliament, and not to ordinary citizens, this penalty can deprive a deputy only of his deputy rights (e.g. denying the right to speak, right to attend parliamentary sittings etc.). It would be incompatible with the constitutional role of the Assembly "if it in a disciplinary manner deprived its members of those legal goods that belong to them independently of their deputy status, as to ordinary citizens, whose loss is usually linked to the violation of the general legal order.[863]

The comprehensive elaboration in the chapter about the parliamentary procedure precedes the chapter about the "authorities" (competences) of the Assembly, although it would be methodologically more appropriate if Jovanović did otherwise because the procedures (methods of work) of the Assembly reflect its competences. There is no unique parliamentary procedure, equal for the exercise of all its duties. In his *Constitutional Law* of 1924, unlike the book of 1907, he added to the chapter about the parliamentary procedure the chapter about the legislative procedure, thus separating the legislative procedure as a special parliamentary procedure as the main one, because the Assembly's second name is the "legislative body". The legal rules about the Assembly's method of work are largely contained in the parliamentary act called "the rules of procedure". They can be prescribed by a separate law (the consentient decision of both legislative factors) or by the autonomous act of the Assembly which has the force of a law. While under the Serbian Constitution, which was the legal basis of the *Constitutional Law* of 1907, the rules of procedure were prescribed by law, the Vidovdan Constitution, as the legal basis of the *Constitutional Law* of 1924, prescribes: "The Assembly defines its own rules of procedure" (Article 76). Jovanović claims it was determined in our practice that "the rules of procedure are an internal act of the Assembly, which defines its internal relations and has no external effect, i.e. has no obligatory force either for citizens or authorities".[864] In the event when the rules of procedure are determined by law, the Assembly cannot unilaterally change them (as the King's consent is also needed for such change), while when they are regulated by the Assembly's act, it can do so. Parliamentary procedures – although one of the greatest achievements of the legal state, apart from the legislative procedure – do not encourage Jovanović to make scientific generalisations, let alone the creation of theories. Jovanović focused on details and interpreted the lack of clarity of regulations with his characteristic clarity, logic and ease, highlighting how they should be interpreted and how their shortcomings should be overcome.

Jovanović divides the legislative procedure, as the most important parliamentary procedure, into several phases. The first is the legislative initiative, and is exercised by the King (through the Government) and individual deputies (individually or several of them together), who enjoy this right to the same extent. As the King submits his law proposals through the Government or the line ministry, the parliamentary rules of procedure call them "Government's proposals". In his *Constitutional Law* of 1907, Jovanović writes: "There is an important difference between the Government's and deputies' proposals as the former ones do not ask the previous question about their reasonableness, while the latter ones pose this question".[865] The second phase is the hearing in the committee, whose mandate covers the law proposal, or a committee particularly selected for such occasion. At the same time, "the committee does not only give the opinion about the legislative proposal; it has the right to change and supplement the proposal,

and even alter it entirely".[866] The committee's report, together with the annexes required by the parliamentary rules of procedure, is submitted to the Assembly. The committee designates one or two rapporteurs (depending on whether opinions in the committee are unique or divided) who will defend the committee's opinion in the Assembly. The third phase is the hearing of law proposals in the Assembly, which are subject to separate rules of procedure. The fourth and final phase is the parliamentary decision making (final voting) about the legislative proposal. The law proposal thus becomes either a law or is rejected.

Apart from the description of procedural actions, when it comes to the analyses of the legislative procedure, Jovanović's following view is particularly noteworthy: "The legislative procedure is open... when the committee ascertains or, when contrary to the committee, the Assembly concludes that the proposal is worth of being placed in the procedure. As the legislative procedure starts from that very moment in regard to deputies' proposals, it means that from then on they can no longer be withdrawn. If this view was not embraced, deputies' proposals should be applied to the rule valid for Government's proposals, which can be withdrawn until the final vote. This would, however, be inappropriate for two reasons: (1) the King and a deputy would be placed in the same position, although a deputy is not one of factors of legislative authority as the King is; (2) a deputy would be able to halt the legislative procedure, according to his will, although it was not initiated in his personal interest, unlike a legal procedure under private suits".[867] The difference in the legal regime of these two forms of the legislative initiative, envisaged by the Constitution to the same extent, is not legally and politically justified, no matter how logically appealing it is. A parliamentarian, deputy, participates in the parliamentary procedure, and is in the Assembly's legislative work guided by the general, and not by personal interest. The Constitution also stipulates that "every deputy represents the entire people..." (Article 74), and not a private individual who pursues court proceedings in his personal interest.

In addition to a regular, "ordinary" legislative procedure applying to the cases for which no separate proceedings are prescribed, there is also an extraordinary procedure, "which takes three different forms: (a) a procedure of urgent proposals; (b) a procedure of proposals determined in the legislative committee; (c) a procedure determined for special issues, e.g. the procedure for handling international agreements, procedure for handling private pleas".[868] As usual, Jovanović describes each of these procedures in minutest detail.

Jovanović ends his analysis of the Assembly and its competences – for him, it is primarily a legislative body: "The National Assembly is, first and foremost, the holder of legislative authority next to the King".[869] Jovanović gives an unusual definition of law in terms of its content "since the Constitution gives nowhere the definition of law in terms of its content"; "a law can encompass all those cases which the Constitution in its explanation does not exclude from the field of legislation".[870] To emphasise the importance of the legislative authority of the Assembly, Jovanović places law in the focus of his definition of the legal state. The legal state exists when "the administrative authority can order individuals only within the limits of law" and when "the judicial authority makes judgments only according to laws".[871] In the legal state, "an individual is a free citizen; he is not subjugated to a despotic, arbitrary, but to a legally limited administration".[872] However, "the legislative authority of the National Assembly has one upper and one lower boundary. The upper boundary is drawn in favour of the Constitution, and the lower in

favour of the regulation".[873] The legislative authority must be within the bounds of the Constitution. Therefore, as a rule, the legislator may regulate by law a single case that is already regulated by a regulation. "In such case, the law, as the act of higher legal importance, repeals the regulation as the act of lesser legal importance".[874] Guided by positive law, rather than theoretical reasons, Jovanović believes courts do not have the right to refuse the application with unconstitutional laws. "Pursuant to our Constitution, courts are under law, and not under the Constitution, and must apply each legally promulgated law, regardless of whether it is, in terms of its content, constitutional or unconstitutional".[875] Jovanović thus brings into question his definition of the legal state, which can be theoretically defined only as a state in which law rules, with the Constitution as the supreme act, and not as a state where only law rules. With his understanding, the highest legal importance of the Constitution in the state remains without its legal sanction.

The Assembly's legislative authority is also reflected in the ratification of international treaties. "The King concludes treaties with other states, but the previous approval of the National Assembly is needed for the confirmation of these treaties" (Article 79 of the Vidovdan Constitution). The Assembly's participation is needed to prevent "the King from changing laws on his own, without the Assembly, under the guise of an international treaty".[876] Exceptionally, "no previous approval of the National Assembly is needed for the confirmation of purely political agreements, unless they contradict the Constitution and laws" (Article 79 of the Vidovdan Constitution). As the Assembly's approval is given in the legal form of a law, Jovanović also calls it "the legitimisation of the treaty". Jovanović has a highly nuanced stance about the legal effect of international treaties: "Once it becomes law, an international treaty is an individual law, as it defines our relations with only concrete state. As an individual law in general, the legitimised treaty does not abolish the laws of general character; it only exempts our relations with one concrete state, below general regulations and places them under separate regulations".[877]

Parliamentary "authorities" are not exhausted in the legislative power. In addition, Jovanović speaks about financial authority, questions and interpellations, investigations and surveys, ministers' accountability, and special "powers" of the Assembly.

The financial authority of the National Assembly is reflected in placing the determination of state revenue under its supervision and in its right to approve the budget. According to Jovanović, the budget is nothing else but "the legitimised estimate of state revenue and expenditure for a particular year".[878] In terms of its content, it is "the act of financial administration; in terms of its shape, it is a law".[879] Jovanović's analyses of the

Slobodan Jovanović; the photo taken in 1893 at the Ministry of Foreign Affairs (ACCHPF)


ЗАКОН

О

ИЗБОРУ НАРОДНИХ ПОСЛАНИКА

ЗА

УСТАВОТВОРНУ СКУПШТИНУ

КРАЉЕВИНЕ СРБА, ХРВАТА И СЛОВЕНАЦА

The Law of 1920 on the Election of MPs for the Constituent Assembly of the Kingdom of Serbs, Croats and Slovenes

budget go into a lot of detail (p. 263–281) in the *Constitutional Law* of 1924 as he elaborates on the entire Law on State Budget. These analyses would be too voluminous for a textbook on financial law, let alone constitutional law. More importantly, this matter has no place in constitutional law.

Deputies' questions and interpellations are no "authority" of the Assembly, but are the means of supervision and accountability of the Government before the Assembly, which is the meaning of parliamentarism. Jovanović believes there is no difference between them in essence, but in form. The foremost difference between them is the fact that no hearing followed by voting is held about a deputy question, while there is both a hearing and the ensuing voting in case of a dutifully submitted interpellation. In regard to questions, there is a relationship between the minister and the deputy – the questioner. When it comes to interpellation, apart from the interpellated minister and the interpellant (there can also be several of them), all other deputies can take part. Besides, "the question constitutes a dialogue between the minister and the questioner, and its aim is to obtain information from the minister. Interpellation is a sort of an attack of a deputy at the minister, aimed at triggering a parliamentary hearing of some minister's actions. The hearing ends with the Assembly's estimate of the minister's actions, either favourable or unfavourable".[880] In regard to the deputy's question, there is no hearing, and there is no reason for the Assembly's decision. In terms of interpellation, a hearing is led, which must end with a decision of the Assembly. By contrast to questions, interpellations do not entail information from the minister, but he must justify and explain his action that the interpellant is dissatisfied with. This is why interpellation "is a dispute between the two of them, which the Assembly should end with its decision".[881] The decision that the Assembly makes in regard to the interpellation, which can be proposed by each deputy, and not only by the interpellant, including the interpellated minister, is not fully examined by Jovanović, which is unusual for him, which is why he did not clearly explain its legal and political consequences. First and foremost, the political consequences of the interpellation are stronger than legal ones, as it leaves a permanent political imprint on the interpellated authority and its minister. Its legal effects range between two extremes – moving to the following item on the agenda, once the interpellation is exhausted in the hearing without a decision, or in explained proposals of the decision, ranging from the commendation of the work of the interpellated minister and the Government, to the dismissal of the Government, about which voting takes place in the order determined by the Assembly. By the decision on moving to the agenda, the minister and the Government leave the interpellation without rebuke and sanctions.

The Government can therefore interpret it "as a sufficient expression of the parliamentary trust towards it".[882] Dissatisfied with the results of the hearing, the Government can also submit a resignation. The proposal of the decision can also imply voting on the mistrust of the Government, although Jovanović does not mention such possibility in his texts about interpellation. In his later book, Jovanović specifies that "the Assembly can conduct a hearing about each Government's proposal through interpellation, and can express mistrust of it in relation to each its action that it is not satisfied with".[883] All this goes in favour of the conclusion that Jovanović's initial thesis that there is no difference between the deputy's question and interpellation in essence, but only in form – is unsustainable, as best corroborated by Jovanović.

Jovanović also puts the Assembly's right to investigations and surveys under the chapter "Powers of the National Assembly". Here, the term "powers" should obviously be understood as authorisations, as in some of them the Assembly has little or no power. Jovanović's definition of these rights reads: "The survey right is the Assembly's right to collect the information it needs about a single issue through its committees (particularly when drafting a law). The investigation right is the Assembly's right to examine someone's offences, irregularities and mistakes through its own committees." While the first Assembly's right is unlimited, the second has a limit. For instance, the Assembly cannot conduct an investigation about the issues "concerning the activity of the judicial branch".[884]

Of the same nature is the Assembly's "power" to receive and resolve the pleas and complaints submitted to it. "With a complaint, an individual addresses the Assembly against the authority that violated his rights or interests. With a plea, an individual asks from the Assembly to adopt a legislative solution in his favour".[885] Incompatible with the principle of the separation of powers, which forbids parliamentary interference with court activities, is the submission of complaints against the judiciary to the Assembly, and against the acts of the administrative branch if the individual has to right to complain against them either before the regular or administrative court. With the plea, the wish is expressed before the Assembly for an exceptional law to be passed, "whereby something would be done for a particular individual, to which he would not have the right according to general legal regulations".[886] The Assembly's right to receive pleas and complaints of private individuals is in line with its nature of a people's representation and essentially "means the right of supervision of the abuses of power".[887] Although the Constitution does not explicitly envisage the right to petition, Jovanović believes it is covered by Article 15 of the Constitution, which recognises the right of plea. Constitutional reform is requested with the petition. "A petition differs from an ordinary plea and complaint by its not being filed in personal, but in general interest".[888]

The ministerial responsibility before the Assembly is its "power" that is far more serious, because it determines the character of power in a state. Jovanović devotes to this characteristic topic of constitutional law twice less space[889] than to the examination of the budget, characteristic for other branches of law. Whether a state is a parliamentary monarchy or republic depends on the type of accountability that ministers have and to whom they are answerable, while whether it has a parliamentarian (only for a republic) or a presidential system of power is relevant from the viewpoint of the separation of powers. The Vidovdan Constitution defines Serbia as a constitutional parliamentary and hereditary monarchy. One of two key features of a parliamentary system is the Government's political accountability before the Parliament. There are two main forms of ministerial accountability – political and criminal (legal). "Political accountability

means that the Assembly, by declaring mistrust, can request the change of those ministers whose political orientation it does not approve of or with whose actions it is not satisfied". "This means the accountability for poor performance of the service and badly pursued politics". "Criminal accountability means that the Assembly can, through an accusation, request the condemnation of those ministers whose action it considers contrary to the Constitution and laws".[890] This means the responsibility for their acts that are considered offences. As for the first accountability, the Assembly requests a change of the minister, and in regard to the second, it requests the condemnation of the minister. The parliamentary system exists when the Assembly can dismiss a minister because he no longer enjoys its trust. The criminal accountability of a minister means the responsibility for his illegal work, the violation of the Constitution and laws if such violation was carried out on official duty. A minister is accountable not only for acts he makes as the head of a ministry, but also for those made by the King, who can violate the Constitution in two ways – by doing what the Constitution forbids, and by not doing what the Constitution orders. Jovanović writes: "The minister is appointed next to the King in order to prevent the King's violations of the Constitution; whenever he misses to rise to that task (either by not waiving the countersignature or by not handing in resignation), he is responsible for all King's violations that become possible as a result".[891] For his offences, the minister is accountable under the accusation of the King or the National Assembly, before a special, so-called State Court. The minister's accountability under complaints of ordinary citizens before regular courts is excluded. The State Court which tries ministers is an ad hoc court – it is established anew for each case of an accusation of a minister. Its members are six state advisers and six cassation judges, whom each of these bodies elects by drawing lots at the plenary session. Its president is the president of the Court of Cassation. No complaints can be made against the decisions of the State Court (all these are legal solutions of the Vidovdan Constitution, aimed at eliminating any bias in the operation of the State Court).

In constitutional law textbooks of countries that are monarchies, the segments about the monarch are, as a rule, grouped into a separate whole (chapter or part). In Jovanović's book of 1907, they are placed in the third, last part of the book, while in the book of 1924 they are contained in the fourth part. In the book of 1907, the monarch is the only topic of the relevant part (the chapter about the King's competences also covers ministers as the King cannot undertake on his own the acts within his remit, but only in concert with or through one minister), while in the book of 1924, in the same part, different topics are covered in separate chapters (in addition to the King, there are ministers and civil servants, local administration, the State Council and Main Control). These three chapters, which do not belong to constitutional law, are contained in a larger number of pages of three chapters, taken together, and are dedicated to the King, according to whom this part of the book is called. The analyses contained in them are highly detailed, and they may perhaps, in such volume, burden the text even in a textbook of administrative law. However, in this part, Jovanović shows his excellent knowledge of legal rules of the monarchical form of rule. He asked many useful legal questions, which are today mostly overcome. However, the answers he gave to those questions have remained to date the model of the strength of logic and the legal skill of interpreting incomplete and unclear legal regulations, particularly the segments about the King's resignation and regency. As Jovan Skerlić says about Jovanović's work as whole, Jovanović here "gave the patterns of strong logical reasoning".[892]

The King is a non-elective, only government authority appointed by the Constitution, "if not with his entire name, then with his surname".[893] The King enjoys privileges that other citizens in the state do not have, which is why he has a unique status in it. One of those privileges is the inviolability of his personality – the King cannot be sued or tried, his personality enjoys stronger legal protection from attacks than anyone else in the state. Secondly, the King is not accountable for political mistakes (his ministers are accountable if they agreed with them). Regents, who exercise royal authority until the King assumes power, do not have the King's privileges. "The King's privileges remain tied even to an incapable King, instead of being transferred to regents".[894] "Regents are appointed for an indefinite period by a King's act, which means that a single King's act can end their authority at any time."[895] There is a difference between assuming the throne and assuming power. "Assuming the throne means becoming a king. Assuming power means starting to exercise royal authority".[896]

A difference should be made between the King's privileges and the King's powers. Privileges belong to the King's personality. King's powers are state powers entrusted with the King to exercise them. Owing to them, the King is a state authority. King's power "exists on a strictly constitutional basis, and not on historical rights from the pre-constitutional age".[897] The King is not the holder of entire government authority. The Constitution separates state authority into its three main functions and determines the bodies to exercise them. The King participates in exercising all three functions, "but always with limited power".[898] Jovanović classifies the King's powers as follows: legislative power, decree-issuing power, administrative power, judicial power, and the right to award orders.

The King exercises the legislative power through indirect participation (calling elections, convening, opening, concluding and dissolving the assembly) and through direct participation (legislative initiative and legislative sanction). A law passed in the National Assembly is not a law until the King confirms it. The King's right to confirm laws is not limited by anything, which means it has the effect of an absolute veto. Although this cannot be considered the exercise of the legislative authority, the King has the authorisation to declare that two legislative factors agreed upon the same legal text. This new act is a written document, which serves as its evidence. The King issues it in the form of a decree. "It is only through the proclamation that the legislative will receives the form in which its authenticity cannot be doubted".[899]

King Aleksandar Karađorđević (1888–1934)

Old Court in the mid-1920's

The decree-issuing power is the legal power below the rank of the Constitution and laws. It is exercised by the King, as the head of the administrative power, through the Government. Unlike a law, a decree is not an act of autonomous regulation. It is issued only along a law, for the purpose of defining the particularities of the law, based on the constitutional authorisation for each law without a difference (general authorisation) or when related only to the law which is designated in the authorisation for the adoption of a decree (special authorisation), because the authorisation for such decrees is issued depending on the case.[900] In theory, the question of the boundaries of the decree-issuing power has always been disputable. The dispute concerned the question whether it is possible for the legislator to transfer one of the matters envisaged by the Constitution as regulated by law to the remit of the administrative authority, defining that this authority will regulate it by a decree. This is one of rare questions from both Jovanović's books in relation to which Jovanović put forward different theories.

This concerns three logical possibilities of answering the disputable question. According to the first opinion, the transfer of competences is allowed without any limitations; according to the second opinion, it is forbidden without any exceptions; according to the third opinion, the transfer of competences is allowed, but only partially. It seems that our practice will embrace the rule of partial transfer.[901] By contrast to laws whose constitutionality they do not have the right to question, courts are entitled to examining both the formal and material legality of a decree. This means that a court cannot deny application to a law "which is unconstitutional in terms of its content, and can deny the application of a decree whose content is illegal... As it stands under

law, a court must apply law even when it is unconstitutional in terms of its content, but for the same reason it need not apply a decree if it is illegal in terms of its content".[902]

In addition to the decree-issuing power, in terms of his "administrative attributions", the King also has the diplomatic and military power. The diplomatic power implies his right to represent the state in foreign affairs, which results in his right to conclude contracts with foreign states, send envoys to foreign states and receive envoys sent by foreign states to us, declare war on foreign states and conclude peace with them. At the same time, the Assembly approves war loans. Also, it is the Great or Ordinary Assembly that must approve all peace agreements that imply territorial losses for our state (Serbian Constitution of 1903, which is the legal basis of Jovanović's system of the *Constitutional Law* of 1907). The King's military power consists of his right to prescribe by his decree the formation of the army, prescribe decrees on military discipline and military sanctions. The King is the supreme commander of the military force.

Unlike the legislative power, which it divides with the Assembly, the King discharges the administrative power on his own, as its head. Although at the head of the military power, the King need not carry out each its act on his own. The administrative power is divided into a large number of divisions, each of which has its real and territorial competence. Related professions are grouped into ministries, and each of them has the supreme head, the minister, who maintains balance among such different and related professions. Ministries get together in the Ministerial Council, consisting of all ministers, "for the purpose of joint decision-making about all important issues of their lines of duty".[903]

The King has the least competences in the judiciary, although he appoints all judges, and courts' judgments are made and executed on King's behalf, because courts, as independent bodies, are not under any authority, but adjudicate according to law. The King cannot order judges as his civil servants how to adjudicate. Courts are "a separate authority whose honorary chief is the King".[904] In formal terms, the King's right to appoint judges is void of practical importance given that he appoints them from the list consisting of bodies not depending on him, while judges are permanent in their titles. Thus, in the area of the judiciary, the King's "authority" is reduced to signing decrees on the appointment of judges. Jovanović believes that out of the entire judiciary, the constitutional matter is the principle of the independence of judges. All other judiciary-related issues go into law. The principle of the independence of judges means that judges cannot be dismissed without the judgment of regular or disciplinary courts; cannot be transferred without their consent and cannot retire until they reach the statutory age limit.

As regards the King's attributions related to the judicial power, Jovanović specifies two: "1) the right of amnesty and pardon, 2) the right of accusing a minister before the State Court, in the same way as the Assembly". Jovanović had one opinion about the legal nature of amnesty and pardon in his book of 1907 and another opinion in his book of 1924. In his book of 1907, he emphasises that "both amnesty and pardon can be considered legislative acts". Explanation: "Both amnesty and pardon prevent strict implementation of law in a given case; an exception from law is made in such case".[905] In his book of 1924, without giving a particular explanation, Jovanović notes that amnesty and pardon are the King's attributions "in relation to the judicial power".[906] This later opinion is correct as it concerns legal means used to correct and change the legal decisions of the court that should adopt them or has already adopted them.

The monarch's right to award orders is "the right of a particular kind" as it does not belong to any of three state powers. The King does not establish them (this is done by law), but only awards orders and decorations envisaged by law, or on his own, "out of his own motivation" or on the proposal of individual ministers.

In his *Constitutional Law* of 1907, Jovanović states that the notion of a minister is related to the King's competence as "the King cannot undertake on his own any act under his competence, but in cooperation with or through a minister".[907] This is why no separate chapter is devoted to ministers, and legal issues concerning ministers are presented in the chapter about the King's "authority". Although nothing changed in their position in 1924, in his book from that year Jovanović covered them in a separate chapter in the part of the book devoted to the King. The same chapter also covers civil servants, who were not discussed in the book from 1907. Jovanović's concept of ministers is too formalistic and one-sided, probably because ministers were determined as such in the constitutions that he analyses. He associates a minister with a monarchical form of rule, and not with a parliamentary system. According to him, ministers are "those administrative bodies standing directly below the King and are not appointed to individual titles, but to individual branches of the state administration".[908] Various branches of the state administration are divided into different ministries, headed by ministers. A minister can be without a portfolio, i.e. he need not be entrusted with any branch of the state administration. Although "the King exercises the administrative power through competent ministers" (Article 47 of the Vidovdan Constitution), he cannot create new or abolish old ministries" – this can be done only by law. Although the minister is the "head of his ministry", his power is not original, but derived. "He manages his ministry on behalf of the King as his delegate".[909] According to Jovanović, two main functions of the minister are to manage his ministry and act in interaction in all King's acts. The responsibility for each King's act falls upon his ministers, regardless of whether they formally participated in it. Ministers can relinquish such responsibility only by resigning.

The link between individual branches for which a ministry is established is maintained by joining ministers into a single council, "whose main task is to ensure necessary harmony in the state administration. This is the Ministerial Council".[910] "The Ministerial Council has its president who, as any other minister, can be without a portfolio. He is not the head of other ministers; they are not his underlings but his friends; all ministers are direct bodies of the King and are equal among themselves".[911] Although in the book of 1924 he only perfunctorily mentions that in some states, the King – after first appointing the president of the Ministerial Council "by a special decree" – appoints other ministers by another decree, on his proposal,[912] Jovanović misses to emphasise that only such states have a parliamentary system, but only when the monarch does not really choose the president of the Ministerial Council, as this is done by a party or a party coalition that received the majority of votes at parliamentary elections. In a parliamentary system, the King does not decide on who will be the president of the Ministerial Council, as this is decided by voters at parliamentary elections and the ensuing people's representation. This entity either elects ministers – members of the Ministerial Council, this choice being confirmed by voting trust with the Ministerial Council in the Parliament, or it proposes candidates for ministers elected by the people's representation individually or by the Ministerial Council *in corpore*. The president of the Ministerial Council has the right to propose to the Parliament to dismiss a minister with whose

King Aleksandar delivers the opening address at the Assembly on 18 January 1932

work he is dissatisfied, or due to affairs circulating in the public about him. This is one of key postulates of the parliamentary system, with the monarch's role being purely formal in the fulfilment of this condition. This is stipulated by the Vidovdan Constitution which, unlike the Constitution of Serbia of 1903, reads that the Kingdom of SCS "is a constitutional, parliamentary and hereditary monarchy" (Article 1). Jovanović does not criticise either the stated or other violations of the parliamentary system envisaged by the Vidovdan Constitution as he believes that constitutional law goes beyond the bounds of science if it critically assesses the solutions from the Constitution, and encroaches the domain of politics where, instead of scientific objectivity, the reason of political reasonableness is dominant. The provision of the 1903 Constitution of Serbia pursuant to which "ministers are appointed and dismissed by the King" (Article 38, paragraph 2) and the provisions of the Vidovdan Constitution under which "the King appoints the president and ministers of the Ministerial Council" (Article 90) and "ministers are accountable to the King and the National Assembly" (Article 91), are presented without the author's critical comment. Moreover, in his opinion, "all ministers are direct bodies of the King and are equal among themselves".[913]

In his book of 1907, Jovanović gives a distorted understanding of the parliamentary regime. He agrees with the understanding of the parliamentary system ("the parliamentary regime is said to exist"), according to which "ministers are not accountable only before the King, but before the Assembly as well". In his view, the Assembly does not have the formal power to dismiss the minister with whom it is dissatisfied,[914] while the King "can always dismiss ministers if dissatisfied with their work".[915] As the Assembly does not have the right to dismiss ministers, it must be given the means "to force ministers to resign". There are two such means: the right of

interpellation, whereby the Assembly may request from the Government to account for its policy. If it does not consider the Government's defence successful, the Assembly may pass a resolution condemning the Government's policy. Jovanović believes this is "a purely moral pressure"[916] of the Assembly on the Government – if it is not sufficient for the Government to resign, the Assembly may apply against it a safer means, i.e. the possibility "to renounce the budget to the Government". "A Government without a budget is formally still not overthrown, but, in fact, the administrative apparatus is frozen in its hands and it is prevented from administration. Brought into such situation, the Government is forced to hand in resignation to the King, even if it did not wish so".[917] Jovanović believes "these means are quite sufficient to ensure the political accountability of ministers before the Assembly, and it can therefore be concluded that our Constitution aimed to introduce a parliamentary regime".[918] However, there is no political accountability of the Government here because the resignation of the Government or a minister is their volitional act in both cases, and not the sovereign will of the Assembly. The Government's real political accountability means decision-making about the parliamentary mistrust of the Government, wherafter, if the mistrust is voted upon, the Government must resign by the will of the Assembly.

As one of important conditions of the parliamentary regime, Jovanović sees here "the compatibility between the deputy and ministerial functions"[919], which was not required either by theory or the majority of constitutions in the world at the time. Moreover, he believes that by allowing such compatibility, the Constitution of Serbia of 1903 "certainly aimed to even better consolidate the parliamentary regime".[920] Both at the time and today, many constitutions in the world contain the provisions "that the function of a Government member is incompatible with the exercise of any parliamentarian mandate" (Article 23 of the Constitution of France of 1958) or that "a Government member cannot be a deputy" (Article 126 of the Constitution of Serbia of 2006). A classic explanation of this solution was given by Charles de Gaulle – the person whose accountability is decided upon cannot at the same time be a member of the body making the decision. Jovanović adheres to the British model here in the major part of the explanation of the relationship between the legislative and executive branches. The logician of his depth seems to have missed the fact that European constitutions of his time were rather a product of reason and are more imbued with logic compared to the British (written-unwritten) constitution, whose institutes were shaped under the pressure of unique political circumstances and a special (unrepeatable) historical interplay of political forces.

In his book of 1924, Jovanović partly changed his views of the parliamentary system, though not because of new constitutional provisions, but rather due to the theoretical views that he in the meantime embraced.[921] He then, quite correctly, claimed that "the parliamentary regime, most simply put, means that the ruler cannot choose ministers by his will, but must take them from the parliamentary majority. They need not have his trust, but must have the trust of the parliament... Strictly put, according to the principles of the parliamentary regime, all ministers, including the minister of the military, should be taken from the parliamentary majority".[922] What follows is a succinct summary of the first key feature of the parliamentary system: "In a parliamentary system, all ministers are political bodies; brought to the Government through the trust of the Parliament, they are removed from the Government as soon as they lose this trust".[923]

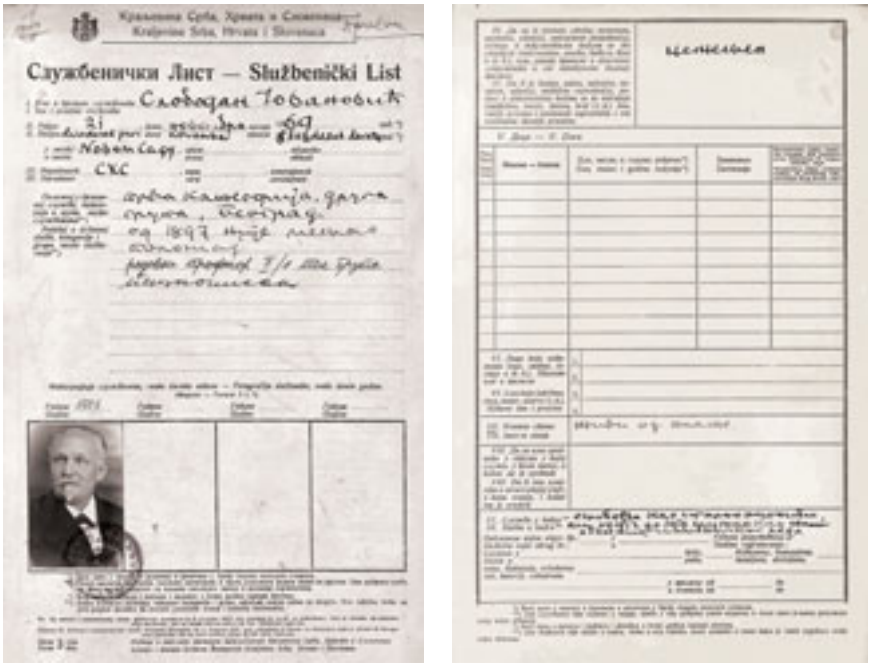
The analyses of the topics that follow exist only in the book of 1924. They are not contained in the book of 1907. The first such topic concerns civil servants – it is covered in a special

chapter and follows the text about ministers. When writing about civil servants, Jovanović has in mind only the civil servants "of the civic order" (without officers and military officers). In terms of the notion of the civil servant, adhering to law, Jovanović believes three things are needed: 1) appointment to a position in state service; 2) appointment to a position by the King's or minister's act; 3) becoming a part of a specific civil servant category or group.[924] The remaining text about civil servants (p. 364–382), not small in volume, contains the analysis of the Law on Civil Servants of 1923. Such going into the area of another branch of law, without any previous explanation, can be justified only by the then teaching curriculum at the Law Faculty in Belgrade, although it is hard to accept that the then legal elite could agree with having a part of administrative, financial and labour law becoming a segment of constitutional law.

The chapter about the local government (p. 383–403), in fact the territorial organisation of administration in a state, should belong to administrative rather than constitutional law – all the more so as Jovanović analyses this matter without prior conceptual differentiation between the local government and local self-government, presentation of some influential "models" in the world and resolving dilemmas about the territorial organisation of a state given different legal regimes existing in this area before unification. There is too much detail in this chapter as well, particularly in regard to regional decrees, which are in terms of their rank not only under law, but also under governmental decrees. In place is the uncritical interpretation of valid legislation, which, void of theoretical examination of individual issues, seems tedious, despite the beauty and liveliness of Jovanović's style.

The State Council and Main Control, covered in a single chapter, represent the institutions of administrative law. Their main task is to maintain administration within the boundaries of law, verifying whether its work is legal (State Council) and within the budget boundaries (Main Control). Although their functions resemble the judicial function, these institutions are not part of the judiciary. The State Council is the borrowed French name for the supreme court in France. It is one of the greatest legal inventions in the history of the legal state, but does not belong to a textbook on constitutional law, regardless of its importance, which is why it was introduced into the Constitution. Jovanović himself correctly notes that "the State Council and administrative courts exercise administrative-judicial functions".[925] In regard to the State Council, all important aspects of an administrative dispute are presented (apart from the course of administrative-judicial proceedings), which is why they represent a compendium on the administrative judiciary, which is one of the most important chapters of administrative law. Far more succinct is the examination of the Main Control which is, in fact, the supreme court of auditors, whose main task is to "detect irregular, incorrect and false accounts" while inspecting the accounts on the spending of government money.[926] Jovanović also describes the procedure implemented after determining the fact that all expenditure in the accounts was not justified. These analyses jeopardise the logical completeness of the subject of constitutional law, which is why it is justified to ask whether Jovanović still adheres to the definition of this subject which he gave at the beginning of the foreword to his book of 1924.

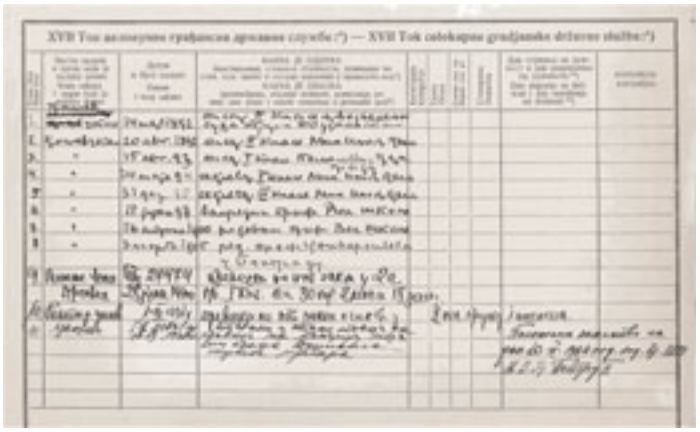
Although in his book of 1907 "the constitutional rights of Serbian citizens" are not covered, even though the 1903 Constitution devotes to them a separate part (part II, Articles 6–31), Jovanović – clinging to the contents of the 1921 Constitution whose Section II covers "Basic civic



Slobodan Jovanović's civil servant identity card

rights and duties" (Articles 4–21), and Section III "Social and economic provisions" (Articles 22–24), under the pressure of the force of the constitutional norm rather than according to his own scientific conviction – covers in the fifth part of his textbook, titled "Legal position of citizens", human rights whose contents are determined by the Constitution. That he did so because he connected constitutional law with the valid Constitution rather than because this matter fit into his understanding of the subject of constitutional law is also seen in the fact that his analyses are poor in content and void of the separate analysis of regulations, which was otherwise typical of him ("the lesson of the anatomy" of regulations) and examination of legal consequences of those provisions on the entirety of the constitutional system. Still, worth noting is that a significant number of those provisions were contained in the Constitution at the request of farmers, socialists, communists, republicans and the Yugoslav Club – political organisations towards which Jovanović did not have many political sympathies.

Jovanović classifies into three groups the rights determining the legal position of citizens and, in accordance with this division, he divides his analyses into three chapters. The first chapter covers civic and political rights. "Civic rights ensure a private individuality to a citizen; political rights enable his participation in public life".[927] The Constitution guarantees the following personal rights: personal freedom and inviolability of home, inviolability of the secrecy of correspondence, freedom of movement, freedom of consciousness and religion, freedom of science and art. The feature linking all these rights in the same group is "the liberation from state authority: that is why they are called freedoms or inviolabilities... All personal rights represent limitations to the state



Slobodan Jovanović's civil servant identity card

authority... The main objective of civic rights is the protection of an individual from the personal tyranny of the authorities".[928] Of political rights, the Constitution proclaims the following: the freedom of the press, freedom of assembly and association, right to petition. "All these political rights... represent various ways in which an individual takes part in public life".[929]

Social rights and duties should be the confirmation of the understanding of the state under which "it is not only a legal and political, but also a social and cultural community".[930] This characteristic of a state determines its right to intervene in economic relations, whereas this intervention should be "in the spirit of justice" and aimed at "protecting those who are economically weaker".[931] Social rights arise from such understanding of the spirit of justice as the protection of those who are economically weaker. One part also stems from the changed understanding of property. "Property is no longer a right that serves exclusively the interest of its owners; in using his right, the owner must take into account the interests of the whole; the use of private property to the detriment of the whole is forbidden. Due to such changed understanding of property, it no longer represents an absolute, unlimited right".[932] This is the so-called social function of private property. A part of economic and social rights is the product of such compromise between the individualistic and socialist understanding of property. The third foundation of economic and social rights is reflected in the obligation of the state to "ensure the physical nurture and cultural development of the people". It does so through state schools, particular protection of "mothers and small children", maintaining the health of its citizens, ensuring free medical help and free medicines "for poor citizens for the sake of maintaining public health", and placing citizens under state protection.[933]

The last chapter in the last part of this book is devoted to the rights of "national minorities". Jovanović distinguishes between two types of minority rights – the minorities "of the other race and language" and religious minorities. He elaborates on them according to the Agreement on the Protection of Minorities of 5 December 1919.

* * *

Of numerous Jovanović's books, two seem to have remained unknown. These are his two main works on constitutional law, of 1907 and 1924. Both books were published only once[934] and are not included in the pre-war selected and post-war collected works of Slobodan Jovanović. The selection of works for the pre-war edition was certainly made by Jovanović himself. "Those who were at the time best knowledgeable about him collected and edited" the post-war edition of his collected works. The reason may also be the fact that the selected and collected works are those where the so-called eternal and durable topics are covered, which cannot be jeopardised by time, while the contents of the two books have become outdated. In them, the questions concerned are covered based on regulations that ceased to be effective a long time ago, even when the printing of Jovanović's selected works (1932) began during his life. Although it was not stated, under the titles, that these books were textbooks of constitutional law (this can be indirectly concluded from the book of 1924), and they were not written in a textbook style, what prevails in these books is the paraphrasing of regulations. Just as today's regulations, they were written in a monotonous legalese and abound in commonplace, worn-out legal phrases. Still, although the major part of these books is devoted to legal regulations, whenever Jovanović refers to them, he does not do so in a pale and dry legelese, and his style is not impersonal and worn-out. Still, this was not sufficient to attract the broadest circle of intellectuals, apart from narrow specialists, which was not the case with his other books. While other Jovanović's books can be read by everyone who is intellectually curious, regardless of their profession, these two books will probably be read only by lawyers, even more so those who specialise in constitutional law.

Professionals, however, can express two major criticisms of these two Jovanović's books. The first concerns Jovanović's understanding of the subject matter of constitutional law, and the second its scientific analysis. The subject matter of constitutional law is defined too narrowly and the method of its scientific elaboration is too one-sided. Jovanović reduces the subject matter of constitutional law to four topics only: the method of exercising constituent authority, the National Assembly as a legislative body, the King, and – in the book of 1924 – the legal position of citizens. Jovanović presented even narrower understanding than this one in the foreword to the *Constitutional Law* of 1924, writing that constitutional law deals with the organisation of the legislative branch, while as far as the administrative branch is concerned – it deals only with its supreme bodies – the head of the administrative branch and ministers, with the details of such organisation belonging to constitutional law. Jovanović creates his system of constitutional law based on the valid Constitution and "special laws related to it". The subject matter of constitutional law are only those institutions that exist in the valid Constitution. What is missing in the Constitution is missing in constitutional law as well. Thus, in both books, Jovanović's hands were tied by the valid Constitution and accompanying regulations. In the topics he covers, he does not

refer to theory and comparable (foreign) solutions. Jovanović places the theoretical analyses of constitutional issues in his main theoretical work "Država" (*The State*) and to a significant degree in his shorter constitutional-law studies about a specific topic, which will be, after the initial independent edition, in his selected and collected works, published under the joint title "Pravne i političke rasprave" (*Legal and Political Treatises*). They show Jovanović's brilliant understanding of the theory of the state and comparable constitutional law.

A great shortcoming of Jovanović's books on constitutional law is their excessive focus on administrative law. Instead of covering a topic of constitutional law in more detail, Jovanović covers several topics of administrative law, which do not belong to constitutional law either by spirit or style (and primarily the subject matter).

The method that Jovanović applies in these two books is the exclusive legal interpretation (legal exegesis) of the Constitution and the relating legislation. He very rarely invokes constitutional practice. He criticises the legal solutions in the Constitution and laws not because there are better ones, but because they are inadequately phrased, contradict the norms of other laws and leave legal gaps. With such approach, he showed his great logical gift and by "displaying the patterns of strong logical reasoning", he enthralled even Skerlić.[935]

However, the description and interpretation of legal norms, without broader insights into their meaning, no matter how profound they are, offer only a shred of ample knowledge about the subject matter of constitutional law. They do not reveal the main reasons for the existence of the norm, or the aim it should achieve. For instance, according to the provisions of the Vidovdan Constitution, the Kingdom of SCS is a unitary state of the triune people, in which Serbian-Croatian-Slovenian is the official language. The ideological claim about the triune people was to serve as the ethnic background for the unitary organisation of the state, which in time proved to be a Procrustean bed for three different peoples joined by a single ethnic origin, but separated by everything concerning the organisation of the joint state. The Croatian Republican Peasant Party claimed that the life of three, historically divided nations – Serbian, Croatian, Slovenian – was not possible in the same state, and proposed confederal, instead of unitary organisation. It was only through the strength of constitutional norms that it was possible to keep the three nations in the same state through the clamp of unitary state organisation. The unitary state was to become a caldron for the assimilation of national individualities, similarly to the melting pot in the USA, which is after all a federal state. Instead of accelerating the merging of three nations into a single nation, the Vidovdan Constitution fuelled national conflicts and widened the gap between the Yugoslav peoples. Legal historian Dragoslav Janković well understood the limitation of the normative method of studying the Vidovdan Constitution by saying: "Limiting oneself to the legal aspect and legal analyses implies, in the case of the Vidovdan Constitution, not only an insufficient but also, to an extent, a wrong path, because this Constitution cannot be either correctly understood or assessed if one fails to discern the social and political factors behind its adoption, contents, and application, i.e. non-application in practice".[936] For the said reasons, it is hard to accept, at least when it comes to Jovanović's books of *Constitutional Law*, the rather perfunctory assessment of Miodrag Jovičić: "He always placed his study in the broadest context of political (in the widest sense) social developments, revealing and analysing all impacts of those developments on law, and vice versa, the impact of law on political and social processes".[937]

Jovanović considers generalised criticism of the Constitution, even when of legal nature, a non-scientific approach. In his book of 1907, whose legal basis is the Constitution of Serbia of 1903 together with the accompanying legislation, he does not dispute the Constitution because it was adopted by non-constitutional means – it was passed unilaterally by the People's Representation without the King's consent, who was only subsequently elected and took an oath on that Constitution. In general, Jovanović's rare critical analyses, when they do exist, do not go out of the boundaries of law. They concerned the remarks such as: "We believe Article [of a particular regulation] contravenes the Constitution", or he noted legal gaps to be interpreted and supplemented in the way he proposed. When a regulation was aimed at materialising an opinion, Jovanović would, if he disagreed, usually object with the following words: "We cannot accept this opinion".

While Jovanović's understanding of constitutional law and the method of its study are subject to scientific criticism, his analyses in both books, particularly that of 1924, represent an unparalleled pattern of legal logic and the simplicity of expression. The concepts presented reflect the deepest fathoming of the essence of things, with an almost ideal order in thoughts. He analyses these concepts with incredible perspicuity, sagacity and concreteness. The constitutional legal concepts that he presented in these two books are valid still today, although the constitutions and laws whereby he explained them ceased to be valid a long time ago. In general, Jovanović is a learned and brilliant writer in the field of constitutional law as well. He is highly knowledgeable, understands well other people's thoughts and impeccably forms his own judgment. He does so without strain, with incredible ease and crystal clear language. In regard to the general concepts of constitutional law, Jovanović defines them in a succinct manner, with almost diamond-like density, never losing himself in empty words. What Ivo Andrić said for Petar Kočić can be fully applied to Slobodan Jovanović as well – "he will remain as the example of a writer who managed in the most succinct, clearest and best way to communicate what he had to say to the people of his language".

As noted by Velibor Gligorić[938] a long time ago, Jovanović, as a writer, "has a highly developed belletristic spirit". Even when he analyses the topics of constitutional law, leaving behind the paraphrasing of regulations and going into barren detail, his language is melodious and pleasant, pure, light and ripe. He is a master of the word and an unparalleled stylist, and a writer of a highly subtle taste. It is hard to define the terms in the field of constitutional law in a clearer and more beautiful way. These are the reasons why we today idealise his scientific greatness. At the start of last century, Skerlić saw the mastery of Jovanović's written word as his particular trait: "Standing out among almost all authors in his profession who are field experts without general and literary knowledge and who do not pay any attention to the form and language, Jovanović created his work in a highly literary form, with a dignified style and exquisite language".[939]

Although Slobodan Jovanović showed the full measure of his genius as the author of the political history of Serbia – from the Government of the Defenders of the Constitution until the rule of the last Obrenović ruler, as a historian of political ideas and theoretician of the state, owing to his books on constitutional law, he was and has remained the Great Master to all those dealing with this branch of law.

Translated by Tatjana Ćosović