

The Absolute Power of the Sovereign, Bureaucracy, Democracy and Constitutional Government in the Works of Slobodan Jovanović

Abstract: The papers discuss the views of Slobodan Jovanović (1869–1958) on several phenomena of Serbia's political and institutional development in the hundred years between the First Serbian Uprising in 1804 and the fall of the Obrenović dynasty in 1903, and on different political systems, looking at the sources on which his thought drew upon, the ideas he was guided by and the theoretical framework of his legal and socio-political thinking. His major work, a legal theory of the state, as most of his other writings, was his own contribution to what he held to be a national mission, the building of a modern state based on the rule of law.

Keywords: Slobodan Jovanović, nineteenth-century Serbia, legal theory of the state, democracy, totalitarianism, bureaucracy, constitutional government, absolutism

The developed system of categories and prevailing ideas of West-European scholarship

Our subject requires taking into consideration not only Slobodan Jovanović's theoretical works on the state — studies on important topics (such as sovereignty, the social contract, the justification of the state, the source of authority, the accountability of administration); on important political institutions (parliamentarism, bicameralism, the Grand National Assembly, the National Assembly); and, in the second edition of *O državi* [On the State], on political parties, the right to rule, ministerial responsibility, federalism — but also his interpretation of Serbia's constitutional and political development in the course of one century. It does not seem unnecessary therefore to reiterate one point of general agreement: Slobodan Jovanović was a prolific writer who made a contribution in many different areas, from literary criticism to legal, social and political theory, notably in the area of Serbia's political and constitutional history.¹



¹ Jurists will no doubt rightly consider him as Serbia's great legal theoretician of the state, and historians, rightly again, as a significant historian, notably of Serbia's develop-

Jovanović followed the development of modern political institutions and debates about them, primarily in leading European countries, and wrote about some phenomena, historical figures and processes from the perspective of political science and political sociology. This socio-political approach is evident not only in his *Examples from Political Sociology*,² but also in his texts on the leaders of the French Revolution, on the age of Machiavelli, on the role and ruling style of British King George III whose politics caused the British American colonies to rebel against the crown, and on many political events and figures of nineteenth-century Europe and Serbia. Jovanović had tremendous knowledge of the political systems in Europe and was also interested in some questions relating to the political development in the countries — or states, as he termed them — of the British Commonwealth and in the United States of America. Such vast knowledge made it possible for him to conduct what today would be defined as comparative analysis of political systems, which he did for some European countries and their regimes formed after the First World War.³ Owing to a profound under-

ment in the nineteenth century. This is the assessment of renowned Serbian historians such as Vladimir Ćorović (*Slobodan Jovanović – istoričar*) and Radovan Samardžić, as well as those who wrote about him abroad. According to Samardžić, in the afterword (“Delo i pisac”) to vol. 12/II of Jovanović’s *Sabrana dela* [Collected Works, hereafter SD] (Belgrade: BIGZ, Jugoslavijapublik & SKZ, 1991): “Books, studies and short essays on nineteenth-century Serbia no doubt occupy the most prominent place in his work” (p. 677), but also: “Slobodan Jovanović held that he was not doing the job of a historian, but rather that his research was primarily political and legal” (p. 688), and: “As a theoretician of the state and law, Slobodan Jovanović studied constitutional and legislative issues even in his historical works or, more precisely, his historical essays, treatises and monographs were largely based on his study of constitutional and legislative questions” (p. 673). Samardžić devoted yet another essay to Jovanović: “Slobodan Jovanović. Istoričar kao pisac” [Historian as a writer], *Pisci srpske istorije*, 3 vols. (Belgrade: Prosveta, vol. II, 1971; vol. III, 1986). Serbian historians or historians of Serbian origin abroad wrote about Jovanović and evaluated his work at a time when such writing was difficult to publish in his homeland. See e.g. Dimitrije Djordjević, “Historians in Politics: Slobodan Jovanović”, *Journal of Contemporary History* 3:1 (1973); Michael Boro Petrovich, “Slobodan Jovanović (1869–1958): the career and fate of Serbian historian”, *Serbian Studies* 3:1–2 (1984/85). Jovanović’s contribution as a theoretician of the state has been less studied than his contribution as a historian. First reviews of his legal-political studies and ideas after the Second World War appeared in the collection of papers presented at a scholarly conference devoted to his work: *Delo Slobodana Jovanovića u svom vremenu i danas* [The Work of Slobodan Jovanović in his Times and Today], ed. Stevan Vračar (Belgrade: Pravni fakultet, 1991); Aleksandar Pavković, *Slobodan Jovanović: An Unsentimental Approach to Politics* (Boulder: East European Monographs, 1993) was an attempt at systematic analysis of his political ideas.

² *Primeri iz političke sociologije* [1940], SD, vol. 10.

³ “Poratna država” [1922] [The post-war state], SD, vol. 8.

standing of the evolution of modern political institutions, he was able to address Serbian political issues using a well-developed system of categories which included not only legal but also sociological and political theoretical and methodological postulates.

During his university studies in Switzerland, Jovanović became acquainted not only with German and French legal doctrines but also with the political institutions of Britain, which led him early on to cherish the ideal of the legal state/constitutional government. He is not just a jurist who deals, when appropriate and in detail, with issues of administration and bureaucracy, nor just a historian who observes, describes and analyzes important events, developments, relations among leaders and between leaders and people, numerous rebellions and other efforts made in a bid to bring about change in these relations; he also approaches these processes from the sociological and political perspective, using a set of notions in which an important role is played by the categories such as absolutism, Oriental despotism, autocracy, bureaucracy, oligarchy of officialdom (frequently used), constitutional government, bicameralism, separation of powers, legal security, civil liberties, parliamentarianism (both in a positive and in a negative sense), political parties, partisanship, etc.

What Jovanović said about Leopold Ranke — that, “being one of the greatest historians of the last century, he was able to recognize in the internal strife of Karageorge’s times not only what was local but also what was general”⁴ — applies, in our view, to Jovanović himself. He, too, seeks for the general, without ever losing sight of the particular and concrete. In doing that, he is guided not only by his scholarly scrupulousness and studiousness but also by his own “approach to the subject” which involves striking descriptions of carefully selected situations and events implying or leading to inevitable conclusions. In their vividness, they fill the “conceptual framework” with images. Regrettably, the language barrier and the lack of interest of “developed” nations in really understanding the nature of political relations in a Balkan country have, as in many other cases, prevented his work from becoming more widely known.

Jovanović does not simply describe and explain the history and problems of Serbia’s political and constitutional development. He tends to choose the examples that he believes may be useful for the state and the people, hopeful that he will contribute to the well-being of the nation by imparting his knowledge of the nature of those legal and political institutions of politically and economically developed countries which would be useful for Serbia to adopt and, conversely, of some hard-way-learned lessons

⁴ Slobodan Jovanović [1937], “Karadjordje i njegove vojvode” [Karageorge and his generals], *SD*, vol. 11, 17.

about what to avoid. In doing so, he does not impose a preconceived pattern onto Serbian history; but rather he explores it and presents the findings. It appears from his scrupulously and scholarly presented ideas and the problems he dealt with that he made a politically constructive attempt to play an implicit reformist role in the public life of the country; hence our attempt to interpret some of his ideas from that perspective. But, of course, not every work of his was meant to serve a practical purpose or to teach. Yet, his legal theory of the state, critique of absolutism, oligarchy and bureaucracy, advocacy of the freedom of citizens within the legal framework of the state and, on the other hand, his willingness to understand and justify certain “reasons of the state” do belong among such ideas.

His later portrayal of totalitarian states contains some serious warnings, but so do his earlier analyses and assessments of the processes unfolding during the French Revolution and of those phenomena in a relatively recent past of Serbia that he subjects to criticism. We even tend to believe that all his studies on the history of political doctrines were written with the clear intention to foster some educational objectives by pointing to typical cases and to the dark side of historical phenomena.

According to Milorad Ekmečić, Jovanović’s historical research is guided by the belief that certain “ideés-forces” operate as driving forces of history.⁵ This observation by a historian about major ideas being involved in the quest for a certain philosophy of history or “a sense in history” seems pertinent because Jovanović’s work seems to suggest that he did have in mind certain trends or “idéés-forces” that influenced the nineteenth- and twentieth-century social and political development of those countries from which he believed his own country should borrow knowledge and experience in order to progress.

Jovanović himself mentions guiding ideas, such as: the idea of “our [national] liberation and unification”; of the “state” (with the remark that the Populists were imbued with “western liberalism”, but grafted onto it the “idea of a strong state, in the Bismarckian sense that prevailed at the time”); and of constitutional government or, as we would put it today, “democracy”. He prefers if changes can be made peacefully and gradually.⁶ For example, he sees the Serbian Constitution of 1869 “as an attempt, after the dynastic crisis, to carry out the transition from a personal to a constitutional regime with as little social turbulence as possible, peacefully, gradually and with measure”. Jovanović puts forth the same view when he speaks about the

⁵ Milorad Ekmečić, “Portret istoričara Slobodana Jovanovića”, *Književne novine* 731–735 (1987).

⁶ One can easily understand why by reading Burke; see Slobodan Jovanović, “Iz istorije političkih doktrina” [From the history of political doctrines], *SD*, vol. 9, 149–212.

failure of the Obrenović regime (i.e. from the second reign of Prince Miloš to Alexander's downfall) to find a "middle ground between 'the state idea' and civil liberty", but he sees where the general spirit of the time, or one of its guiding ideas, was leading: "All things aspired to the same goal: national unity and Europeanization of institutions."⁷

It is inspiring, therefore, to try to identify the "ideés-forces" which Jovanović was looking for and which influenced his interpretation of Serbian history. Yet, in spite of the above quotation and given his methodological pluralism and non-deterministic approach, he does not seem to have looked for a sense in history or a philosophy of history. What may be assumed with some certainty from his works and his whole life is that Jovanović was inclined to the Whig idea of broad liberties within the framework of reasonable and stable laws, and that it probably was at the core of his ideal of constitutional government. As he said himself, one of the ideés-forces which had been influencing the development of Serbia during the one-century period which was in the focus of his political and historical research, was the idea of constitutional government, of the rule of law.

The absolute "power of the ruler" and the "state of law"

From the very beginning of the momentous historical process of liberation that Leopold von Ranke wrote about in his *Serbian Revolution*, apart from the struggle against the Ottomans and the work on the internal organization of the restored state, an almost inevitable process ridden with uncertainties and tragic events was also taking place, and Slobodan Jovanović could not fail to describe it. It was the power struggle among the Serbian popular leaders and the aspiration of the most important of them, Kara-george and Miloš, to impose their power on the other insurgent leaders and county heads. This struggle for power accompanied both the First and the Second Serbian Uprising. What draws Jovanović's attention is that the leaders sought to make their power over the people absolute; so much so that at times domestic governance was comparable to Ottoman. This internal power struggle and tendency to impose absolutism onto the people could take nasty forms if the leaders were irascible persons letting their whims take the upper hand. What Jovanović wants is not to paint an idyllic picture of the process of liberation or embellished portraits of popular leaders; he wants political facts of relevance to the history and constitutional and political development of Serbia. The lessons that can be drawn from

⁷ Slobodan Jovanović, *Vlada Aleksandra Obrenović I* [1929] [The reign of Alexander Obrenović], SD, vol. 7, 366–370, where he also uses the abovementioned expression "Oriental despotism" (p. 369).

Jovanović's accounts and analyses — probably written with the intention to make the past known in order to help people avoid repeating it and become better equipped for the future — are absolutely priceless.

According to Jovanović, “the constitutional issue here, same as everywhere, did not arise until after the establishment of a sovereign power which needed to be constitutionally restricted.”⁸ The process had begun with Karageorge and did not end until 1830, when the Sublime Porte recognized Miloš Obrenović as hereditary Prince of Serbia. Although Karageorge had harboured the same ambition and almost succeeded, the 1813 disaster brought an end to it, and so Miloš became the creator of sovereign power. “The ‘Governing Council’ [*Praviteljstvujučii sovjet*], initially conceived as an assembly of county delegates which was supposed to put limits to Karageorge's power,” Jovanović continues, “became his office. The Council members, appointed by Karageorge instead of being delegated by the counties, were nothing more than ministers of the ‘Supreme Leader.’” Jovanović argues that “supreme political power was formally vested in the Council, with Karageorge as merely its president, but Karageorge, had it not been for the 1813 disaster, would have certainly dissociated himself from the Council and taken the title of prince.”⁹

In his review of Stojan Novaković's book *The Constitutional Question and the Laws of Karageorge's Times* (published in 1907), Jovanović emphasizes that Novaković deals with the earliest and the least explained period of recent Serbian history. He argues that the earlier historians, being “too close to Karageorge's era to be able to look at it impartially”, interpreted the struggle between Karageorge and his opponents as a personal thing, as a mere struggle for power. Novaković, on the other hand, seeks to find a more general significance of the struggle between Karageorge and his opponents.¹⁰ It seems that Jovanović in one of his later writings follows quite closely certain patterns observable in Novaković. Jovanović relies on Novaković for telling examples to illustrate the reign of self-will and fruitless attempts to overcome such a situation. For instance, Jovanović describes the experience of Boža Grujović (born as Teodor Filipović). Having studied law in Austria and Hungary, and teaching law at universities in Russia, he was invited to come to Serbia to lay the groundwork of the country's legal system. The situation that he found on his arrival in 1805 was that “all power was in the hands of *vojvodas* [insurgent leaders], and each of them

⁸ Slobodan Jovanović [1905], “Naše ustavno pitanje XIX veka” [Our constitutional question in the 19th century], SD, vol. 2, 13 ff.

⁹ Ibid. 14.

¹⁰ Slobodan Jovanović [1908], “Ustavno pitanje i zakoni Karadjordjevog vremena” [The constitutional question and the laws of Karageorge's times], SD, vol. 11, 603.

commanded in his area in the same manner as he commanded in his camp". Grujović offered more general ideas "with a moral": "There where one or more govern at will, not abiding by the law but doing as they please, there the land has died, there is no freedom, no security, no good, there is nothing else but browbeating, only under a different name". Grujović wanted to replace this state of affairs by "the rule of law": "Law is the will of the people. The law is the overlord and the judge in a land. All lords and rulers and the Governing Council must abide by the law [...] a land without law is doomed."¹¹ Jovanović assumes that Grujović wanted the separation of civil and military authority and the supremacy of the Council, as a civil authority, over the *vojvodas* as holders of military authority, because: "Only there where there is supremacy of civil authority over military is it possible to put an end to personal arbitrariness and introduce the rule of the law".¹²

Karageorge was compelled to battle with the county heads who refused to recognize his authority and wanted a Council capable of limiting his power. Miloš, however, reached an oral understanding with the Sultan's vizier Marshli Ali Pasha that he would take care that people remained peaceful, while in return the vizier allowed the transfer of administrative powers to popular leaders, with the Ottoman government remaining the highest authority. By promising to pacify Serbia, Miloš gained support from Marshli Ali Pasha, who had his own reasons to play Miloš off against other popular leaders. Hence Miloš was able to neutralize his most dangerous rivals and rise to the position of "Supreme Prince". By the time of the Sultan's *berat* of 1830, "Miloš had already become the unlimited ruler of Serbia: building his own authority instead of the previous authority of the pasha, he made it as despotic as that of the pasha had been".¹³

¹¹ Ibid. 604.

¹² Ibid. 608.

¹³ Jovanović, "Naše ustavno pitanje XIX veka", 14–15; as Jovanović wrote (ibid.), Prince Miloš "was not bound by law because there were no written laws in those times. In principle, the judicial power was separated from the executive; everywhere, there were, besides the heads of nahiyes, separate judicial collegiums, but the Prince paid no heed to this separation of judicial and executive powers. He kept instructing the courts how they should proceed; reviewed their rulings; moreover, he administered justice himself. The central government was not divided into ministries, but all affairs were managed from one chancery, the chancery of the Prince, which means that the Prince governed directly, and not through ministers. The only limitation on his power was the National Assembly, which met twice a year to set taxes for the nahiyes (these taxes covered the costs of both Turkish and native authorities). However, even this limitation was of little practical effect. The National Assembly was not composed of freely elected representatives, but of the heads of nahiyes and village communities, who depended on the Prince because they were appointed by him."

The process of political institutionalization and of establishing constitutional or/and statutory limitations to the regime of personal rule was a slow and difficult one. Jovanović shows it graphically when describing the fate of a Russian idea concerning the Council, as well as the obsequious manner of the notables towards Miloš, not at like that of the leaders of the First and Second Uprisings had been.¹⁴

Jovanović is also noted for his psychological portrayal of political actors, leaders and rulers. He tends to make seemingly parenthetical but quite consequential and accurate observations: “For Miloš it was morally impossible to negotiate with notables. It is difficult for any absolutist to transform into a constitutional ruler; it was even more difficult for Miloš, because the notables were men he had created and elevated. He ranked them slightly higher than his pages and patrolmen. To him, letting them limit his power would have been as good as humiliating himself and losing all dignity”.¹⁵

The situation changed under Prince Alexander Karageorgević. “Alexander owed his accession to the throne” to the Constitutionalists, and therefore “was willing to let his power be limited by their Constitution”.¹⁶ But he

¹⁴ By 1817 Miloš had mostly got rid of the brave and self-reliant among the leaders of the uprising. “The notables accepted the Russian concept of the Council straightaway but then they were men who had risen to prominence while serving Miloš, beginning as his *buljubase* [military officers], scribes, *tatari*, business partners, etc.” Jovanović suggests that they can be seen as the parvenus of Miloš’s reign, as his camarilla. Once they rose in society under Miloš’s patronage, they began to feel his absolutism too hard to bear. The Prince had given them offices and honours, allowed them to grab hold of land and create large estates, but their power, honour and wealth did not have an adequate legal basis.” In the absence of law, the Prince was the unlimited master of all public offices; he would give them and take them away at will; he would move them from higher to lower posts, etc.” “His favourites could be degraded or dismissed at any time.” “The notables felt all the more insecure because Miloš was an inconsistent, whimsical, irascible man, and it was as easy to find favour with him as it was to fall out of it. The notables were driven by the need for legal security. They wanted their privileged position, obtained by the grace of the Prince, to be grounded in law and thereby independent of the will of the Prince.” “As for the peasant,” Jovanović writes, “he did not enjoy full economic freedom; he still felt himself dependent, tied to the land of, and thus enslaved by, his lord. The peasant demanded the abolition of *corvée* and the introduction of free trade. The farmer was oppressed by *corvée*. He did not labour only for the ‘common good’ and the Prince himself, but also for more or less all public officials of some rank: captains and village heads, members of the court and village mayors, priests and monks. Indeed, it could have seemed to the peasant that he was not a free man, but a servant to his master.” Cf. Jovanović, “Naše ustavno pitanje XIX veka”, 15–16.

¹⁵ Ibid. p. 17.

¹⁶ Ibid. 19.

was not “the strong ruler that new times required”.¹⁷ This is why almost all of the time between 1842 and 1858, under Prince Alexander and the Constitutionals, was spent to modernize governance, separate administration from judiciary, and train the necessary civil servants.¹⁸

When the new Law on the Council (1858) made the Council a stronger factor than the Prince both in legislative and administrative matters, its members began to think about ousting the Prince (Jovanović assumes their motives). The realization of this idea required that another important political institution be introduced into the political life of the nation: the National Assembly, established by the Law on the National Assembly of 1858. Along with the Assembly, there appeared in Serbia the first political party — the Liberals. Jovanović follows very closely not only the creation of the institutions that constituted the basis or framework for achieving constitutional government, or democracy, but also whatever factors that could lead away from achieving it.

Prince Miloš was not any more hypocritical or “Machiavellian” than many other absolute rulers before him or absolute presidents and secretaries general after him. Yet, under his rule things were changing, and hypocrisy and manipulation became techniques of ruling. Slobodan Jovanović demonstrates this using his own selection and description of details, but in such a way that he cannot be criticized for partiality. According to him, under Prince Miloš a mere mention of the word “constitution” could mean putting your life at risk. However, when Miloš was invited to return to Serbia to re-assume power in 1858, he publicly stated that he would rule as a “constitutional ruler”. Once on the throne again, however, Miloš told Kabuli Efendi, Ottoman commissioner, that he would not abide by the Constitution of 1838. When Kabuli Efendi asked what he would do in the meantime, until the Constitution was changed, Miloš replied: “I will not abide by it”.¹⁹ In Jovanović’s view, this exchange reveals Miloš’s actual attitude towards the “constitution” as such, i.e. that had no intention to rule by the Constitution of 1838 or, for that matter, by any other Constitution. Miloš’s self-willed

¹⁷ Slobodan Jovanović [1912], *Ustavobranitelji i njihova vlada* [Constitutionalists and their rule], SD, vol. 3, 362.

¹⁸ Jovanović, “Naše ustavno pitanje”, 21.

¹⁹ Slobodan Jovanović [1923; 1933], *Druga vlada Miloša i Mihaila* [The second reign of Miloš and Mihailo], esp. chap. IV, “The autocracy of Miloš”, SD, vol. 3, 308 ff. Jovanović describes how Miloš’s intended to abolish the Council, but unable to do that, he subordinated the Council to himself “by appointing his loyal men from the time of his previous reign, who had been courageous and able to chase outlaws back then, but otherwise unsophisticated and uneducated [...] none of them knew any foreign language, there was only one who completed, here in the country, some higher level of education.”

style of rule was obvious in all matters, of which Jovanović gives numerous examples, adding that during the Prince's first reign the National Assembly "voiced his will as if it had been the will of the people" and that the Prince wanted to achieve the same thing during his second reign.²⁰

Prince Michael (Mihailo) wanted to strengthen sovereign power in accordance with the role he intended for the ruler, i.e. for himself. According to Jovanović, Michael believed that the only way for people to progress to a higher cultural level was for them to be led by "a good despot, a crowned enlightened educator who would organize all intellectual resources of the nation as his own well-disciplined officialdom." Michael strove to establish a "police state" and "to make a try at enlightened despotism after his father's patriarchal despotism".²¹

Michael's intentions met with resistance. Jovanović writes about opposition coming from the Liberals, "whose intelligentsia refused to place itself in the service of Michael's enlightened despotism. They were mostly younger people, educated abroad and confident that Serbia's most pressing need was to establish political institutions of the liberal West, a parliamentary system and freedom of the press". Michael called upon the Liberals to abandon the unproductive political struggle and to work for the common good under the authority of their Prince as his officials, but they did not respond to his call because he had failed to fulfil their expectations. The Liberals "had expected of the restored Obrenović dynasty to bring down the bureaucratic system and enable popular participation in state affairs. But Michael reduced popular participation in state affairs to a minimum. Convinced that the masses were politically immature, he continued to rule through officials. The only difference between the Karadjordjević rulers and him was in that under the Karadjordjević dynasty it was the officials who 'ruled' through the Prince, while under Michael it was the Prince ruled who through the officials. Michael did not destroy the bureaucracy; he just disciplined and strapped it up — made it harmless to the Prince. But that did not make it harmless to the people too."²²

Autocratic aspirations, then, were not specific to Prince Miloš; they were shared by his successors too. "All three Obrenović rulers — Michael and Milan and Alexander — were proponents of the same idea — that of the ruler's concentrated power and enlightened despotism. In their view, the masses were not cultured enough to enjoy political liberties; moreover, they suffered from a common Slavic malady, discord, which, under liberal

²⁰ Ibid. 286 ff.

²¹ Jovanović, "Naše ustavno pitanje", 27.

²² Ibid. 27–28.

regimes, might lead into real anarchy.”²³

For all of the Obrenović rulers whose regimes he studied Jovanović gives a concise analysis of the forces on which each relied in the effort to concentrate power in his own hands: “Michael wanted to rule with officials, but not with political parties; Milan exalted ‘the state idea’ as a counter to the narrow-minded, local views of a peasant parliament; Alexander worked out a ‘neutral government’ formula; but all of them shared the same policy under different names: order and labour imposed from above!”²⁴

True to his intention to identify and assess a phenomenon but also to make a point (in accordance with the “idées-forces”), Jovanović claims that except the Conservatives in Michael’s times, all Serbian political parties of the second half of nineteenth century, which is to say the Liberals and the Radicals and “even the Populists”, “strove to provide legal security for the citizens”. To the political parties, it seemed that what “the Obrenović rulers ultimately wanted was ‘autocracy’ and that they, on the pretext of strengthening state authority, were destroying not only political freedoms but also the legal security of the citizens”. Hence, Jovanović poses the following questions: “Can a Western-style culture be raised under such Oriental despotism? Is a strong state possible there where all sources of individual energy are sealed? [...] To limit the ruler by the law was the ultimate goal of the Liberals when they fought for the institution of the National Assembly; and of the Radicals when they fought for a parliamentary system; and of the Progressives when they, contrary to the ruler, wished to set up a Senate of wealth and learning. In brief, the whole thing came down to this: What was the lesser of two evils — a strong but despotic authority or an authority that would be made harmless to the citizens but also powerless. What was needed was a middle ground between the two extremes, a solution that would reconcile ‘the state idea’ and civil liberties.”²⁵ The issue seems to be as topical as it was in the 1920s when the passage quoted above was written. In our view, Jovanović offered a theoretical middle ground in his legal theory of the state.

On bureaucracy and bureaucratic oligarchy

Jovanović observes and remarkably describes the nature of personal rule such as was established in Serbia after both uprisings. Jovanović had predecessors in that respect, at first Vuk Karadžić, and then other historians and

²³ Jovanović, *Vlada Aleksandra Obrenovića II* [1931], SD, vol. 7, 368–369.

²⁴ *Ibid.* 369.

²⁵ *Ibid.*

writers. Many of them were aware of the unenviable status of those who were supposed to carry out the decisions of new authorities. They were also aware of the need to legally regulate the status of the social group for which Vuk had already sought “justice”, most of all for the sake of the success of the national movement and Serbia’s progress. Jovanović is keenly interested in the process of transformation that the Serbian state was undergoing in the nineteenth century; and in the role in that process of the stratum of professionals who administered state affairs and without whom no new state can be constituted, nor can any state function. His studies cannot be seen as focused on one particular historical phenomenon relating to the Serbian insurgents or, later, to people and society in the process of state building. He perceives and sheds lights on some general features of this transformation, in accordance with his quest for the general in the particular and using the particular to grasp the general, a principle that he sees as a strength of Ranke’s approach. His description of these phenomena, as arresting as that of Prince Miloš’s arbitrary rule, is combined with his ideas and assessments of the nature of bureaucracy in a politically fermenting and undeveloped society, of the social function of a well-educated and well-organized officialdom, of dysfunctions in economic and political life and of the manner in which a bureaucratic oligarchy ruled through its subordinates who were neither educated nor responsible.²⁶

In fact, when writing about officialdom and bureaucracy Jovanović usually reserves the latter term for the practices that he perceives as objectionable. His views on officialdom are similar to the doctrines whose normative ideal is “the legal state” or “the state of law”. These views of Jovanović, and of the German and French legal theoreticians he drew on, are similar to

²⁶ In his inaugural address as a member of the Royal Serbian Academy, he presented an excerpt from his study on the Constitutionlists. He obviously found it very important to read the section concerned with the bureaucracy (see the excerpt published in *Godišnjak SKA XXV* (1911), 171–173). One cannot help thinking that he used the occasion to draw attention to a phenomenon which he deemed as being harmful to the people and the state, and as preventing Serbia from falling into step with European trends. Although other states were not immune to it either, they tended to cope with the problem through laws and political institutions. Jovanović’s lucid descriptions in several of his works are illustration enough of the position of the bureaucracy in relation to the Prince’s self-willed rule, but also of the arrogance of the bureaucratic oligarchy towards people whenever they were given the opportunity. In the parts of *On the State* that deal with the organization of administration (Part 3, chap. III), Jovanović gives a detailed account of the position of officialdom in the institutions of the Constitutionlists’ regime (Part 1, chap. II of the study on the Constitutionlists), and in his work *The Second Reign of Miloš and Mihailo* (where the chapters of relevance to our subject are chap. II, “The overthrow of public officials”, and chap. IV, “Miloš’s autocracy”), and he writes about similar issues and situations in several other places.

Hegel's view that officialdom is necessary for putting the idea of the "state" into practice. On the other hand, Jovanović clearly notices and remarkably describes how officialdom can obediently serve a ruler's absolutism, and the tendency of the bureaucracy to rise above both the ruler and the people and gain control over the state. A century that has elapsed since the time described by Jovanović gives ground to assume that bureaucracy remains a threat to every modern state, though, of course, not in so primitive forms as were those studied by Jovanović.

Jovanović vividly portrays the transformation of officials from being the Prince's personal servants to becoming members of the state apparatus: "During Miloš's [first] reign, the official in the modern sense did not exist. Today the official is seen as a state organ; back then he was seen as a private servant of the Prince."²⁷ The particulars given by Jovanović clearly show the position of officials during Miloš's reign. The Prince regarded them as his personal servants. "For example, an official could be assigned as a servant to the Prince's household; officials would wait the Prince's table; put the shoes on his feet, etc. None of them had a precisely defined formal duty; they could be assigned to this or that job, changing lines of work and responsibilities at the Prince's will. There was no established hierarchy of titles; nor was there an established rule for promotion from a lower to a higher grade. Under Miloš it could easily happen to an official who had a good salary and performed the most important state duties to be suddenly demoted to an ordinary and insignificant job and a low salary; in fact, to be demoted from a higher-ranking position to a lower."²⁸

Jovanović briefly but remarkably describes the nature and significance of the change to the status of bureaucrats in relation to the Prince brought by the so-called Turkish Constitution of 1838: "from being servants to the Prince it made them servants to the state; it granted them the rights of officials and the justice which Vuk had asked for them. After Miloš's downfall, under Michael [Obrenović] and under Alexander Karadjordjević, their legal position was set in detail by a number of decrees, including the rule (though it was not strictly observed in practice) that only properly trained persons, those with a diploma, were eligible for officialdom. It was not enough any more to be the Prince's personal protégé. The state official did not have anything to do with the Prince's household; nothing outside his office was his concern. Officials proceeded to higher ranks through promotions: each higher rank was a new mark of distinction; once granted it could only be lost by a court ruling; the Prince could no longer demote them to a lower grade position at will. The salaries of officials were not arbitrarily

²⁷ Jovanović, *Ustavobranitelji*, 49.

²⁸ *Ibid.*

determined by the Prince, but by the budget resolution, i.e. an act adopted jointly by the Prince and the Council [...] The state service was separated from other occupations. The state official was forbidden to engage in trade; forbidden to provide legal representation; he had to be a state official and nothing but a state official [...] One of the main ideas of the regime of the Constitutionalists was that the reputation of state authority required that the subjects be in awe of the state officials who were its living representatives. That is why state officials were given outward marks of distinction: titles and uniforms.”²⁹

Jovanović gives a somewhat sarcastic description of the bureaucrats feeling uncomfortable and sweating in their uniforms; but they loved the security of their employment that their new legal status provided. Namely, a state service job came to be seen as a permanent job. During the regime of the Constitutionalists, to be appointed by decree “was considered to be as secure as ownership of a crop field or a meadow”. Since they could be deprived of their status of officials only by a court ruling, state service titles were made “as inviolable as private property”. The rank and title become ‘acquired rights’.³⁰

With reference to Vuk Karadžić’s claim that under Miloš nobody was eager to become an official, Jovanović describes the distinction: “Now that the position of officials was considerably improved, everyone was making a rush for the job. The age of the Constitutionalists was marked by a rush on state service jobs [...] Educated people only thought of how to enter the state service after completing their schools; in fact, the only reason why parents sent their children to school was that they might become state officials [...] At first, due to the lack of educated people, uneducated had to be employed, those previously engaged in trade or a craft, — and their example came to be an outrage. The whole lot that charged into the state service for material benefit saw it as nothing other than a sinecure, some kind of ‘God-given pension’, bread without sweat.”³¹

²⁹ Ibid. 50–51. Jovanović makes a sarcastic remark that this gives “a military appearance” even to the most ordinary bureaucrat who “spends his day with a goose quill in hand”. Titles were bestowed only to senior officials and depended on the rank. “The uniform prescribed for special occasions was: greatcoat and gloves, sabre and boots, like the military. Uniformed and titled, officials had to pay attention to their appearance, to look clean and tidy, which nowadays is required of military officers. When, in the 1850s, some officials tried to grow beards, the Prince forbade it: an official must be clean shaven. His beard is the subject of a decree as well as his clothing.”

³⁰ Ibid. 52.

³¹ Ibid. 55. Jovanović cites the comment of a minister (Aleksa Simić) after an inspection visit to the provinces: that the officials work as if they were forced to “hard labour”, but at the same time “are grabbing for promotion and salary like caterpillars”. He adds that

Analyzing the change in the position, permanency, security and influence of the bureaucracy under the regime of the Constitutionalists, Jovanović argues that they turned into a “bureaucratic oligarchy”. The Liberals fought against the bureaucratic system as they understood it, i.e. as the political supremacy of state officials which had originated from the Constitution of 1838. Jovanović also gives a brief analysis of other political factors: “The Prince was passive; the National Assembly was not being convened; all power lay with the Council, — and consequently, when the Council became bureaucratized, the bureaucracy became omnipotent in the state. At that moment, it really seemed that officialdom had taken all power away from the Prince and the people, changing from being servants to the state to being masters of the state. The proceedings of the Council were secret; there was no free press to make the workings of this body public or to subject them to criticism; the officials administered the state much like an aristocracy, without any contact with the people, as if politics had been an occult skill ungraspable by ordinary citizens.”³²

Jovanović speaks of discontent with the Constitutionalists because of the state in which the judicial system in Serbia was, and claims that not even after all changes, and after the transfer of legislative powers from the Council to the Assembly under the Constitution of 1869, “was there judicial independence”, and “exploitation by officials was possible only because the Assembly had no power over the ministers whatsoever”.³³

Jovanović argues that the way in which the Constitutionalists organized the bureaucracy relied on an outdated notion of its role: that bureaucracy should govern, and the people should obey; that the bureaucracy was the intelligentsia, and the people, a rough-edged peasant crowd. As state officials were held to be the smart ones, it necessarily followed that they should not follow the people; the people should follow them.³⁴ Jovanović

“in a primitive country, where money was scarce and hard to earn, a state job with its salary seemed like a gold mine, giving bread without sweat”.

³² Jovanović, “Naše ustavno pitanje”, 28.

³³ Ibid. 30 and 34.

³⁴ Jovanović, *Ustavobranitelji*, 52–53, brings many interesting details to corroborate and complement his accounts and assessments. E.g., he writes that Jeremija Stanojević, a minister in the government of Alexander Karadjordjević, defined the relationship between authority and people with utmost clarity: “The authority is the tutor, and the people are its pupils.” Ilija Garašanin shares this view in a letter to Knićanin: “Tell everyone that all that they should think about is how to run their own household, and they should by no means worry about the duties of the Governing Council [...] If the Governing Council mustn’t meddle in their private affairs, then I guess they mustn’t meddle in the affairs of the Council.” Paradoxically, in Jovanović’s view, this same Garašanin requires, in an official document, that people “respect” state officials, and that officials “respect”

finds it interesting that people tended to accept the Constitutionalists' notion of the relationship between power and people:³⁵ "In short, under the regime of the Constitutionalists, officialdom was more than just officialdom; it was a ruling class in the state [...] Supreme power was organized consistent with this view, namely that officialdom is the one with whom the guardianship of the people lies."³⁶

In 1859, Miloš was on his way to Serbia to begin his second reign, issuing demagogic statements that he would be "a constitutional ruler". One of the issues he intended to deal with was the issue of officialdom. As early as 28 January 1859, his Proclamation of Accession envisaged that every Ministry should prepare both decrees of appointments for new officials and of dismissals for some incumbents. The Liberals' demand for a "purge" of officials came in handy for Miloš and thus many officials were fired. Their removal was contrary to the provisions of the 1838 Turkish Constitution; but those provisions were not abided by. "Under Karageorge, there had been much talking about the recalcitrance of officials, as a result of their not being subjected to any severe disciplinary sanctions. Upon Miloš's return, a complete mockery was put up. Miloš would appoint and dismiss officials at will..."³⁷

During his second reign, Miloš "admitted to the state service men whose only qualification was the fact that they had suffered for the Obrenović dynasty", thereby increasing the number of incompetent officials. Even during his son Michael's reign there were "many half-educated or even uneducated officials left from the time of Karageorge", and there were county mayors who were illiterate. Jovanović's accounts give a clear picture of how far away from what the new state needed the actual situation was.³⁸

In Jovanović's opinion, Prince Michael was determined to put an end to the farce put up by Miloš, but he never intended to restore the Constitutionalists' system of permanently employed and undisciplined officials. Michael's views generally concurred with the views of one of his most loyal supporters, Miloje Lešjanin, expounded in the treatise *The state service and*

the "law"; otherwise, "it is a sure way to anarchy". "It is not enough for him," Jovanović writes, "that people should obey authorities: he also requires 'respect' from them. Indeed, if people do not respect state officials and do not trust their good sense, then people will not let officials manage affairs of state without them."

³⁵ Ibid. 53. Jovanović relies on the account of Ljubomir Nenadović, who heard peasants say that the common people were unsophisticated and in need of command, and that nothing could be done if there were no laws.

³⁶ Ibid.

³⁷ Jovanović, *Druga vlada Miloša and Mihaila*, 367.

³⁸ Ibid. 369–370.

state servants (1859). “The aim of this treatise, very carefully written in keeping with the German legal literature of the period, was to prove that, contrary to what the Constitutionists held, the official is not the owner of his title. The official is, in fact, a servant of the state; his title is assigned to him in common interest and he is answerable to the head of the state for the way in which he uses the title.”³⁹

It was not until Michael’s constitutional change that the “Council’s oligarchic rule” was terminated. The change was introduced indirectly, that is by way of laws (because the Porte insisted that it should be the one to grant the constitution, though without going into the question of its content any more). However, he too sought for his regime to be “enlightened absolutism” which had been causing the opposition of the Liberals, and not even he “destroyed” bureaucracy; he just “overpowered and restrained it — made it harmless to the Prince”, but “that did not make it harmless to the people too”, whose participation in power Michael “reduced to a minimum”.⁴⁰

Michael wanted to limit the power of officialdom, to regulate its status by law, but also to strengthen the ruler’s power and control over officialdom, putting it in a position which imposed unconditional obedience not only in matters of state administration but also in political and moral matters. The Law on State Officials enacted in 1864 (and remaining in force until 1923, though, of course, amended and supplemented) did not envisage the possibility of their administrative dismissal. But the following year changes were made which abolished the permanency of their employment, facilitating their dismissal if it was “in the interest of the service”. This change opened the way for major abuse of power against the officials whose political beliefs the government might find suspicious, and abolished the legal basis of their independence. “In his rigid and arrogant autocratic rule,” Jovanović writes, “Michael was not content to impose ordinary discipline on state officials; he wanted complete moral solidarity between the government and state officials. They were not allowed to have a different political opinion from the government; they had to serve the government not only as its professional organs but also as its loyal supporters [...] Michael stepped across the line of mere bureaucratic discipline [...] because, bureaucratic discipline does not destroy the citizen in the bureaucrat; it leaves him the freedom of political belief. Only soldiers are required to obey the orders issued in the name of the ruler with their entire moral being, without thinking for themselves and yet with great enthusiasm.”⁴¹

³⁹ Ibid. 367.

⁴⁰ Jovanović, “Naše ustavno pitanje”, 28.

⁴¹ Jovanović, *Druga vlada Miloša i Mihaila*, 370. Jovanović held that Michael’s legislation was based on a true premise which, however, was subsequently taken too far: “The

Michael's intention to step up control over officialdom was greatly facilitated by one paragraph of the abovementioned Law (§ 76). It placed it not only under judicial but also under administrative control, which, as it often happens, could be broadly, partially and arbitrarily interpreted and hence used as the government's political guillotine against public officials. "In practice, Paragraph 76 introduced by Michael proved to be highly detrimental; some even claimed that it had ruined our officialdom. The moral integrity of an officialdom left to the mercy of the government tends to be eroded, and the personal regime of both Milan and Alexander relied on such bureaucratic servility. Officials became something of civil mercenaries, willing to serve any regime for the sake of 'having a job'. Unscrupulous as they were, they became a corruptive element in our public life. Lešjanin used to say that officials should be state servants — and that was quite true. Due to Paragraph 76, they did not become state but government servants, which is quite another thing."⁴²

When it comes to the issues discussed here, Jovanović is very critical in his assessment of the post-1859 period under the Obrenović rulers: "We created a sort of a bureaucratic-proprietary state, the upkeep of which exhausted the economic strength of the nation, and which limited internal freedoms in favour of some disproportionately big external tasks."⁴³ This assessment seems to bring Slobodan Jovanović closer to the notion that the bureaucracy can behave as it were (or to actually be) the owner of the state, i.e. that it can "privatize the state" and use it almost as a private thing in order to gain personal benefits. In some respects this idea is similar to the ideas such as Mosca's notion of the political class, Djilas's notion of the new class, Rizzi's notion of "the managerial class", or even to Waclaw Machajski's nineteenth-century notion of why the victory of the socialists might be possible, but socialism as a classless society was not.

In his study on Svetozar Marković Jovanović pays much attention to Marković's critique of bureaucracy, and not only in the third chapter ("His criticism of the bureaucratic system") which is entirely devoted to this problem but also in other chapters (for example, "His criticism of the Liberal Party"). According to Jovanović, "apart from the bureaucratic system... [Marković] mainly criticizes the Liberal Party but it, too, on account of the bureaucratic system."⁴⁴ In the opening part of the second chapter ("Serbia in his times"), Jovanović states that "in his political article 'Our miscon-

true premise was that an orderly state service required, apart from the accountability of officials before the court, their accountability to senior administrative authority."

⁴² Ibid. 370–371.

⁴³ Jovanović, *Vlada Aleksandra Obrenovića*, 368.

⁴⁴ Slobodan Jovanović [1903], "Svetozar Marković", SD, vol. 2, 92.

ceptions', which he wrote as a government scholarship holder studying in Zurich, and which cost him his scholarship, Svetozar Marković wrote the following: 'What I see as the most pressing need in Serbia is to destroy the bureaucratic system.'⁴⁵ In much of his work, Jovanović seeks to demonstrate that the status and role of the bureaucracy needed to be changed and its power limited, but that it should not be destroyed. Furthermore, that it is unfounded to ascribe to the bureaucracy all those sins that Marković ascribed to it, and to accuse it of being omnipotent; were it really so, there would be grounds to claim that the bureaucracy has been the most influential factor of civilization and initiator of every revolutionary change. "If Svetozar Marković was not content with making the bureaucratic system less complicated but demanded its abolition instead, the reason above all was in that he saw the situation in Serbia blacker than his contemporaries did."⁴⁶

On the State, probably the most important single work of Slobodan Jovanović, deals with theoretical and practical aspects of the role, nature, legal status and responsibilities of the bureaucracy (Chapter "Organization of the administrative power", § 62 "Officialdom"); with the tendency of the bureaucracy to alienate itself from, and rise above, the people (chapter "Organization of the legislative power", § 45 "Relationship between legislature and electorate"); and also with the danger of bureaucratization of the legislative body. "If, in addition to the administration and the judiciary, the legislature were also bureaucratized, then the entire state organization would be bureaucratized. Even though the bureaucratic element is necessary in the state organization, it must not be allowed to take over the entire state organization. Made master of the state and left without control by the people, the bureaucracy becomes high and mighty: the dignity of state authority comes to be considered as their own, they behave as a ruling class and think that the people are there for them and not the other way round."⁴⁷

There was a huge gap between the normative ideal of the legal state and a bureaucracy subject to law on the one hand and, on the other, the reality of Serbia's seventy-five years of constitutional and political development which Slobodan Jovanović studied. Much of this gap is still Serbia's reality. Jovanović does not want to mythologize the restoration of the Serbian state, nor is he overly understanding of its weaknesses; quite the opposite, he identifies and analyzes them like a physician would analyze a disease, aware that only the truth about things can lead to their change, and that

⁴⁵ Ibid. 58.

⁴⁶ Ibid. 68.

⁴⁷ Slobodan Jovanović [1906; 1914; 1922], *O državi. Osnovi jedne pravne teorije* [On the State. Fundamentals of a Legal Theory], SD, vol. 8, 278.

therefore the responsibility of scholarship is to reveal, not to conceal. By the way, Jovanović sticks to this very principle in analyzing the mores and mentality of the nation.⁴⁸

Slobodan Jovanović gives brilliant studies of the process of transformation of the insurgent masses led by one or, more precisely, a few leaders, into a state which was yet to become a *constitutional*, i.e. *legal state* (and we hold this to be an important feature of his political ideal of the state, towards which the process he studies did unfold, but not at all along a line, nor determined by some influential ideés-forces). Today, some would describe this process using a widely popular but not entirely precise term — transition. In his studies, Jovanović follows the course, problems and difficulties of the process of transformation from the Prince's despotic rule and treatment of public servants as his personal servants to officialdom as a professional and permanent group. Within this process, he also follows the role, behaviour and evolution of other actors and mechanisms on the political scene (such as the royal court, the National Assembly, political parties, the army and the people) and describes and analyzes the role of particular factors in constitutional and political struggles.

On the notion of democracy and the ideal of legal government

Slobodan Jovanović does not address the issue of democracy in a systematic manner; apart from an essay he wrote as a student, he discusses it along with other topics. It should be borne in mind that the notion of democracy in his times was different from what it is today. It was not as synonymous with the good, beautiful and true as it tends to be today⁴⁹ or with more or less the best possible form of government. Jovanović's concept of democracy does not have the connotation, meaning and role that it tends to have today. It seems, therefore, that Jovanović's political ideal comes down to two words: *constitutional government* or legal government, a category he often uses or has in mind while writing. Jovanović's ideal state is the state that Serbia needed given its level of development, problems, national mentality and many other factors. He writes about the magnitude of the national task that lay ahead of nineteenth-century Serbia: "We had to build, in what even yesterday had been an Ottoman pashalik, a modern European state, a state with its officialdom and army, its courts and schools, its banks and railways. Afterwards,

⁴⁸ See his posthumously published (1964) contribution to the study of Serbian national character and cultural model in SD, vol. 12, 543–582.

⁴⁹ This is how Klaus von Beyme, *Die politischen Theorien der Gegenwart* (Munich: Piper, 1972), critically writes about the popular understanding of democracy today; quoted after the Croatian edition: *Suvremene političke teorije* (Zagreb: Stvarnost, 1977), 199.

a thus organized Serbian state should incorporate other Serb lands which were still under foreign occupation.”⁵⁰ Reflecting on our national mentality and “cultural models”, which significantly influence political behaviour, Jovanović also describes the behaviour of some nineteenth-century political figures and party leaders. These descriptions indeed seem to capture some characteristic and widespread features of people in high positions, without attempting an explanation why it was so: “Politicians good at manoeuvring like Garašanin and Ristić are rare. Most politicians lack moderateness both in resisting and in giving in: they are either principled and self-righteous to the point of rigidity and obstinacy or opportunistic to the point of unprincipledness verging on spinelessness. Sometimes both extremes can be seen in one person: one at the beginning, the other at the end of his career.”⁵¹ That is why Jovanović was able to believe that the establishment of a modern legal state or a state of law was more important and urgent than the introduction of a democratic system. With its rational organization expressed in good laws, such a state would restrict and direct our passions, arbitrariness and behaviours guided by personal whims. As a matter of fact, David Hume had a similar view about democracy and the rule of law. He argued that while democracy was not necessary for the development of modern society and its economy, the rule of law was.

The heading of this section contains the word “democracy”. It is used as an abbreviation for many things which are habitually required today but towards which Jovanović would have had some reservations. Because the term “democracy” does not encompass, etymologically or semantically, all which it does in its modern everyday usage and which is often a set of desirable practices or elements which may not be easily compatible or even are incompatible. In Jovanović’s youth, the ideas of rights and freedom, the right to vote and freedom of the press, constitutional guarantees of individual rights, freedom and property, and the idea of the state of law as a form of constraint of absolutism and arbitrariness were more current and widespread than the idea of democracy even though the latter was already becoming an *idéé-force*.

In his student report on the last academic year in the form of an essay submitted to the ministry that granted him his scholarship, Jovanović says that he has studied public law and that he has the honour of touching upon “one of the most important questions of that science, the question of *democracy*”.⁵² There we can find an outline, and assessment, of something

⁵⁰ Jovanović, *Vlada Aleksandra Obrenovića II*, 370.

⁵¹ *Ibid.* 371.

⁵² It was a good decision to include this essay, written in 1889 and previously unpublished, in his *Collected Works* (SD, vol. 12, p. 795–809). It reveals Jovanović’s youth-

that would later be pejoratively called “mass society”, a society to which a specific form of democracy, potentially totalitarian, corresponds (see below on the ideas of J. Talmon).⁵³ Influenced by Bluntschli,⁵⁴ young Jovanović writes: “In a democratic system sovereignty belongs to the people... [and] all citizens are equal before the law”; “and these two postulates, without which the idea of real democracy is unimaginable” also entail equal political rights. In the political system of this type, “all citizens participate with equal rights in affairs of state, and state administration is not in the hands of only one social stratum or caste.” A feature of democracy is that “the will of the numerous majority is taken as being the will of the people and in the name of it the defeated minority must conform.”⁵⁵

What Jovanović sees as strengths of democracy are that it teaches the nation to govern itself, instils a sense of personal pride in people and significantly diminishes the importance of the bureaucracy. Democracy has also its negatives and Jovanović is well aware of them, arguing that nowadays it is impossible to establish an immediate, direct, democracy, such as existed in ancient times. He also emphasizes great weaknesses of parliamentary democracy and the unacceptability of both a Caesarean system and the constitutional Convention system (established during the French Revolution). Finally, of the entire ideal of democratic government as viewed by Jovanović remains only one form of the Swiss model with some elements of the American one.

ful preoccupations and his audacity to express some ideas which would not have been looked favourably by the regime, and it also gives us a clue to possible influences on his later views on some weaknesses of democracy.

⁵³ Jovanović might have also been influenced by some ideas which were current in social psychology in France and Switzerland at the time, and which were used in interpreting some phenomena characteristic of the French Revolution: the Jacobin terror undoubtedly influenced Jovanović’s formulation of some of his ideas and views. Gustave le Bon’s *Psychologie des foules* (The Crowd: A Study of the Popular Mind) was published in 1895. It was seen not only as controversial, but also as superficial and, by some, as supporting antidemocratic tendencies. Jovanović probably learned a lot from his professors and from books, and new developments gave substance to some of his doubts. The experiences with totalitarian democracies, about which he later learned a lot, being their contemporary, and about which he wrote towards the end of his life, confirmed his fears of the negative sides of democracy expressed in his early work.

⁵⁴ In his essay “Nikola Pašić” (SD, vol. 11) Jovanović ranks Bluntschli among the European liberal writers who were much read by Pašić’s Radicals after they turned their back on Russian socialists such as Chernyshevsky and others (p. 145). Bluntschli’s book on political parties, one of the first on the topic in the world, was published in Serbia in 1880, as well as many other articles.

⁵⁵ Slobodan Jovanović [1889], “O demokratiji” [On democracy] (student report/essay), SD, vol. 12, 795.

If a democracy is immediate, Jovanović writes, then “sovereignty is exercised by the people itself [...] the separation of powers is meaningless because all powers are concentrated in its hands; the people is the lawmaker and the judge and the government. It is the tyranny of all over all; all citizens are masters and slaves at the same time. If we want to take it a step further, we could say that it is a sovereign who serves himself. This form, although it may seem the most perfect one at first sight, is quite contrary to the needs of modern society and does not suit its needs. Science has demonstrated that immediate democracy can be useful to an extent *only in the most primitive times*. Being impracticable in today’s circumstances is not the only flaw of immediate democracy; there are other, more serious shortcomings. Encountering no restrictions, people tend to believe that everything is permitted. Their rights extend as far as their force extends. The few politicians who manage to take the lead of the masses become the masters of the life, property and honour of the other citizens, disposing of them according to their own whim. The laws are trampled underfoot, there is no such thing as law and justice, and the whim of a few cunning agitators holds in its hands the fate of the wretched people who, by the way, live in the blissful belief that they are free.”⁵⁶

The lines quoted above reveal an influence of the reactions to the interpreters and implementers of Rousseau’s theory during the French Revolution. Jovanović also offers a socio-psychological analysis of mass movements, to which he devoted many pages in his other works. Here already, he writes: “It was said a long time ago that people tend to lose their minds [...] the crowd is incapable of cool-headed reasoning and mature judgement, it goes by the first impression, it is a slave to its passions and weaknesses [...] Immediate democracy subjects society to an even greater danger. By its very principle, it is intolerant and despotic and ruthlessly crushes every, even the most reasonable and most justifiable, resistance [...] In such a democracy there is no room for independent spirits, for people who would not sacrifice their intellectual individuality whatever the cost.”⁵⁷ These lines were obviously based on the then widespread views on democracy, and not only conservative but also liberal, such as the views of John Stuart Mill who wrote about the tyranny of the majority and was concerned about the intellectual liberties of the individual facing the pressure of insufficiently enlightened and intolerant public opinion, of what today would be called mass society.

More than sixty years later — in the meantime, he published a book on the leaders of the French Revolution based on thoroughly examined sources (during the Paris Peace Conference), wrote on Burke and on Car-

⁵⁶ Ibid. 797–799.

⁵⁷ Ibid.

lyle, and, what is more important, he witnessed the forms of totalitarianism before, during and after the Second World War — Jovanović returns to the issue of the relationship between freedom and democracy in his *On Totalitarianism*. In chapter III (“The totalitarian state”) he writes: “The problem of personal freedom in a sovereign state did not arise only under the absolutist monarchy, it arises in the age of democracy as well. The omnipotence of democratic assemblies is no less incompatible with personal freedom than the omnipotence of a ruler.”⁵⁸ Jovanović’s finding that even the philosophy of rationalism can become a basis for fanaticism should also be given due importance: “The French Revolution demonstrates that collective fanaticism can be ignited by the philosophy of rationalism.”⁵⁹

Representative democracy, as he understood it in his student days, has different flaws: “There is no much guarantee that the people are represented well and truthfully. Popular representatives frequently tend to misuse their public office for personal gain [...] All decisions are taken by majority vote, but this majority is sometimes so thin, so accidental and so pressured into, that it cannot be regarded as being a true expression of the will of the people.”⁶⁰ Describing the institutions of representative parliamentary democracy, the only example of which he finds to be France at the time, Jovanović says that parliamentary institutions were quite popular in the late eighteenth and early nineteenth century, but confused with representative government, especially in France and even by such prominent figures as Montesquieu and Benjamin Constant. During the Revolution, the Assembly attempted to establish such institutions, but failed. Unfortunately, Jovanović adds, not even a third attempt (i.e., after the Franco-Prussian War of 1870/1) was “this political ideal of Montesquieu’s, this much praised and glorified English parliamentarianism able to fulfil the high hopes pinned on it [democracy] [...] Parliamentary democracy can be understood and defended only as the result of a long and arduous struggle between the crown and the people.”⁶¹ Jovanović sees parliamentarianism as being the compromise outcome of the abovementioned struggle, and levels the criticism that “it has been suited for *a false democracy, for the monarchy*. It has never been of any use in *a real democracy, in the republic* [...] In such a system the people play the minor role of a distant spectator [...] Finally, there is a theoretical argument against parliamentarianism, that it is contrary to the

⁵⁸ Slobodan Jovanović [1952], *O totalitarizmu* [On totalitarianism], SD, vol. 12, 153.

⁵⁹ Ibid. 172.

⁶⁰ Jovanović, “O demokratiji”, 800.

⁶¹ Ibid. 801.

great principle of separation of powers.”⁶² As we know, Jovanović will later criticize the flaws of the principle of separation of powers from the standpoint of the legal sovereignty of the state. In his report as a student, where he also deals with non-parliamentary representative democracy, exemplified by the United States of America and Switzerland, he takes a less critical view of this form, defining it as “a mixture of representative and immediate democracy.”⁶³

Observing that democratic revolutions played a role in overthrowing absolutist regimes, Jovanović claims that not even democracy could get rid of vestiges of absolutism. “Contemporary democracy is not the product of peaceful and gradual improvement. It was born out of a revolution, covered in blood, tainted, overwrought, full of hatred and vengeful [...] and in France, where democracy was the most successful, revolutions came one after another, and even monarchies, which would rise overnight only to fall the next day, bore the imprint of street rioting (not to mention republics).”⁶⁴ Jovanović concludes his student report with the statement that wishing “to marry democracy and monarchy would mean wishing to reconcile democracy with its negation.”⁶⁵

It should be borne in mind that Jovanović wrote this essay towards the end of the nineteenth century, when democracy was not the word of the day as it is today. Although it has a lot of inconsistencies and its conclusion concerning the relationship of democracy and monarchy may have been politically motivated (and, as has already been said, not even Great Britain could be considered a democratic state at the time), it nonetheless shows the author’s familiarity with a number of issues which preoccupied the legal and political theory of the period. His view of the impossibility of reconciling democracy with monarchy should not be regarded as specific to Serbia at the time; it also prevailed in the United States and Switzerland, the countries that would not even take such a model into consideration, and France, which had become a republic less than twenty years before this essay was written and which Jovanović takes as an example of democracy.

In the text “On the social contract” which mostly deals with Rousseau, Jovanović contends that Rousseau was mesmerized by the idea of abolition of tyranny and by the notion that a society cannot become a true community unless it is free. Such a community and his notion that the weaker should not be subordinated to the stronger were based on the principle of universal equality which should be achieved. Jovanović notices contradic-

⁶² Ibid. 802.

⁶³ Ibid. 805.

⁶⁴ Ibid. 806–807.

⁶⁵ Ibid. 809.

tions in Rousseau's understanding of freedom and equality, as well as its flaws, i.e. the unacceptable consequences of Rousseau's understanding of equality: "For Rousseau freedom is uniformity [...] Rousseau's thoughts are the following. For a man to be free, he must renounce his will and obey the will of the community [...] Or, so that no one would be a slave, all will be tyrants [...] and he transferred absolutism from one man to the whole society."⁶⁶

When he says that "all that Rousseau knew about freedom, he learnt from the history of the republics of classical antiquity", Jovanović also follows prominent French historians and students of classical antiquity. "In the ancient view, to be free did not mean to be as independent of the administration of society as possible, but to participate in it more. It meant the right to vote on public affairs in the council, free access to the Forum or the Agora [...] every citizen a voter and elector."⁶⁷

Benjamin Constant was the first who pointed to the outdated and erroneous understanding of the nature of ancient democracy. Jovanović was acquainted with Constant's liberal thought and wrote about him. Constant's ideas were later developed by Fustel de Coulanges, who was also well known in Serbia owing to a translation of his *Ancient City* published in 1895. Fustel de Coulanges was breaking the misconceptions held by many eighteenth-century French revolutionaries, demonstrating that the so-called free man had been a "slave of the state" even in ancient Greece at the peak of its democracy.⁶⁸

⁶⁶ Slobodan Jovanović [1895], "O društvenom ugovoru" [On social contract], SD, vol. 12, 194–195.

⁶⁷ Ibid. 196–197.

⁶⁸ Fustel de Coulanges, *La cité antique* (Strasbourg 1864); Eng. transl. by W. Small, *The Ancient City* (Boston & New York 1877), Book III, chap. XVII, characteristically titled: "Omnipotence of the State. The Ancients knew nothing of Individual Liberty". This interesting issue, discussed in the nineteenth and twentieth century, was raised by Benjamin Constant, *De la liberté des anciens comparée à celle des modernes* (Paris, 1819). Franz Neumann, *The Democratic and the Authoritarian State* (Free Press, 1957), wrote about the Spartan social order and the regime of Diocletian as two totalitarian experiments of antiquity, allowing for the possibility that forms of Oriental despotism were of the similar kind. In his view, the Spartan regime was based on terror, not law. He relies on Thucydides, Plutarch and other ancient sources to show how that system of terror was maintained and how bloody were the consequences of sending out young Spartans, "from time to time", to terrorise and slaughter the helots. The lack of the individual's moral autonomy in ancient Greece and in Athens at the peak of its democracy was also discussed by Werner Jaeger, *Paideia: The Ideals of Greek Culture*, transl. by G. Highet (New York: Oxford University Press, 1945), esp. vol. I. See also V. Stanovčić, "Razvitak ideja o slobodama i pravima čoveka i gradjanina" [Evolution of the ideas of the liber-

But apart from the ancient understanding of the nature of freedom, which has its modern version, there is a different, liberal, understanding such as championed by John Stuart Mill. Two notions of freedom were written about by Isaiah Berlin after the Second World War, and before the war also by Harold Laski, who advocated state interference in social life so as to secure certain rights for those who have neither the wealth nor the power to do that by themselves.⁶⁹ So, in 1895, basically discussing the idea of two concepts of freedom, Slobodan Jovanović illustrates them ingeniously by showing the difference between the French and English understanding of the role of the constitution or, we would say, understanding of the character of constitutional government. “The first duty of every French constitution is to settle the issue of who will be sovereign. In it, freedom is called universal suffrage. Moreover, the ideal of every citizen is to have whatever position in its administration, if not as a wheel in its machine then at least as a cog. There is more than one reason to say — and it has been said — that his ideal is not freedom, but power, the power, of course, transformed into common good, made accessible to all. As Benjamin Constant observed, it is not freedom, it is despotism, but vulgarized.”⁷⁰

Unlike the French view of the role of the constitution and the nature of political system, “English unwritten constitutionality does not decide on where authority resides. It sets barriers⁷¹ to power no matter where it resides. It is entirely born out of concessions that individuals or an individual, at first private associations, forced out of representatives of state authority; it is a series of guarantees with which personal freedom is limited and of limits set to the right that the social community has over its members. According to it, freedom is not called universal suffrage, but *habeas corpus*.” The English citizen “is not wrestling for power, but away from power.”⁷² At the time Jovanović was writing these lines, France had already introduced universal suffrage, while Britain was still far from it (the right to vote was expanded to all adult men after the First World War, and to all women only in 1929).

ties and rights of man and the citizen], in *Prilozi demografskim i ekonomskim naukama* (Belgrade: Serbian Academy of Sciences and Arts, 1994), 313–332.

⁶⁹ Cf. Isaiah Berlin, *Four Essays on Liberty* (Oxford University Press, 1969); and Harold Laski, *Liberty in the Modern State* (New York: Harper & Brothers, 1930); see also V. Stanovčić’s preface to the Serbian edition of Laski’s book, “Pluralističko poimanje društva i slobode” [Pluralist perception of society and freedom] (Belgrade: Radnička štampa, 1985).

⁷⁰ Jovanović, “O društvenom ugovoru”, 198.

⁷¹ A pun in Serbian: *ustav* meaning “constitution” and *ustava* meaning “dam”, “barrier” (to unlimited power).

⁷² Jovanović, “O društvenom ugovoru”, 198.

In that sense, England was not a democracy in the modern-day sense, but it did have a political system where all citizens enjoyed broad liberties within the boundaries of law, legal security, independent judiciary etc.; whereas France had none of it, only universal suffrage.

Significant for Jovanović's views on democracy, with obvious critical overtones and some reservations, were also the then current ideas which he emphasized in a short review of Jelinek's book on the rights of the minority. Jovanović finds that Jelinek's main intention was to discuss whether the majority has the right to impose its will on the minority and how the minority can secure its independence. Jelinek's book "makes us reconsider the right of the majority, which we, in this age of democracy, tend too much to take as an incontestable and absolute right". Without expressing his own view (except implicitly, through choosing this particular book for review and through laying emphasis on certain ideas), Jovanović writes that Jelinek considers the rule of the majority as a necessary evil and that it would be much more to his taste if nothing is decided by simple majority vote, but by agreement between different social groups. He also adds that this famous German legal theoretician, accepting the even more famous theory of John Stuart Mill, "demonstrates that, if unconstrained, the rule of the majority might become a serious obstacle to progress, since it is always a minority, and a tiny one, that is the first to get enthusiastic about new ideas". Jovanović does not fail to notice a further difficulty arising in the case when political parties represent different religions or nationalities. If the majority rule principle were strictly applied in such a case, the result in practice would be the tyranny of the numerically strongest religion or nationality over all other religions and nationalities.⁷³

In a short essay written in 1923 with reference to a book by an American historian, Jovanović also expresses objections to democracy as a form of government: "As soon as a great world crisis began [First World War], the American democracy felt helpless. It surrendered itself to the government with blind trust, which means that it expected its salvation from despotism, and a despotism for which it was yet to be seen — after the war and according to the achieved results — whether and to which extent it would be beneficial [...] The same lack of political wisdom which democracy had shown during the war was evident even after the war when the problems of social reconstruction arose [...] The rule of the largest number was established in Europe and the USA before the problem of educating the masses had

⁷³ Slobodan Jovanović [1902], "Pravo manjina" [The right of minorities], *SD*, vol. 11, 599. Reference to John Stuart Mill concerns his concept of the tyranny of the majority, put forward before him by James Madison in the eighteenth century and by Alexis de Tocqueville in the nineteenth century.

been solved. A new force, stronger and mightier than any before but blind and unruly, was thrown into political life.”⁷⁴ Although, in his opinion, to destroy political parties would be as good as to disorganize the democracy, Jovanović criticizes the political parties, as he perceives them, for not being an educational actor in public life; they govern the masses, but they do not make them better. Their main concern is to win elections. They are primarily, if not exclusively, set for the election struggle. Hence they are not even trying to enlighten people. They find it more practical to take advantage of their ignorance and simplicity for the sake of a momentary political success. “They as a rule pursue a demagogic policy; they delude or inflame the voters instead of informing them. They have done relatively little to foster political consciousness.”⁷⁵

In his most important single work, even though written at the beginning of the twentieth century, Slobodan Jovanović divides the evolution of European democracy into three phases. In the first phase, it is seen as the liberation of the individual from the pressure of authority and the focus of attention is on constitutional guarantees of personal freedom — “on the rights of man and the citizen”. In the second phase, democracy is understood as the rule of the majority and attention is focused on the electoral system and the demand for universal suffrage which is supposed to secure an influence of the masses on affairs of state. In the third phase, democracy is understood as organized social solidarity. The economically and politically stronger must not be allowed to exploit or tyrannize the economically and politically weaker. The state is a common institution of all its members, be they rich or poor, part of a majority or of a minority. The state is entitled to require them all to make sacrifices, but it owes them protection in return. Democracy shifts from the rule of the majority to the protection of the minority, and once it becomes understood in that way, it also becomes obvious that proportional representation must be accepted as the electoral system which provides the most guarantees to minorities.⁷⁶

As we have stressed several times, Jovanović does not look up to democracy as an ideal, although he observes that it has become an *idéé-force*. His ideal is the legal state, the rule-of-law state. However, a thus understood legal state has some limitations, which result from Jovanović’s notion of the state itself. Since today democratic systems are defined by the existence of the separation of powers, of the rights and liberties of the citizen as something that is relatively independent of the authority of the state and serves

⁷⁴ Slobodan Jovanović, “Političko vaspitanje demokratije” [Political education of democracy], SD, vol. 12, 263–264.

⁷⁵ Ibid.

⁷⁶ Jovanović, *O državi*, 327–328.

as a meta-legal basis of its constitution and legislature (in Jovanović's view, these rights are granted by the state which is also entitled to deny or abolish them if circumstances require), constitutional limits to power in principle (which is not quite in accordance with Jovanović's understanding of the nature of sovereignty), it follows that Jovanović's views on democracy are different from the currently prevailing, though not necessarily correct, views on democracy. The most significant differences stem from Jovanović's views on the state, especially from his concept of the state as a person with an infinite will to create law, and from his interpretation of sovereignty. These views, presented in the best and most complete way in his book *On the State*, were brought together into a comprehensive, closed and non-contradictory system in the spirit of the ideas and best methodology of the German school of legal thought from the beginning of the twentieth century. Once he expounded them, Jovanović's was in the bonds of his system and it could have been a hindrance to him to venture a different, more up-to-date interpretation of categories such as the separation of powers, sovereignty, the rule of law, human rights and liberties, even the very idea of democracy. On the other hand, within the boundaries of his system, i.e. the system of the German school of legal thought of the period, Jovanović was very flexible and inspired to judge facts and to subsume them under his categories, taking a very critical position when the facts, but also the government's policies and decisions, were not in accordance with the normative character of his system; for example, when he defends some elements of the separation of powers using the argument that an absolute monarchy would otherwise be the only system that is not in logical contradiction to the concept of sovereignty in the strict sense.

To better understand Jovanović's views on the state, it should be remembered that he emphasizes, from a legal point of view, that the defining attribute of the authority of the state is that it is the *highest* and independent, that states can unite into an "association of states", but that a "state of states" is not possible, and that international rules are based on their being recognized by sovereign states.

Slobodan Jovanović was acquainted with Montesquieu's teaching about the separation of powers. He frequently refers to various ideas of Montesquieu's, especially in the work on the social contract, in an overview of the Abbé Sieyès's political ideas (on the occasion of the centenary of the Abbé's death), in the short essay on American federalism (1939), where he also refers to the American exponents of the theory of separation of powers and to Tocqueville's interpretation of the nature of the American system and constitution.

With respect to all the above, Jovanović's poses, in the book *On the State*, the crucial question: "Should the authority of the state, being the

highest, be unlimited as well?” and replies: “We believe that it should. One authority can only be limited by another, higher authority; if there is no higher authority above state authority then there is no way to limit it. Can state authority be limited by the legal system? Here, one should first determine in what sense the expression ‘state authority’ is being taken. If state authority is taken in the sense of state coercion, then it may be limited by the legal system, i.e. the state organs that dispose of the means of state coercion may be limited by the legal system in such a way that they are not allowed to use these means whenever they find it fit, but only when the legal system allows them to.”⁷⁷ But, “if state authority is taken in the sense of the will of the state which is the creator of the legal system, then it cannot be restricted by the legal system. The legal system cannot at once be an expression of the will of the state and the only means to limit this very will [...] Apart from ‘unlimitedness’, the concept of sovereignty also involves ‘indivisibility’. It is unimaginable that sovereignty could belong half to one authority, half to another. [...] But from sovereignty being indivisible it still does not follow that sovereign state authority must be concentrated in one organ. Sovereign state authority is expressed in state laws: if the indivisibility of sovereignty required that sovereign state authority be concentrated in one organ, then absolute monarchy would be the only that conforms with the logic of state sovereignty. Monarchical absolutism used to be defended with this theoretical argument [...] In the modern constitutional monarchy, however, the legislative power is divided between the monarch and the parliament, and the parliament is almost always bicameral.”⁷⁸ And the crown statement, which does not resolve the contradiction: “The indivisibility of sovereign power requires only that, at a given moment, only one will be taken as sovereign will, i.e. as the law.”⁷⁹

Jovanović had considerable reservations about the principle of separation of powers, among other reasons, because many theoreticians considered it as being unsuitable for monarchies and, perhaps even more, because of the difficulties and adverse effects of its practical implementation. In “Sieyès” (1936), he writes: “Montesquieu saw guarantees against abuse of power in the separation of powers, in the limitation and supervision of one power by

⁷⁷ Ibid. 130.

⁷⁸ Ibid. 131. There follows the explication of the manner in which contradictions between the two views should be reconciled, and a very clearly articulated one: “As a matter of fact, the plurality of state organs does not mean that sovereign power is divided among them [...] in a constitutional monarchy various agents are so interconnected that all of them form one authority. They cannot make legitimate decisions without one another.”

⁷⁹ Ibid. 132.

another [...] Sieyès, although he was not Montesquieu's disciple, accepted his principle of separation of powers, developing it and making it complicated to the point that the state machinery eventually became too fine for practical use."⁸⁰ The American Civil War brought another experience with the division of sovereignty. But American federalism was nonetheless consolidated on the original principle of separation of powers, of "checks and balances", and federalism, on the principle of divided sovereignty, a system in which the constitution holds a very important place. What Jovanović sees as an important advantage of the US system is that no person or body is sovereign, only the constitution is. He also states that the fundamental rights of the individual play a role in limiting power, because "the parliamentary majority in the Union or in the states, however despotically inclined it may be, would not dare impinge on the basic rights of individuals."⁸¹

These views and observations of Jovanović constituted an implicit modification of some legal principles of the state as he had presented three decades earlier, an evolution that brought him closer to more modern understanding of democracy and federalism but, of course, the functioning of these modern ideas and institutions requires a different social, political and cultural setting from the one he could count with.

The emergence of new forms of totalitarian, ideologically inspired, absolutism, led Jovanović to conclude, in "The post-war state", that "almost everywhere in post-war Europe [First World War], institutions which do not conform with the principles of the old rule-of-the-law state are gaining ground to a lesser or greater extent. In the rule-of-the-law state, the citizen was *free* in the sense that his freedom was limited only by the law and that the legislative power was above other powers. After the war the supremacy of the legislative power has been called into question."⁸² "The post-war state", a comparative study of a few political systems subsequently appended to the book *On the State*, brings remarkable descriptions and balanced assessments of the principles, institutions and political practice of these new systems.⁸³

⁸⁰ Slobodan Jovanović [1936], "Sjejes (1748–1836)" [Sieyès], SD, vol. 12, 328.

⁸¹ Slobodan Jovanović, "Američki federalizam" [American federalism], SD, vol. 12, 124–136, esp. chap. "Teorija o deobi suverenosti" [The theory of the division of sovereignty], "Osnovna načela Saveznog ustava" [Basic principles of the Federal Constitution] and "Razgraničenje nadležnosti između Saveza i država" [The division of competencies between the Union and the states].

⁸² Slobodan Jovanović, *O državi*, 499.

⁸³ Many scholars have rightly pointed to the difference between the two parts of *On the State* in subject and method, and many have noticed inconsistencies between the supplement and the first, already thrice revised work, given that the supplement, while

In the study *On Totalitarianism* — written in 1952, after the accumulated experience with totalitarian regimes and their consequences in practice compared to those presented in “The post-war state” — Jovanović in a way sums up his reflections on democracy as well, stating that experienced people could defend it as “the least bad of all political systems, but young people, who expect an ideology to give them a thrill, could not be thrilled by democracy.”⁸⁴

“In the nineteenth century some believed that democracy with its ideology might become a new religion. But once its party came to power, democracy began to lose the power of attraction it had while it had still been an unaccomplished ideal. The more its ideas were being realized, the more they were being adapted to the requirements of life, which is to say, to our human weaknesses. Eventually, democracy has turned into an ordinary, prosaic and ‘too human thing’.”⁸⁵

In the “Supplement” to the essay on totalitarianism, Jovanović makes a very interesting observation. While the essay was in press, a book of Jacob Talmon⁸⁶ was published. Contending that “totalitarian democracy has not arisen outside the political traditions of the West; it has arisen from the eighteenth-century political ideas which asserted themselves as a historical force in the French Revolution,” Jovanović points out, Talmon has in mind the ideas of J.-J. Rousseau, Maximilian Robespierre and François Noël Babeuf. “According to these ideas,” Jovanović continues, “our mind is able to become aware of the best possible social system which would secure freedom and equality to people and thus usher into a new era in the history of mankind, the era of peace and prosperity.”⁸⁷ It is easy to recognize in these lines Burke’s criticism of the French Revolution which Jovanović analyses in his essay on this philosopher. In continuation, Jovanović presents his views about the evolution and nature of democracy, totalitarian democracy in particular. “Since the French Revolution, democracy has been evolving in two different directions depending on whether the focus has been on the idea of freedom or on the idea of equality: on the one hand, in the

being in itself a good study on five different European regimes, disturbs the structure of a general legal theory of the state. The study brings Jovanović’s accurate observations about some features of the new state forms based on comprehensive totalitarian, i.e. fascist and national-socialist, ideologies, as well as the Bolshevik state under the rule of the communist party and with a communist economy and ideology.

⁸⁴ Jovanović, “O totalitarizmu”, 158–159.

⁸⁵ Ibid. 158.

⁸⁶ Jacob Talmon, *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1952).

⁸⁷ Jovanović, “O totalitarizmu”, 167.

direction of liberal democracy, such as prevailing mostly in the West; on the other hand, in the direction of totalitarian democracy, such as is observable in communist Russia and its satellites [...] What they all have in common is the messianic belief that heaven on earth is achievable. They are convinced that the cause of all ills is in that a handful of rulers enslaved their peoples and forced them to sacrifice their own wellbeing to their particular interests. As soon as this slavery of man to man would end, people would, working for the common good in a free community, find their own personal benefit.”⁸⁸

* * *

Jovanović’s moderation, and a call for finding the right measure in everything, in every action, decision or institution, is obvious in countless places in his works. He was as strongly against excessive concentration of power in the hands of the Prince, the King, the Council or even the Assembly as he was against anarchy or an overly weak government in situations that required a more resolute policy and a regime based on an established legal order guaranteeing safety and certainty.⁸⁹

His views presented above seem to reveal also an influence of the thoughts that inevitably come to mind while studying Machiavelli. Jovanović was not against the centralization of power in one person if the situation required so, but was resolutely against absolute and despotic personal rule. He mentioned the “Council oligarchy” countless times in order to demonstrate that, in his view, such a regime offered as little prospect of good governance as a personal regime. As history shows, various triumvirates and decemvirates which resulted from inevitable power struggles and divisions of influence often proved to be as unbearable to the common people as some previous absolute power, be it a Caesar or an assembly.

Slobodan Jovanović was quite moderate and careful when expressing the views which may be understood as judgments and advices. One of the ideal forms (in a methodologically sense) of the state, the form that he

⁸⁸ Ibid. 158.

⁸⁹ As an example of how Jovanović judges the nature of concentration of power depending on the situation, one may quote from his “Conclusion” to the book on the Constitutionals (*Ustavobranitelji*, 261–262): “Just as there had been a need for dividing overly concentrated power, now there was a need for concentrating overly divided power. As the need grew stronger, the fall of Alexander Karadjordjević grew more inevitable [...] Alexander Karadjordjević had to fall because he was not the strong ruler that new times required and who was to concentrate power in his person. The Constitutionals had to fall because the Council oligarchy that they represented could not come to terms with a strong ruler. As [Jovan] Ristić says, one and the same disaster caused the ruin both of Prince Alexander and of the Council oligarchy that was against him.”

obviously championed and rightly considered as a must for Serbian society, is a variety of the rule-of-law state or, as he often termed it, legal state. It is the concept of state as was developed in the German theory of the state, but combined with some elements of institutions and practices encountered in England and France. As he clearly put state interests before individual interests, he also held that each set of rights should have a set of obligations as a counterbalance. He obviously was aware that the building of a modern state in Serbia depended on overcoming all forms of dynastic, oligarchic or bureaucratic absolutism. He became familiar with many varieties of that type of regime through studying both the history of nineteenth-century Serbia and a somewhat earlier history of Europe, where new forms of ideologically inspired totalitarian absolutism emerged after the First World War.

Jovanović's theory of the state had the mission to pave the way for the development of the Serbian state at a time it was still coming out of great hardships and conflicts, with new conflicts already looming on the horizon. Under such circumstances, to base the state on rational legal principles, such as those in the civilized European countries, was the most that the prevailing ideas in European thought, the legal *ratio*, and the situation in Serbia, which inspired a deep sense of patriotic duty, could contribute to the building of the state structure. But the principles that Jovanović envisaged for the Serbia of his time to be built upon still being in many respects ahead of what we have in practice today, his ideas about the state based on the law can still be inspiring and effective.

At the end of the nineteenth and beginning of the twentieth century, Jovanović perceived democracy as one of the most influential ideas, but wherever he encountered it in his historical enquiries it seemed to him that its fruits tended to become bitter for people because of various doctrinal exaggerations or, at best, there where it did produce good results, such as the United States of America or Switzerland, he was aware that it was thriving because it grew on a different soil from the one his own country had. He contented himself to point to the oft-cited thought that democracy is the least bad of all political systems. His ideal was that of "lawful rule", something like Max Weber's concept of legitimate rule based on the law. It is a variety of the "legal state", which has become outdated in the practice of developed democracies, but which, taken as a whole, with its content and message, can still be an inspiration for constructive political projects which might transcend the initial aspiration of this very concept.

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