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Reflections on the Croatian Constitutional Tradition from 1848 to 1918

Introduction

This article discusses the Croatian constitutional tradition from 1848 to 1918. Here I mean the constitutional tradition of the Kingdoms of Croatia and Slavonia, which retained old Croatian institutions from an earlier period.

The aim of the article is to identify the main features of the concept of the constitution in Croatia and Slavonia from the revolutionary year 1848 until the end of the Austro-Hungarian Monarchy in 1918. The article is divided into five sections. In the first section, I comment on the Croatian constitutional tradition on the eve of 1848. Understanding the basic assumptions of that tradition represents an initial point of reference for understanding the constitutional development in the later period. In four following sections, I discuss the issue of the constitution in the revolutionary years 1848–1849, the March constitution of 1849, constitutional development until 1860, the constitution in Croatia and Slavonia from 1860 until 1868, and the concept of the constitution from the conclusion of the Austro-Hungarian and Croatian-Hungarian compromises until the end of the Habsburg Monarchy. Since the article only considers the main features of the concept of the constitution in Croatia and Slavonia, it does not discuss all the constitutional regulations that were relevant in Croatia and Slavonia at that time.

1. Comments on the Croatian Feudal Constitution on the Eve of 1848

On the eve of the revolutionary year 1848, the Kingdoms of Croatia and Slavonia (officially called the Kingdoms of Dalmatia, Croatia, and Slavonia)¹ were part of the Lands of the Hungarian Crown. The Kingdoms kept their institutions such as the *ban*,

¹ The name reflected only virtual unity since Dalmatia belonged to the Austrian part of the Habsburg Monarchy.

the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia, and municipal organisation with counties as bulwarks of the old constitution.²

However, at the time, the power of the *ban* was significantly limited, because, from 1790, he could not summon the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia without the king's consent.³ Moreover, from 1790, the Hungarian regency council had supreme executive power in Croatia and Slavonia and in this way superseded the *ban*, who became one of the members of the council. From 1790, the traditional competences of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia were also limited because the Hungarian Diet⁴ also acquired supreme jurisdiction in the matter of raising war tax in Croatia and Slavonia.⁵

Despite such a constitutional setting, many specific Croatian constitutional rules were still relevant. These rules were collectively named *iura municipalia*. Traditionally, *iura municipalia* included: the right to the independent election of the ruler in the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia; the legislative power of the Diet (which was implemented with the king); independent decision-making on religious issues; the right to decide on the official language; the cooperation of the *ban* and the Diet; and the representation of the Kingdoms of Dalmatia, Croatia, and Slavonia in the Hungarian Diet via *nuncios* who held the right of veto, etc.⁶

The rules are listed by prothonotary Josip Kušević in *De municipalibus iuribus et statutis regnorum Dalmatiae, Croatiae et Slavoniae*, published in Zagreb in 1830.⁷ Listing these specific Croatian constitutional rules at the time had an important political function in political clashes with the Hungarian liberal nobility who advocated transformation of Hungary (meaning the Lands of the Hungarian Crown) into a modern Hungarian national state.⁸ So, although after 1790 the practical relevance of some of *iura municipalia* was reduced, the concept of *iura municipalia* played an important role in defending the specific Croatian constitutional position within the Lands of the Hungarian Crown.

² Three counties were Croatian counties (Zagreb county, Varaždin county, and Križevci county), while the other three were Slavonian (Virovitica county, Požega county, and Syrmia county). On the powers and work of the counties see: F. Potrebić, *Županije u Hrvatskoj i Slavoniji u 18. i prvoj polovici 19. stoljeća* [in:] *Hrvatske županije kroz stoljeća*, ed. I. Goldstein et al., Zagreb 1996, pp. 53–61.

³ Cf. B. Šulek, *Hrvatski ustav ili konstitucija godine 1882.*, Zagreb 1883, p. 59.

⁴ It was the Diet for the lands of the Hungarian Crown. The Kingdoms of Dalmatia, Croatia, and Slavonia participated in the Diet through representatives called *nuncios*.

⁵ B. Šulek, *Hrvatski ustav...*, p. 59; I. Beuc, *Povijest država i prava na području SFRJ*, 3. izd., Zagreb 1989, p. 70; H. Sirotković, *Ustavni položaj i organizacija rada Sabora Kraljevina Hrvatske i Slavonije u građanskom razdoblju njegova djelovanja (1848–1918)*, Rad JAZU 393, Zagreb 1981, p. 44.

⁶ Municipal rights are listed in: B. Šulek, *Hrvatski ustav...*, pp. 80–81. The most important rights are mentioned in: D. Čepulo, *Hrvatska pravna povijest u europskom kontekstu od srednjeg vijeka do suvremenog doba*, Zagreb 2023, p. 137.

⁷ J. Kušević, *O samosvojnih pravih i pravilih kraljevina Dalmacije, Hrvatske i Slavonije* (transl. from Latin: Fr.X.Ž. Pretočki), Zagreb 1883, pp. 18–39.

⁸ D. Čepulo, *Hrvatska pravna...*, p. 138. For more on some of the conflicts, see: D. Šokčević, *Hrvatska od stoljeća 7. do danas*, Zagreb 2016, pp. 215–252.

From the Croatian point of view, the constitution in Croatia and Slavonia consisted of rules relevant for the Lands of the Hungarian Crown, but also of specific rules relevant for the Kingdoms of Dalmatia, Croatia, and Slavonia.⁹ However, these rules were scattered in numerous sources that regulated constitutional matters.¹⁰

Constitutional diversities within the Lands of the Hungarian Crown reflected the situation of the early modern period, in which the state was fragmented and laws within the state differed significantly. This means that there was no one unified set of laws which defined relations among the king, the estates, and the population, but a number of laws which were often in conflict with each other.¹¹

2. 1848–1849 in Croatia and Slavonia and the Constitution

The years 1848 and 1849 in Croatia and Slavonia as well as in the rest of the lands of the Habsburg Monarchy were marked by revolution. However, revolution as well as revolutionary requests were specific in each of the lands. In Croatia and Slavonia, the revolution began in the second half of March 1848 and was prompted by events in Hungary.¹² The main impetus was the drafts accepted by the Hungarian Diet in March 1848 which aimed to transform Hungary (with Croatia and Slavonia) into a modern country. The drafts, approved by the king in April, contained constitutional rules on the establishment of responsible government, and other rules on the organisation of government and citizens' rights.¹³ From a Croatian perspective, the laws were in opposition to the old constitution of the lands of the Hungarian Crown, which gave specific autonomy to Croatia and Slavonia.¹⁴

The reaction in Croatia and Slavonia was summarised in the form of a document entitled the Demands of the People (*Zahtijevanja naroda*) of 25 March 1848.¹⁵ Some of the demands asked for the territorial unity of the Kingdoms of Dalmatia, Croatia, and Slavonia (Croatia and Slavonia, Dalmatia, the Military Border, and other Croatian territories that were under Austrian and Hungarian rule), for the formation of

⁹ This opinion is found in B. Šulek, *Hrvatski ustav...*, pp. 40–42.

¹⁰ On the sources of historical constitution in the Kingdoms of Dalmatia, Croatia, and Slavonia, see: L. Polić, *Nacrt hrv.-ugarskog državnog prava*, Zagreb 1912, pp. 3–32; J. Pliverić, *Hrvatsko-ugarsko državno pravo*, Zagreb 1908, pp. 33–199.

¹¹ I. Horbec, *Prema modernoj državi. Uprava i politika u Banskjoj Hrvatskoj 18. stoljeća*, Zagreb 2018, p. 39.

¹² Cf. J. Šidak, *Studije iz hrvatske povijesti za revolucije 1848–49.*, Zagreb 1979, pp. 33–37.

¹³ For the laws see: *Reformtörvények Magyarországon 1848-ban. The Acts of 1848 in Hungary*, ed. N. Varga, Szeged 2012, pp. 11–95.

¹⁴ One of novelties introduced by the April laws that was evidently in contrast with the old constitution was the abolition of the concept of the representation of Croatia and Slavonia in the Hungarian Diet via nuncios.

¹⁵ J. Šidak, *Studije iz hrvatske povijesti...*, pp. 51–57.

a responsible government for the Kingdoms of Dalmatia, Croatia, and Slavonia, for legal equality, and for numerous civil and political rights.¹⁶

Nevertheless, the Demands of the People were only a political declaration issued by the Croatian political elite of the People's Party (*Narodna stranka*). Constitutional norms still had to be enacted. That is why the Croatian political elite gathered in the People's Party asked for elections and the convocation of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia, which at the time was not in session.

During May 1848, the new *ban* Josip Jelačić passed a new electoral law and called elections for the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia.¹⁷ The Diet was in session from 5 June to 9 July 1848, and it passed numerous acts that defined the constitutional position of the Kingdoms of Dalmatia, Croatia, and Slavonia within the Habsburg Monarchy and regulated domestic affairs including the abolition of serfdom.¹⁸ One of the acts stated that the Kingdoms of Croatia, Slavonia, and Dalmatia were independent from Hungary, while another act proposed to the king a constitutional relation of the Kingdoms with Austria, which retained a wide sphere of competences.¹⁹ Still, most of the acts could be considered merely political declarations and not laws, since only one, on the relations of the Kingdoms with Hungary, was later accepted by the king.

From a conceptual point of view, the initial work of the Diet aimed to regulate constitutional matters via specific laws and not via a formal constitution in the shape of one single act. This practice was a reflection of the urgency of the situation, but also a reflection of an earlier tradition in which constitutional matters were not regulated by one single act. In parallel to that, however, the *ban* in May 1848 received a proposal of a draft of a constitution for the Triune Kingdom (by an unknown author).²⁰ Although the draft was never debated in the Diet, it is interesting from the conceptual point of view since it reflects the idea of regulation of constitutional matters via one single act.

¹⁶ See the document in: *Constitutions of the World from the late 18th Century to the Middle of the 19th Century. Croatian, Slovenian and Czech Constitutional Documents 1818–1849*, eds. D. Čepulo, M. Krešić, M. Hlavačka, I. Reiter, Berlin–New York 2009, pp. 39–46. Cf. H. Sirotković, *Ustavni položaj...*, pp. 45–46.

¹⁷ T. Markus, *Hrvatski politički pokret 1848.–1949. godine: ustanove, ideje, ciljevi, politička kultura*, Zagreb 2000, pp. 108–110.

¹⁸ On the sessions of the Diet see: *ibid.*, pp. 115–164. See the acts in: B. Šulek, *Naše pravice. Izbor zakonah, poveljah i spisah, znamenitih za državno pravo kraljevine dalmatinsko-hrvatsko-slavonske od g. 1202–1868.*, Zagreb 1868, pp. 247–299. The most important acts are published in: *Constitutions of the World...*, pp. 51–112.

¹⁹ Cf. I. Beuc, *Povijest institucija državne vlasti Kraljevine Hrvatske, Slavonije i Dalmacije*, Zagreb 1985, pp. 254–255.

²⁰ See the proposal in: J. Kolanović, *Hrvatski državni sabor 1848.*, vol. 2, Zagreb 2007, pp. 548–564. The name the Triune Kingdom was used as shorter version of the name the Kingdoms of Dalmatia, Croatia, and Slavonia.

3. Constitutional development in Croatia and Slavonia from 1849 to 1860

Parallel with attempts at constitutional regulation in the Kingdoms of Dalmatia, Croatia, and Slavonia, and also in Hungary, the king in Vienna had his own vision of a constitution. Thus, on 4 March 1849 Franz Joseph I proclaimed a constitution and a separate constitutional law on the civil and political rights of citizens for all the Monarchy.²¹

The co-called March constitution defined the Habsburg Monarchy as a centrally organised state. Specifically, the constitution speaks of the Austrian Empire and its crown lands. But these crown lands were supposed to be uniformly organized with only limited autonomy. The March constitution also predicted the enactment of constitutions for each of the crown lands.²² The Constitution did not recognise the concept of the Lands of the Hungarian Crown, but divided this territory into several parts (Hungary, Croatia and Slavonia, Transylvania, and the Serbian Voivodeship). The Constitution thus separated Croatia and Slavonia from Hungary.²³

The king proclaimed the Constitution under circumstances when it seemed that the Hungarian revolution had been defeated. However, subsequent events were not in line with Franz Joseph's expectations. On the contrary, reaction to the new constitution was quite negative in Hungary and produced further tensions and a new impetus for revolution that lasted until the final defeat of the revolution in August 1849.

The situation of political and the social uncertainty and continuing revolution in Hungary, but also the centralist character of the March constitution also affected its promulgation in Croatia and Slavonia. Specifically, because the March constitution did not match Croatian revolutionary demands in 1848, the *Bans' Council* (*Bansko vijeće*) initially refused to promulgate it.²⁴

Nevertheless, after the defeat of the Hungarian revolution, the *Bans' Council* on 6 September 1849 promulgated the March constitution.²⁵ Still, its implementation within the legal order was only partial. This was specifically due to the non-convocation of the central parliament but also of regional assemblies including the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia. The March constitution remained in force only until 31 December 1851 when Franz Joseph issued the patents by which he repealed the Constitution.²⁶

²¹ See the constitution and the relevant constitutional law in: *Die österreichischen Verfassungsgesetze*, hrsg. E. Bernatzik, Wien 1911, pp. 150–168.

²² Cf. M. Gross, *Počeci moderne Hrvatske: neoapsolutizam u civilnoj Hrvatskoj i Slavoniji 1850–1860.*, Zagreb 1985, p. 15.

²³ Cf. *ibid.*, pp. 15–16.

²⁴ F. Šišić, *Povijest Hrvata. Pregled povijesti hrvatskoga naroda 600.–1918.*, Split 2004, p. 437. For the reasons for rejecting the promulgation of the Constitution, see also: M. Smrekar, *Ustavno zakonodjelje. Sbirka ustavnih zakona i propisa valjanih za Kraljevine Hrvatsku i Slavoniju*, Zagreb 1901, p. 6.

²⁵ F. Šišić, *Povijest Hrvata...*, p. 439.

²⁶ *Die österreichischen Verfassungsgesetze...*, pp. 208–210; M. Smrekar, *Ustavno zakonodjelje...*, p. 6.

From then on, Franz Joseph ruled without a formal constitution and without parliament or regional assemblies. The period of open absolutism lasted until 1860. The basic determinants of the period from the constitutional point of view were manifested in the king's rule through decrees and an attempt to transform the Monarchy into a unified state. Although the new formal constitution had not been enacted at that time, an important novelty of the period, in terms of unification of the legal order of the Monarchy, was that numerous laws entered into force. The Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) was introduced in Croatia and Slavonia in 1853.²⁷ This code, as Wilhelm Brauner argues, was styled as a fundamental law and was at that time understood as part of the constitution.²⁸

Thus, it is evident that in the period from 1849 until 1860, constitutional development in Croatia and Slavonia was very similar to that in the rest of the Monarchy. During the period, the authorities promoted values and norms that were obviously in contrast with the old Croatian feudal constitution and municipal rights, but also in contrast with visions of the Croatian political elite about the Croatian constitutional position within the Monarchy; these had been emphasised during the revolution. From this point of view, in Croatia and Slavonia this period is marked as unconstitutional. On the other hand, on a conceptual level, the period from 1849 to 1861 brought important innovations. One such innovation was the regulation of constitutional matters by a formal constitution in the shape of a single act.

4. The Constitution in Croatia and Slavonia from 1860 to 1868

In 1860, the king enacted the October Diploma (*Oktoberdiplom*) by which he envisioned the new constitution for the Monarchy with the Imperial Council as the central parliament and with representative institutions for each of the lands, including Croatia and Slavonia.²⁹ The October Diploma was further developed by the February Patent of 1861.³⁰ The first article of the February Patent defines it as constitutional law (*Staatsgrundgesetz*). Moreover, in the second article, the February Patent speaks about the re-establishment of the old constitutions of the kingdoms of Hungary, Croatia and Slavonia, and Transylvania but only within the limits set by the October Diploma. The king's vision of a constitution in these kingdoms was, thus, twofold, since

²⁷ The Austrian General Civil Code entered into force on 1 May 1853. On the introduction of the Austrian General Civil Code in other lands, see: M. Vuković, *Opći građanski zakonik s novelama i ostalim naknadnim propisima*, Zagreb 1955, p. V.

²⁸ W. Brauner, *The "First" European Codification of Private Law: The ABGB*, "Zbornik Pravnog fakulteta u Zagrebu" 2013, vol. 63, no. 5–6, pp. 1020–1023.

²⁹ Cf. *Kaiserliches Diplom vom 20. Oktober 1860, zur Regelung der inneren staatsrechtlichen Verhältnisse der Monarchie* [in:] *Die österreichischen Verfassungsgesetze...*, pp. 223–227. Cf. M. Smrekar, *Ustavno zakonoslovlje...*, pp. 7–8.

³⁰ Cf. *Kaiserliches Patent vom 26. Februar 1861* [in:] *Die österreichischen Verfassungsgesetze...*, pp. 255–259.

the constitution included new provisions (the October Diploma and the February Patent) and old ones. The new provisions stipulated affairs that would be decided at the Imperial Council in Vienna and the representation of Croatia and Slavonia in the Council.

In Croatia and Slavonia, the reconvening of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia was seen as a critical moment in a return of constitutionality.³¹ From that perspective, the constitutional order had yet to be determined.

During its work, the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia refused to send its representatives to the Imperial Council. Furthermore, it stated that the October Diploma and the February Patent were not in accordance with the old constitution.³² In parallel to that, the Diet accepted numerous drafts, many of them of a constitutional nature, which were intended to build a new Croatian constitutional and legal system after eleven years of, from their point of view, unconstitutional rule.³³ In general, the drafts tried to reconcile municipal tradition and modern principles.³⁴

However, the only draft that received the king's approval was a legal proposal on the relations of Croatia and Slavonia with the Kingdom of Hungary. This proposal defined the conditions under which Croatia and Slavonia would enter a real union with the Kingdom of Hungary. The article referred to 1848 and stated that from that year the constitutional relations between the Kingdoms of Dalmatia, Croatia, and Slavonia and the Kingdom of Hungary had ceased. It also proposed a new model of a constitutional bond between the kingdoms, but on equal footing. The law envisioned as autonomous Croatian affairs: internal affairs, education, worship, and the judiciary.³⁵

However, the renewal of Croatian-Hungarian constitutional relations did not take place until 1868, and at the time the constitutional position of Croatia and Slavonia within the Habsburg Monarchy was provisional. The competent government for Croatia and Slavonia was the state government in Vienna. In parallel, the king in 1862 formed the Croatian court office in Vienna as a government office competent for Croatia and Slavonia in internal affairs, education, religion, and the judiciary. In Croatia and Slavonia the king formed the Royal Regent Council for the Kingdoms of Dalmatia, Croatia, and Slavonia headed by a *ban*. However, the Royal Regent Council was in its work dependent on orders from Vienna and the *ban* was only a state officer and not a political official.³⁶

During this period, Croatian political and constitutional reality was marked by attempts to reach an agreement on the Croatian constitutional position within the

³¹ Cf. F. Čulinović, *Sabor Hrvatske od 1861*, Zagreb 1967, p. 78.

³² M. Smrekar, *Ustavno zakonoslovlje...*, p. 10.

³³ For the work of the Diet and for an overview of the acts, see: F. Čulinović, *Sabor Hrvatske od 1861...*, pp. 77–210. See the acts in: A. Kolak Bošnjak, T. Markus, S. Matković, *Hrvatski sabor 1861.: zaključci i drugi važniji spisi*, Zagreb 2018, pp. 25–194.

³⁴ D. Čepulo, *Zakonodavna djelatnost Hrvatskog sabora 1861. – autonomija, modernizacija i municipalne institucije*, "Pravni vjesnik" 2002, vol. 18, no. 1–2, p. 154.

³⁵ Cf. B. Šulek, *Naše pravice...*, pp. 400–403; M. Smrekar, *Ustavno zakonoslovlje...*, pp. 10–12.

³⁶ Cf. D. Čepulo, *Hrvatska pravna povijest...*, pp. 167–168.

Monarchy. In one such attempt, the head of the Croatian court office in Vienna, Ivan Mažuranić, aimed at the recognition of the February Patent by the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia through the concession of the unification of Dalmatia with Croatia and Slavonia, but this attempt failed.³⁷

5. The Constitution in Croatia and Slavonia from 1868 to 1918

5.1. The Compromises and constitutionalism

In 1867 Franz Joseph I reached an agreement with the Hungarian political elite on a new constitutional arrangement within the Monarchy. The agreement, known as the Austro-Hungarian Compromise, presupposed a division of the Monarchy into two parts, Austrian and Hungarian, with the king and three ministries of military, foreign affairs, and joint finances for military and foreign affairs, as common institutions of the Monarchy. Military, foreign affairs, and joint finances were also called pragmatic affairs. In addition, the agreement defined common dual affairs as affairs of joint interest in which Austria and Hungary were supposed to agree, but in which both states kept full legislative and executive powers.³⁸ Other affairs, such as internal affairs, education, worship, the judiciary, the economy, finances, etc., were left to Austria and Hungary separately.

While the agreement was immediately accepted in the Hungarian Diet, the German liberal political elite on the Imperial Council initially opposed the agreement and asked for liberal reforms as a concession for approving the Compromise.³⁹ The liberal reforms consisted of accepting a set of fundamental laws. After the king's consent, the Imperial Council in December 1867 approved the Compromise and enacted a set of fundamental laws, known as the December Constitution (*Dezember-Verfassung*).⁴⁰

The agreement between the king and the Hungarian political elite defined Croatia and Slavonia as a land within the Hungarian part of the Monarchy.⁴¹ However, its status within the Hungarian part of the Monarchy still had to be defined. In this vein, it was necessary that the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia accept the Austro-Hungarian Compromise and make another agreement with the Hungarian Diet on the position of Croatia and Slavonia within the lands of the Hungarian Crown. In such circumstances, the king appointed the unionist Levin Rauch as the new *ban* governor (*banski namjesnik*) on 27 June 1867.⁴² Further, the king on 20 October 1867

³⁷ Cf. *ibid.*, pp. 166–167.

³⁸ M. Gross, A. Szabo, *Prema hrvatskome građanskom društvu: društveni razvoj u civilnoj Hrvatskoj i Slavoniji šezdesetih i sedamdesetih godina 19. stoljeća*, Zagreb 1992, pp. 213–214.

³⁹ *Ibid.*, p. 213.

⁴⁰ *Die österreichischen Verfassungsgesetze...*, pp. 413–453.

⁴¹ According to the Austro-Hungarian Compromise, Dalmatia was, as before, recognised as part of Austria.

⁴² For more on the process of the appointment, see: I. Perić, *Hrvatski državni sabor 1848.–2000. Drugi svezak: 1868.–1918.*, Zagreb 2000, p. 13.

unilaterally enacted an electoral law for the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia. The law was in favour of the Unionist Party, which was the most willing to accept close constitutional relations with Hungary.⁴³ Elections were held in November and December 1867 under pressure from the *ban* governor Levin Rauch. As a result, the Unionist party won a majority.⁴⁴ After the Diet was convened, negotiations between the delegations of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia and the Hungarian Diet were held. The result of the negotiations was an agreement called the Croatian-Hungarian Compromise.⁴⁵

In the historical writing and in legal history much has been said about the agreement itself.⁴⁶ Here, I will only mention some of its basic premises. One of the premises was the recognition of Croatia and Slavonia as an autonomous land within the Hungarian part of the Monarchy. Its autonomy was recognised in matters of internal affairs, education, worship, the judiciary, and other affairs that were not explicitly mentioned as common Hungarian-Croatian affairs. The compromise recognised the *ban* as the head of the land government and the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia as a legislative body competent to enact laws in autonomous matters together with the king who had the right of legislative sanction. However, this autonomous structure faced considerable limitations. One such limitation was the obligation of the Croatian authorities to send all drafts accepted by the Diet to the king via the minister for Croatia and Slavonia in the Government in Budapest. The Government in Budapest could, therefore, object to some extent to the content of these autonomous drafts.⁴⁷ In addition, the specific dependency of Croatia and Slavonia *vis-à-vis* Budapest reflected the fact that the *ban* was appointed by the king but under the approval and with the counter signature of the prime minister of the Government in Budapest. All this indicates a imbalanced institutional arrangement in Hungary's favour.

What is more, the Croatian-Hungarian Compromise defined a wide sphere of joint affairs between Croatia and Slavonia and Hungary, specifically in matters of the economy, railways, finances, etc. In these matters, the competent authorities were the Government and the Diet in Budapest. In these institutions, Croats played only a minor

⁴³ On the electoral law of 1867, see: *ibid.*, pp. 21–25.

⁴⁴ *Ibid.*, pp. 27–30.

⁴⁵ Cf. Zakonski članak o nagodi, koju s jedne strane kraljevina Ugarska, sjedinjena s Erdeljem, s druge strane kraljevine Hrvatska i Slavonija sklopiše za izravnjanje postojavih između njih državnopravnih pitanja. Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju (further: Sbornik), Komad V, 1868. Cf. I. Perić, *Hrvatski državni sabor...*, pp. 35–41.

⁴⁶ M. Gross, A. Szabo, *Prema hrvatskome...*, pp. 221–238; D. Čepulo, *Hrvatska pravna povijest...*, pp. 172–181; I. Beuc, *Povijest institucija...*, pp. 275–282; L. Heka, *Osam stoljeća Hrvatsko-ugarske državne zajednice s posebnim osvrtom na Hrvatsko-ugarsku nagodbu*, Szeged–Subotica 2011, pp. 303–349; D. Šokčević, *Hrvatska od stoljeća 7...*, pp. 283–293; *The 1868 Croatian-Hungarian Settlement: Origin and Reality*, eds. V. Švoger, D. Soksevits, A. Cieger, B. Ostajmer, Zagreb–Budapest 2021.

⁴⁷ For the ability of the Government in Budapest to influence autonomous legal drafts and for some examples, see: D. Čepulo, M. Krešić, *Hrvatsko-ugarska nagodba: institucije i stvarnost* [in:] *"Mint nemzet a nemzettel..." Tudományos a magyar-horvat kiegyezés 140. évforduloja emlékeire/"Kao narod s narodom..." Konferencija u spomen 140. obljetnici Hrvatsko-ugarske nagodbe*, ed. D. Šokčević, Budapest 2011, pp. 149–153.

role. Part of the Government was one minister for Croatia and Slavonia, who was, as other ministers, responsible to the prime minister and to the Hungarian-Croatian Diet in which Croats were greatly outnumbered.⁴⁸

The Croatian-Hungarian compromise represented a fundamental act that defined the position of Croatia and Slavonia within the Lands of the Hungarian Crown. However, it is evident that the compromise was not a constitution in the classic sense. It was not an act issued only by a king or by a constitutional assembly or by a king and a constitutional assembly together, but it was an act that was the result of negotiations between two diets. Later on, however, the act was accepted by the king, separately for Hungary and Croatia and Slavonia, and, thus, became law. Although the text of both laws was basically similar, there were also certain differences between them.⁴⁹

The Compromise contains constitutional norms concerning the appointment of the *ban*,⁵⁰ on the competences of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia,⁵¹ on the responsibility of the *ban* to the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia,⁵² and on the position of the Croatian minister in the Central Government, etc.⁵³ In addition, the Croatian-Hungarian Compromise contained norms that defined some citizens' rights. These are specifically political rights, for example, the right of Croatian representatives and virilists to participate in the work of the Hungarian-Croatian Diet,⁵⁴ the right of Croatian representatives to speak in Croatian in the Hungarian-Croatian Diet,⁵⁵ the rule (although not imperative) about employment of Croatian natives in common Hungarian-Croatian offices,⁵⁶ and the rule about Croatian language as the official language in Croatia and Slavonia.⁵⁷ The last rule implied the communication of the Croatian population with the authorities in Croatian.

The Compromise of 1868 was controversial from the very beginning for the members of the political elite who did not belong to the Unionist Party, including members of the People's Party, who emphasized its unconstitutional character. The People's Party, thus, asked for its revision, which was made in 1873 after the People's

⁴⁸ In the Hungarian-Croatian Diet, in the upper house there were only two and, from 1883, three Croatian representatives, while in the lower house there were only twenty-nine and, from 1883, forty members of the Croatian delegation. The entire lower house numbered 453 members. D. Čepulo, *Hrvatska pravna povijest...*, p. 175.

⁴⁹ On the differences between Croatian and Hungarian versions, see: M. Gross, A. Szabo, *Prema hrvatskome...*, pp. 234–235.

⁵⁰ Cf. art. 51 of the Croatian-Hungarian Compromise (further in footnotes: C-H Compromise).

⁵¹ Cf. art. 47 and 48 of the C-H Compromise.

⁵² Cf. art. 50 of the C-H Compromise.

⁵³ Cf. art. 44 of the C-H Compromise.

⁵⁴ Cf. art. 32–37 of the C-H Compromise.

⁵⁵ Cf. art. 59 of the C-H Compromise.

⁵⁶ Cf. art. 46 of the C-H Compromise. More on this rule see in: I. Kosnica, *Zapošljavanje u javnoj upravi u Hrvatskoj i Slavoniji (1868.–1918.) s obzirom na državljanstvo i hrvatsko – slavonsku pripadnost*, "Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave" 2018, no. 4, p. 622.

⁵⁷ Cf. art. 56–58 of the C-H Compromise.

Party won elections. Nevertheless, even after the revision, the basic premises of the Compromise remained the same.⁵⁸

5.2. Constitutional matters in other acts

The constitutional system in Croatia and Slavonia was evidently only partially defined by the Compromises.⁵⁹ Parallel to that, we can identify other laws that defined the position of the Lands of the Hungarian Crown within the Monarchy. Here, the Pragmatic Sanction of 1723 is particularly important.⁶⁰ Furthermore, the following are also relevant: the Legal Article (I 1867) on the coronation of his Majesty Franz Joseph I as King of Hungary and its associated kingdoms,⁶¹ the Legal Article (II 1867) on the royal guarantee and the royal oath,⁶² and other laws on the crown and court.⁶³

Another group of constitutional acts consists of laws that regulate the organisation of the government within the Hungarian part of the Monarchy. Relevant here are the laws on the Hungarian-Croatian Diet,⁶⁴ but also the laws that regulated Croatian institutions within the Croatian autonomous sphere. The last mentioned are, for example, the law on the organisation of the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia,⁶⁵ the law on the formation of the Croatian-Slavonian-Dalmatian land government,⁶⁶ and the law on the responsibilities of the *ban* and heads of departments of the land government of 1874.⁶⁷ In addition, of relevance are the laws on the regulation of the judiciary, specifically the law on the judiciary (*Zakon o sudačkoj vlasti*) of 1874, which contained basic rules on the organisation of the judiciary.⁶⁸ Another such fundamental law was the law on the presidency of the Table of Seven of 1874.⁶⁹

⁵⁸ Cf. I. Perić, *Hrvatski državni sabor...*, pp. 104–115.

⁵⁹ The Compromises, later revisions of the Croatian-Hungarian Compromise, and the laws that defined financial agreements within the Monarchy see in: M. Smrekar, *Ustavno zakonoslovlje...*, pp. 17–103.

⁶⁰ Cf. the Pragmatic sanction in: M. Smrekar, *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji*, vol. 2, Zagreb 1900, pp. 893–898.

⁶¹ Zakonski članak (I. 1867) O krunisanju Njegova Veličanstva Franje Josipa I. za kralja Ugarske i posestrimih joj kraljevina. Sbornik, Komad IV, 1869.

⁶² Zakonski članak (II. 1867) O uzakonjenju kraljevske zavjernice, što ju je Njegovo kralj. Veličanstvo prije posvete i krunidbe izdalo, i kraljevske zakletve, koju je prigodom krunisanja položilo. Sbornik, Komad IV, 1869.

⁶³ Cf. M. Smrekar, *Priručnik...*, pp. 899–905.

⁶⁴ Cf. *ibid.*, pp. 948–963.

⁶⁵ The first of these laws was: Zakonski članak (II. 1870) Sabora kraljevina Dalmacije, Hrvatske i Slavonije, ob uređenju sabora istih kraljevina. Sbornik, Komad XV, 1870.

⁶⁶ Cf. Zakonski članak ob ustrojstvu autonomne hrvatsko-slavonsko-dalmatinske zemaljske vlade. Sbornik, Komad III, 1869.

⁶⁷ Zakon o odgovornosti bana kraljevina Dalmacije, Hrvatske i Slavonije i odjelnih predstojnika vlade zemaljske. Sbornik, Komad II, 1874.

⁶⁸ Zakon o vlasti sudačkoj. Sbornik, Komad VIII, 1874.

⁶⁹ The Table of Seven was the supreme court in Croatia and Slavonia. The relevant law terminated a previous rule on the Croatian *Ban* as a president of the court and prescribed the appointment of a special president as head of the court. Zakon o predsjedništvu kr. stola sedmorice za kraljevine Dalmaciju, Hrvatsku i Slavoniju. Sbornik, Komad VIII, 1874.

Another group of constitutional acts consists of laws that regulated the rights of citizens. Here, especially important are the Croatian electoral laws. The first of them was enacted as early as 1870, and later more electoral laws were passed.⁷⁰ These laws regulated voting rights for the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia. Other constitutionally relevant laws are the law on public assembly of 1875,⁷¹ a set of laws on the freedom of the press,⁷² and the Imperial Patent of 1852 which regulated the right of association.⁷³ Further important constitutional acts included those on the position of religious communities, for example, Jews and Muslims.⁷⁴ In principle, these laws gradually imposed the constitutional principle of freedom of religion within the Croatian constitutional and legal system.⁷⁵

Conclusions

On the eve of the revolutionary year of 1848, the constitution in Croatia and Slavonia consisted of rules relevant to the Lands of the Hungarian Crown, but also of specific rules relevant to the Kingdoms of Dalmatia, Croatia, and Slavonia. The situation radically changed during the revolution of 1848. At the time, as a reaction to events in Hungary, the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia made a decision to terminate constitutional relations with Hungary and proposed to the king a constitutional relation of the Kingdoms with Austria, assuming the retention of wide autonomous competences. Furthermore, the Diet accepted numerous drafts that regulated constitutional matters. Thus, the Diet followed a traditional pattern of regulation of constitutional matters with laws and not via one formal constitution.

The defeat of the 1848 revolution led to constitutional developments that were not in accordance with Croatian revolutionary aspirations. The March constitution envisioned the Monarchy as a central organised state with only limited autonomy for the crown lands, including Croatia and Slavonia. However, the model was not fully implemented in practice and was very soon replaced with a period of open absolutism. Nonetheless, conceptually speaking, the importance of the March constitution stems from the fact that it was the first formal constitution for the Monarchy, including Croatia and Slavonia.

⁷⁰ Zakonski članak o izbornom redu za sabor kraljevina Dalmacije, Hrvatske i Slavonije. Sbornik, Komad XV, 1870. For more on the electoral regulations in the period from 1848 to 1918, see: D. Čepulo, *Prava građana i moderne institucije. Europska i hrvatska pravna tradicija*, Zagreb 2003, pp. 91–110.

⁷¹ Zakon o pravu sakupljati se. Sbornik, Komad III, 1875.

⁷² For a detailed analysis of the press legislation, see: D. Čepulo, *Prava građana...*, pp. 141–159.

⁷³ Cf. the Imperial Patent in: M. Smrekar, *Ustavno zakonoslovlje...*, pp. 182–189.

⁷⁴ Cf. Zakonski članak sabora kraljevinah Dalmacije, Hrvatske i Slavonije kojim se ustanovljuje ravnopravnost izraeličanah sa sljedbenici ostalih u kraljevini Hrvatskoj i Slavoniji zakonom priznatih vjerozakonah. Sbornik, Komad XXI, 1873; Zakon o priznanju islamske vjeroispovijesti u kraljevinama Hrvatskoj i Slavoniji. Sbornik, Komad X, 1916.

⁷⁵ For details about the imposition of this principle in the Croatian-Slavonian legal order, see: D. Čepulo, *Prava građana...*, pp. 160–180.

In terms of constitutionality, the shift forward to open absolutism meant the abolition of the formal constitution and royal rule by decrees. In this period, neither Croatia and Slavonia nor the rest of the Monarchy enjoyed a formal constitution although the introduction of the Austrian General Civil Code in Croatia and Slavonia had a constitutional effect.

The new moment in constitutional regulation arrived with the collapse of absolutism in 1860. The shift was seen in Croatia and Slavonia as a chance to build new constitutional relations within the Monarchy, ones that would be more in line with the Croatian constitutional tradition. In such circumstances, the Diet of the Kingdoms of Dalmatia, Croatia, and Slavonia refused to send its representatives to the Imperial Council and accepted many drafts that aimed to build a new Croatian constitutional order after eleven years of unconstitutional rule. The acceptance of multiple drafts that regulated constitutional matters was in line with the earlier premodern tradition, when constitutional matters were regulated via numerous laws. However, this attempt failed and the constitutional relations of Croatia and Slavonia with the rest of the Monarchy were provisional for the next seven years and marked by attempts to reach some kind of adequate agreement.

A degree of stability in the constitutional order was achieved in 1868 after the acceptance of the Austro-Hungarian Compromise and the formulation of the Croatian-Hungarian Compromise. These acts represented fundamental acts that defined the position of Croatia and Slavonia within the Austro-Hungarian Monarchy and within the Lands of the Hungarian Crown. What is more, during that period, many systemic laws were passed that regulated the organisation of the government and the rights of citizens. Thus, constitutional matters in the period from 1868 to 1918 were regulated by the Compromises and systemic laws in the field of the organisation of the government and the rights of citizens. This again meant that there was no one formal constitution but only laws that regulated constitutional matters.

To sum up, one can say that an important feature of the concept of the constitution in Croatia and Slavonia in the period from 1848 to 1918 was the non-existence of one formal constitution. Instead, constitutional matters were regulated only by laws. An exception to this was the short-lived March constitution of 1849. Another important feature of the concept of the constitution was its change and an obvious tension between higher authorities and Croatian autonomous structures. One can say that most of the time, with the exception of the period of neo-absolutism from 1849 to 1860, the constitution was shaped by different levels of government and was therefore multi-layered. Finally, during this period the regulation of citizens' rights, specifically the right to vote, the right to public assembly, freedom of the press, and freedom of religion, etc., became part of the Croatian constitutional tradition.

Literature

- Beuc I., *Povijest država i prava na području SFRJ*, 3. izd., Zagreb 1989.
- Beuc I., *Povijest institucija državne vlasti Kraljevine Hrvatske, Slavonije i Dalmacije*, Zagreb 1985.
- Brauneder W., *The "First" European Codification of Private Law: The ABGB*, "Zbornik Pravnog fakulteta u Zagrebu" 2013, vol. 63, no. 5–6.
- Constitutions of the World from the Late 18th Century to the Middle of the 19th Century. Croatian, Slovenian and Czech Constitutional Documents 1818–1849*, eds. D. Čepulo, M. Krešić, M. Hlavčaka, I. Reiter, Berlin–New York 2009.
- Čepulo D., *Hrvatska pravna povijest u europskom kontekstu od srednjeg vijeka do suvremenog doba*, Zagreb 2023.
- Čepulo D., *Prava građana i moderne institucije. Europska i hrvatska pravna tradicija*, Zagreb 2003.
- Čepulo D., *Zakonodavna djelatnost Hrvatskog sabora 1861. – autonomija, modernizacija i municipalne institucije*, "Pravni vjesnik" 2002, vol. 18, no. 1–2.
- Čepulo D., Krešić M., *Hrvatsko-ugarska nagodba: institucije i stvarnost* [in:] "Mint nemzet a nemzettel..." *Tudományos a magyar-horvat kiegyezés 140. évfordulója emlékeire*/"Kao narod s narodom..." *Konferencija u spomen 140. obljetnici Hrvatsko-ugarske nagodbe*, ed. D. Šokčević, Budapest 2011.
- Čulinović F., *Sabor Hrvatske od 1861.*, Zagreb 1967.
- Die österreichischen Verfassungsgesetze*, hrsg. E. Bernatzik, Wien 1911.
- Gross M., *Počeci moderne Hrvatske: neoapsolutizam u civilnoj Hrvatskoj i Slavoniji 1850–1860.*, Zagreb 1985.
- Gross M., Szabo A., *Prema hrvatskome građanskom društvu: društveni razvoj u civilnoj Hrvatskoj i Slavoniji šezdesetih i sedamdesetih godina 19. stoljeća*, Zagreb 1992.
- Heka L., *Osam stoljeća Hrvatsko-ugarske državne zajednice s posebnim osvrtom na Hrvatsko-ugarsku nagodbu*, Szeged–Subotica 2011.
- Horbec I., *Prema modernoj državi. Uprava i politika u Banskoj Hrvatskoj 18. stoljeća*, Zagreb 2018.
- Kolak Bošnjak A., Markus T., Matković S., *Hrvatski sabor 1861.: zaključci i drugi važniji spisi*, Zagreb 2018.
- Kolanović J., *Hrvatski državni sabor 1848.*, vol. 2, Zagreb 2007.
- Kosnica I., *Zapošljavanje u javnoj upravi u Hrvatskoj i Slavoniji (1868.–1918.) s obzirom na državljanstvo i hrvatsko – slavonsku pripadnost*, "Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave" 2018, no. 4.
- Kušević J., *O samosvojnih pravih i pravilih kraljevina Dalmacije, Hrvatske i Slavonije* (transl. from Latin: Fr.X.Ž. Pretočki), Zagreb 1883.
- Markus T., *Hrvatski politički pokret 1848.–1949. godine: ustanove, ideje, ciljevi, politička kultura*, Zagreb 2000.
- Perić I., *Hrvatski državni sabor 1848.–2000. Drugi svezak: 1868.–1918.*, Zagreb 2000.
- Pliverić J., *Hrvatsko-ugarsko državno pravo*, Zagreb 1908.
- Polić L., *Nacrt hrv.-ugarskog državnog prava*, Zagreb 1912.
- Potrebića F., *Županije u Hrvatskoj i Slavoniji u 18. i prvoj polovici 19. Stoljeća* [in:] *Hrvatske županije kroz stoljeća*, ed. I. Goldstein et al., Zagreb 1996.
- Reformtörvények Magyarországon 1848-ban. The Acts of 1848 in Hungary*, ed. N. Varga, Szeged 2012.
- Sirotković H., *Ustavni položaj i organizacija rada Sabora Kraljevina Hrvatske i Slavonije u građanskom razdoblju njegova djelovanja (1848–1918)*, Rad JAZU 393, Zagreb 1981.

- Šmrekar M., *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji*, vol. 2, Zagreb 1900.
- Šmrekar M., *Ustavno zakonoslovlje. Sbirka ustavnih zakona i propisa valjanih za Kraljevine Hrvatsku i Slavoniju*, Zagreb 1901.
- Šidak J., *Studije iz hrvatske povijesti za revolucije 1848–49.*, Zagreb 1979.
- Šišić F., *Povijest Hrvata. Pregled povijesti hrvatskoga naroda 600.–1918.*, Split 2004.
- Šokčević D., *Hrvatska od stoljeća 7. do danas*, Zagreb 2016.
- Šulek B., *Hrvatski ustav ili konstitucija godine 1882.*, Zagreb 1883.
- Šulek B., *Naše pravice. Izbor zakonah, poveljah i spisah, znamenitih za državno pravo kraljevine dalmatinsko-hrvatsko-slavonske od g. 1202–1868.*, Zagreb 1868.
- The 1868 Croatian-Hungarian Settlement: Origin and Reality*, eds. V. Švoger, D. Sokcsevits, A. Cieger, B. Ostajmer, Zagreb–Budapest 2021.
- Vuković M., *Opći građanski zakonik s novelama i ostalim naknadnim propisima*, Zagreb 1955.

Summary

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Reflections on the Croatian Constitutional Tradition from 1848 to 1918

This article discusses the Croatian constitutional tradition from 1848 to 1918. Its aim is to set out the main features of the concept of a constitution in Croatia in that period. In the first section, I make some basic remarks on the Croatian feudal constitution before 1848. This section represents the starting point for an analysis of subsequent constitutional development. In addition, I analyse the Croatian constitution between 1848 and 1849 and constitutional development from 1849 to 1860, 1860 to 1868, and 1868 to 1918.

Keywords: Austro-Hungarian Monarchy, constitution, Croatia, Habsburg Monarchy.

Streszczenie

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Refleksje o chorwackiej tradycji konstytucyjnej w latach 1848–1918

Artykuł odnosi się do chorwackiej tradycji konstytucyjnej z okresu 1848–1918. Jego celem jest ustalenie zasadniczych cech konceptu konstytucyjnego w Chorwacji w tym czasie. Autor w pierwszej części zamieszcza podstawowe uwagi na temat chorwackiej konstytucji feudalnej sprzed 1848 r. Ta część stanowi punkt wyjścia do analizy późniejszego rozwoju konstytucyjnego. Ponadto przeanalizowano konstytucję okresu 1848/1849, rozwój konstytucyjny w latach 1849–1860, a następnie w latach 1860–1868 i 1868–1918.

Słowa kluczowe: monarchia austro-węgierska, konstytucja, Chorwacja, monarchia Habsburgów.