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Florin Sion, *Considerații asupra elaborării Codului civil român în legătură cu principalele controverse* [Considérations sur l'élaboration du Code civil roumain – à propos des principales controverses], Iassy 1915
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François Zénatti, L'évolution des sources du droit dans les pays de droit civil, in: *Le Dalloz. Recueil* (2002), Chron. 15
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Building of the modern legal system in Croatia 1848–1918 in the centre-periphery perspective*

I. *Introduction*

The transition from a feudal to a modern legal system and the building of modern Croatian legal structures began in 1848 and continued throughout the following decades intertwining with the nation-building process. Based on a transfer of several models from other legal systems, the modernization of the Croatian legal institutions was predominantly influenced by the Austrian institutions. This process, its beginnings as well as the results, were largely predetermined by a specific Croatian position in regard to the environment, even though Croatia was a country with an own autonomous legislation, executive and judiciary.

From a cultural point of view Croatia can be considered as a constant part of the European legal cultural framework, but its position in the pre-modern and modern period can be described as "peripheral" with respect to the Western "centre", which in a way generated several institutional and doctrinal models that were later adopted elsewhere. From a political point of

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view, Croatian autonomy in the modern period institutionally and far more factually depended on the centres in Budapest (the central government) and Vienna (the king). In this regard, the Croatian autonomous position can again be considered as "peripheral". Thus, it seems appropriate to approach the modernization of the Croatian legal system from a centre-periphery view.

The results of this analysis would suffice, I believe, for a complete framework of the process of modernization in Croatia to be sketched in a form that might be useful as a preliminary model for observing the same process in other countries in a similar position. Thus, my purpose is not only to inform on the principal topic, but also to provoke discussions and possibly a broader cooperation. However, the complexity of the modernization process in Croatia in the respective period requires a short preliminary reference to previous Croatian traditions, as well as to their later development. This will be followed by a reconstruction of the course of modernization throughout the relevant periods. In conclusion, a general view including a model of the process of modernization will be presented.

II *Historical framework from medieval times to the present*

The Croatian medieval kingdom emerged in 925 following a period of principalities dominated either by the Frankish Empire or by Byzantium.[1] At its largest, this early kingdom encompassed several regions including Slavonia, Dalmatia and Bosnia. From early times the organization of power of the Croatian Kingdom rose on the basis of indigenous determinants and exogenous influences from the West. In the late 11th century Hungarian kings meddled in the fight for the vacant Croatian throne. This confrontation between the Croatian nobility and the Hungarian Arpád dynasty ended in 1102 with a compromise which raised the Hungarian dynasty in Croatia to the throne, but ensured also the continuation of an own Croatian aristocracy endowed with specific rights. A distinctly Croatian constitutional identity developed on this basis. On the one hand, the aristocracy had the right of self-government, realized through the institution of the Sabor (Diet) that developed in the 13th century; on the other hand, the king reigned in Croatia through the Ban, a Croatian political institution of early medieval origin. In 1526/27 the Hungarian and Croatian diets elected Ferdinand II from the Habsburg dynasty as their king. Subsequently, Hungary and Croatia remained part of the Habsburg Monarchy until 1918. In a further development the Croatian Sabor could retain its own legislative sphere, but four of its delegates also participated in the Hungarian Diet. It was with their assent and with the approval of the Croatian Sabor that laws enacted in the Hungarian Diet and approved by the king also became effective in Croatia.[2]

Apart from the political organization, the Croatian legal system developed on the basis of its own traditions as well as under the influence of the *ius commune*. The favorable conditions of that influence were the Roman traditions of the Dalmatian towns on the East Adriatic and their vicinity to the Italian centres as well as a continuous involvement of the Croatian regions in the broader European political, religious and cultural context during the whole medieval period.

However, the extent of particular Croatian rights increased and diminished according to political circumstances, while the size of the territory under the administration of the Ban and the Sabor fluctuated. At the beginning of the 15th century Dalmatia, the southern coastal part of Croatia, was annexed by and became part of the Venetian Republic. As the Croatian territory was contiguous to the Ottoman Empire, at the beginning of the 17th century the borderland was turned into a military zone, the so-called Military Border (*Militärgrenze*), under direct administration of the Austrian military authorities. In the 19th century the question of integrating these two regions into Croatia became an important issue intertwined with the question of modernization.

In fact, Dalmatia passed through the process of modernization separately as an Austrian province and, for a very short time, under French rule. The fall of the Venetian Republic in 1797 was followed by a short period of Austrian rule (1797–1805), replaced by French rule (1805–1813) that extended over a large part of Croatia in 1809, but was finally replaced again by Austrian rule (1813–1918). In the short period of their rule, the French proclaimed equality before the law, imposing the *code civil* (except for regulations on family and inheritance) and French criminal codes, established the *Concordat* and proclaimed the separation of church and state. They abolished the communal autonomies of towns replacing their organization with a rationally organized

1 Synthetic presentations of Croatian history in English and German: Ivo Goldstein, *Croatia. A history*, London 1999; Ivo Perić, *A History of the Croats*, Zagreb 1988; Ludwig Steindorff, *Kroatien. Vom Mittelalter bis zur Gegenwart*, Regensburg 2001.

2 On Croatian medieval history and institutions, see Ivan Beuc, *Povijest institucija državne vlasti kraljevine Hrvatske, Slavonije i Dalmacije* [History of the statal institutions of the Kingdom of Croatia, Slavonia and Dalmatia], Zagreb 1985, pp. 3–230; Antun Dabinović, *Hrvatska državna i pravna povijest* [Croatian constitutional and legal history], Zagreb 1940 (reprinted 1989); Ferdo Šišić, *Povijest hrvatskog naroda* [A history of the Croatian nation], Zagreb, 1916 (reprinted several times), pp. 67–366.

judiciary separated from a centralized administration. They also improved schools and established the *Lycée* and then the *Écoles centrales* in the Dalmatian capital of Zadar, with departments for legal education, mostly dedicated to the teaching of the *code civil*. However, the new regulations which replaced traditional forms of life as well as the extensive taxation necessary for financing military expenses were the main reasons for the unpopularity of the French rule. Because of that, the "penetration" of French institutions did not profoundly influence the legal culture in Dalmatia and Croatia except for a few isolated circles of the political and intellectual elite. The Austrians introduced their administrative and judicial institutions into Dalmatia, including the *Allgemeines Bürgerliches Gesetzbuch* (*ABGB*), in 1816. The Habsburgs made Dalmatia an Austrian province under the name "Kingdom of Dalmatia". It retained that status until 1918, in spite of sustained demands by the Croatian Sabor for its unification with Croatia-Slavonia.[3]

On the other hand, the Military Border was demilitarized and integrated into Croatia in two phases, in 1871 and 1882. Thus, in the 19th century the continuity of autonomous institutions was preserved only in the civil part of the Kingdoms of Croatia and Slavonia making up a unified administrative territory with a particular constitutional identity rooted in traditional liberties and rights (*iura municipalia*). During the nation-building process in the 19th century, the crucial strategic goal of Croatian politics became the integration of regions considered Croatian, these being primarily Dalmatia and the Military Border as well as some smaller parts. During that time the territorial-administrative denominations "Kingdoms of Croatia and Slavonia" and (the virtual) "Kingdoms of Dalmatia, Croatia and Slavonia", also called the Triune Kingdom, interchanged with the national denominations "Croatia" and "Croatian Kingdom".

The modernization of legal institutions in Croatia was part of the nation-building process. In fact, the transformation of traditional into modern political autonomy meant the encouragement of national integration and a prosperous development toward more independence.

That process faced an abortive start in 1848 and "continued" with the extensive reform program imposed from Vienna in the period of false

3 Vjekoslav Maštrović, *Razvoj sudstva u Dalmaciji u XIX. stoljeću* [Development of the judiciary in Dalmatia in the 19th century], Zagreb 1959, pp. 45–79; Jaroslav Šidak, *Studije iz hrvatske povijesti XIX. stoljeća* [Studies in Croatian history of the 19th century], Zagreb 1973, pp. 91–93; id. et al., *Hrvatski narodni preporod. Ilirski pokret* [Croatian national revival. The Illyrian movement], Zagreb 1988, pp. 15–57.

constitutionality and neoabsolutism from 1849 to 1859. Reformist attempts of the Croatian Sabors in 1861 and 1865–67 failed to meet productive ends. Systematic modernization was possible only after the Croatian-Hungarian Compromise of 1868 that set up a stable constitutional framework for Croatian autonomy, but still let the Hungarian government retain control functions. In the period from 1868 to 1918, modernization in Croatia reached its peak during the administration of the liberal-nationalist government between 1873 and 1880. It was basically back-warded during the authoritarian rule exercised from 1883 to 1903 in quasi-constitutional forms by Ban Karoly Khuen-Héderváry who appeared as an agent of the Habsburg Court and the Hungarian government. Moderate re-liberalization, which began under the nationalist government in the complex political period after 1903, had no real possibilities for full development.

Croatian autonomy as well as separate institutions of Croatian public law ceased to exist in the unitary and centralist Yugoslav Kingdom established in 1918. However, the main civil and criminal regulations remained in force in its respective regions until the legal unification in 1929 when uniform laws for the whole country were enacted. Nevertheless, the *ABGB* remained in force until 1946. In 1939 the large autonomous unit of the *Banovina Hrvatska* (the Banate of Croatia) was formed in an attempt to reduce Croatian-Serbian tensions on the eve of the Second World War. The Yugoslav state collapsed in 1941 and soon after that the fascist Independent State of Croatia (*NDH*) was established. In 1943 the antifascist communist movement led by the Croat Josip Broz Tito laid the political and institutional foundations of the federal organization of Yugoslavia in which Croatia was to be one of the federal republics. The federal principle was adopted by both the federal and the republican constitutions from 1946 to 1974. Democratic elections in 1990 were followed in 1991 by the proclamations of independence of two Yugoslav republics, Slovenia and Croatia. Those proclamations were based upon the right of self-determination granted by the federal and the republican constitutions of 1974, and also upon the results of popular referendums. The republics of Macedonia and Bosnia and Herzegovina soon also proclaimed independence. Attempts at constructing a Greater Serbia led to an armed conflict in Slovenia and then to bitter wars in Croatia, Bosnia and Herzegovina as well as later in Kosovo. In 2004 Croatia became an official candidate for the membership in the EU.[4]

4 On Croatia in the context of Yugoslav history, see Dušan Bilanždić, *Hrvatska moderna povijest* [Modern Croatian history], Zagreb 1999 and Hrvoje Matković, *Povijest Jugoslavije 1918–1991: hrvatski pogled* [A history of Yugoslavia: the Croatian view], Zagreb 1998.

III *The outset of modernization in 1848*

Following the end of Josephin absolutism in 1790 the Croatian Sabor delegated some of its executive and legislative authorities to the Hungarian *Consilium Regium Locumtenentiale* (council of lieutenancy) and to the Hungarian Diet. In fact, the transfer of Croatian competences had already been decreed by Maria Theresia in 1779, when the Croatian *Consilium Regium,* established in 1767, was abolished. However, the acceptance of such a decision by the Sabor in 1790 was motivated by the wish to strengthen common Hungarian-Croatian defences against possible future absolutist attempts of the Habsburgs. But instead of that, the transfer of competences resulted in a further diminution of the role of the Croatian Sabor. It was convoked only to elect delegates for the Hungarian Diet, to formulate obligatory instructions for them and to proclaim laws that had already been accepted in the Hungarian Diet and sanctioned by the king.[5]

During the formative period of modern Hungarian national statehood, traditional Hungarian-Croatian feudal solidarity disappeared and Croatian autonomy became an obstacle for the transformation of the feudal Kingdom of Hungary into Hungarian national state. From 1825 the Hungarian majority in the Hungarian Diet made constant attempts to introduce the official use of the Hungarian language in Croatia instead of Latin and to abrogate a law of 1608 that forbade the protestant faith in Croatia. The issues of language and religion were part of the exclusive Croatian jurisdiction granted by the *iura municipalia*. Therefore, the Sabor saw their revision, especially if undertaken in the Hungarian Diet, as an opportunity for a possible revision of other Croatian *iura municipalia* that could lead to the abolition of the autonomy itself.[6]

The *iura municipalia* not only granted Croatia autonomy, but also prevented the bourgeoisie from filling political and executive positions that were exclusively reserved for the nobility. Nevertheless, the Croatian national movement which emerged in the 1830s adopted the legitimate *iura municipalia* as its platform. The national program could only be carried out and advance successfully in the framework of Croatian autonomy, which was

5 Šišić, Povijest (n. 2), pp. 388–390.

6 See the list of *iura municipalia* in Josephus de Kušević, *De municipalibus iuribus et statutis regnorum Dalmatiae, Croatiae et Slavoniae*, Zagrabiae 1830 and in the Croatian translation *O samosvojnih pravih i pravilih kraljevina Dalmacije, Hrvatske i Slavonije*, Zagreb 1883. See also Mirjana Gross, *Počeci moderne Hrvatske* [The beginnings of modern Croatia], Zagreb 1985, p. 100; Tomislav Markus, *Hrvatski politički pokret 1848.-1849. godine* [The Croatian political movement], Zagreb 2000, pp. 38–39; Bogoslav Šulek, *Naše pravice* [Our rights], Zagreb 1868, pp. 78–81.

compromised by Hungarian attempts. The *iura municipalia* were therefore an efficient defensive measure. Moreover, the weak Croatian bourgeoisie was forced to ally itself with the conservative nobility which dominated the Sabor. This largely explains why the Croatian national movement remained concentrated on the issues of national integration and the installation of Croatian as official language, but until 1848 neglected such elementary liberal demands like the abolition of serfdom or governmental responsibility.

However, it seems that the gradual fermentation of political ideas prepared the turnabout in March 1848. It was induced by the development of the Croatian national movement up to that time as well as by circumstances in the political environment and the circulation of liberal ideas. The acceptance of the March Laws of 1848 in the Hungarian Diet, in spite of protests by Croatian delegates, partly triggered the events in Croatia. The March Laws constituted the modern institutional ground of the centralized national Hungarian state. But despite their liberal substance they reduced the Croatian territory, while Croatian autonomy was cut down close to a mere provincial level and knowledge of the Hungarian language was made the general prerequisite for passive electoral right. Besides, the fact that the Hungarian Diet decided on issues belonging to the autonomous jurisdiction of the Sabor was a challenge to the autonomy itself.[7]

It was on the junction of these factors that an *ad hoc* political assembly which symbolically represented all Croatian regions (Great Assembly of Dalmatia, Croatia and Slavonia) was convened in Zagreb on 25 March. It unanimously accepted the "Demands of the People", a programmatic document roughly systemized in 30 points. Among these demands were the urgent convocation of the Sabor based on the modern representative principle and the integration of the Croatian lands according to historical claims and the *iura municipalia*. Furthermore, the "Demands" insisted on the installation of a modern Croatian government responsible to the Sabor, of a modern administration and of Croatian as official language. In addition, the assembly's demands were concerned with the issues of unrestricted development of national culture, the establishment of universities, the abolition of serfdom, equality of citizens before the law, freedom of the press, of religion and of speech, trial by jury and responsibility of judges, the right of public

7 See the March Laws in the contemporary Croatian translation: *Zakonski članci Ugarskog' dáržavnog Sabora godine 1847/8* [Articles of the Hungarian Diet], Zagreb 1860. See also Markus, Hrvatski (n. 6), pp. 53–54; Andor Csizmadia, L'instauration du droit bourgeois au cours de la révolution hongroise de 1848, in: *Acta Juridica Academiae Scientiarum Hungaricae* 25 (1983), pp. 311–350; Carlyle Aylmer Macartney, *The Habsburg Empire 1790–1918*, London 1969, pp. 336–341, 380.

assembly, right of association, establishment of a national bank and postal service, to name only the most important. Although the basis of this document was ambiguous, both liberal and conservative, it nevertheless represented a shift of the Croatian national movement from a basically conservative to a basically liberal orientation.[8]

The Sabor of 1848 was elected on the basis of the Electoral Law decreed by the new Ban, Josip Jelačić. The Sabor, consisting of elected deputies and virile members (high nobility, prelates and high officials), retained this traditional unicameral bi-componential structure up to the end of the monarchy. The elective franchise remained indirect in counties and direct in towns. It depended on (male) sex, possession of real estate or, alternatively, of a high school degree or of the status of civil servant, as well as on domicile in the electoral district. Prerequisites to the passive electoral right were "affiliation to the homeland", affiliation to the religions acknowledged by law, i.e. Catholic and Orthodox (such discriminatory provision was never again repeated in electoral legislation), and literacy. The deputy's right of vote in the Sabor was free and individual, unless he had imperative mandate by his electoral district.[9]

The Sabor was in session for only one month (June-July) as it postponed further work due to growing tensions with Hungary. Disagreements led to war in September 1848 after the attempts of a Croatian-Hungarian "reconciliation" mediated by the Court had failed. Ban Jelačić, who was also an officer of the emperor's army, proclaimed mobilization in Croatia, but after crossing the Hungarian border flew the Austrian flag.

8 Markus, Hrvatski (n. 6), pp. 69–70; Dalibor Čepulo, Razvoj ideja o ustroju vlasti i građanskim pravima u Hrvatskoj 1832–1849 [The development of the ideas on government organization and on civil rights in Croatia], in: *Pravni vjesnik* 3–4 (2000), pp. 41–44; Josip Horvat, *Stranke kod Hrvata i njihove ideologije* [Croatian political parties and their ideologies], Beograd 1939, pp. 28–30; Petar Korunić, Hrvatski nacionalni i politički program 1848/49. godine [The Croatian national and political program], in: *Povijesni prilozi* (1992), pp. 211–212; Josip Neustädter, *Ban Josip Jelačić i događaji u Hrvatskoj od 1848*, [Ban J. J. and the events in Croatia], Zagreb 1994 (first published in French, Zagreb 1940), pp. 287–288, 300–304; Jaroslav Šidak, *Studije iz hrvatske povijesti za revolucije 1848–49* [Studies in Croatian history of the revolution], Zagreb 1979, pp. 33–74, 51–5.

9 Ladislav Polić, Povijest modernoga izbornoga zakonodavstva hrvatskoga [A history of modern electoral legislation in Croatia], in: *Mjesečnik Pravničkoga društva u Zagrebu* 8 (1908), pp. 657, 658–659; Hodimir Sirotković, Jelačićev izborni red za prvi hrvatski građanski Sabor 1848. godine i provođenje izbora [Jelačić's electoral order for the first Croatian civil Diet in 1848 and the administration of the elections], in: *Hrvatska 1848. i 1849. Zbornik radova*, edited by Mirko Valentić, Zagreb 2001, pp. 60–62.

Croatian legislative activity was partly a reaction to the March Laws that were interpreted as a serious breach of the Croatian *iura municipalia* and as the reason for the abrogation of the union with Hungary. In mid-April, Ban Jelačić proclaimed the breach of any relationship with Hungary until the conclusion of a new treaty based on freedom and independence; Jelačić's proclamation was later approved by the Sabor. In Croatian politics and historiography that disruption has been interpreted as an abrogation of the *unio realis* according to which the person of the king remained the sole connection between the two lands. The traditional union with Hungary was thought to have been replaced by the idea of a decentralized organisation of the whole monarchy based on extensive autonomy of the units with a central parliament and government in Vienna.

In fact, the Sabor enacted such an article which also described the particular Croatian position in that framework (Article 11:1848). That act marked a reorientation of Croatian politics in favor of Austria instead of Hungary. In regard to the internal organization, the Sabor enacted the Constitution (Statute) of the Military Border. It framed the administrative organization in that area and was supposed to replace the military rule. Finally, the Constitution endowed the local population with individual rights which they had not been able to enjoy during the military regime. Yet faced with reality, the Sabor was moderate in the regulation of these rights, while the implementation of the Constitution was postponed until the return to normal circumstances.[10]

The Sabor also approved the Ban's decree on the abolition of serfdom which he had issued in April in order to avoid the riots of peasants who were aware that the March Laws had already abolished serfdom. Furthermore, the Sabor abolished completely the *iura regalia minora* and proclaimed the right of landlords to compensation for peasants' duties at public expense.[11] By the end of the session, the Sabor provisionally empowered Ban Jelačić with unrestricted ("dictatorial") powers which he could exercise "in time of threat of danger".[12] The five-member Ban's Council, established in April by Jelačić as his privy council, turned into the *de facto* Croatian government which even took the role of a directorate, due to Jelačić's constant absence on the battlefield.[13]

10 Markus, Hrvatski (n. 6), pp. 89, 123–124, 144–147; Polić, Povijest (n. 9), pp. 652–658; Ivo Perić, *Hrvatski državni Sabor 1848–2000. Prvi svezak 1848–1867* [The Croatian State Diet. First volume], Zagreb 2000, pp. 141–143, 148 ff, 172 ff.

11 Gross, Počeci (n. 6), p. 158; Markus, Hrvatski (n. 6), pp. 95, 149.

12 Markus, Hrvatski (n. 6), p. 142; Perić, Hrvatski (n. 10), p. 185.

13 Beuc, Povijest (n. 2), p. 256.

In May 1849 'the Ban and dictator' Jelačić imposed the Provisional Law on the Press, compiled on the basis of the relevant Austrian press and jury trial laws of March 1849. The new law was as rigid as the Austrian model, prescribing high fines and enabling administrative repression against political journals. These journals could be published by concessions of the administrative authority, issued only after the deposition of a considerably high security. Apart from these rigidities, trial by jury was prescribed in cases of criminal offences committed through printed materials. But Jelačić abolished trial by jury after the first case in which one of the jurors, a retired judge, left the courtroom in protest against the unconstitutionality of the decree.[14]

In fact, the only substantial and effective institutional reforms in the Croatian autonomous legislation in 1848 were the abolition of serfdom, the proclamation of the principle of equality of the citizens before the law and the introduction of the citizens' representation in the Sabor. Thus, the Croatian Sabor of 1848 did not manage to establish a Croatian autonomy on a developed modern scale.

IV *Imposed modernization: false constitutionality and absolutism, 1849–1859*

The Constitution of the Austrian empire imposed by the emperor in March 1849 was proclaimed in Croatia in September, only after Jelačić's explicit order towards the Ban's Council. Previously, the Council had in fact refused to proclaim such an act abolishing Croatian autonomy.

Croatian liberals reacted to the proclamation by returning to the idea of modernization of traditional municipal institutions. Yet this did not mean the complete abandonment of the traditional institutions in favor of modern principles. Modernization from Vienna, combined with the abolition of Croatian autonomy as well as with centralism and Germanization, restored the attraction of the municipal institutions as a traditional pledge of independence, yet open to modern development.[15] However, there were isolated opinions believing that the traditional constitution did not provide an adequate framework for modernization. The same sources warned that Croatian political forces were not strong enough to realize the task of modernization which could only be accomplished by the Vienna centre under the condition that its policy remained within the Croatian constitutional borders and respected Croatian circumstances.[16]

The time of false constitutionality (1849–51) was followed by Bach's absolutism (1852–59). In both of these periods Croatia was administered by the provincial government in Zagreb directly subordinate to the central government in Vienna. As in other regions, an extensive reform package was imposed from Vienna between 1852 and 1854 and up to 1859, with the principal goal of preparing the legal unification of the monarchy.

However, the laws introduced in Croatia were of great significance as they replaced archaic institutions and prepared further modernization in an autonomous framework. The most important reforms concerned administrative and judicial organisation, civil and criminal law, civil and criminal procedure as well as legal education.

The changes in administration and judiciary were substantial. The first centralistic reforms, imposed during the period of false constitutionality in 1854, were replaced by those founded on rational principles and the Austrian model. A centralist administration with professional civil servants was built upon the model of the Austrian *Kreise*. It replaced the traditional municipal framework based on counties (*županije*) whose autonomy was centred in their assemblies which periodically re-elected clerks. The historical borders of *županije* were partly reshaped into more rational ones. The local commune (*općina*), transplanted from the German and Austrian tradition, enjoyed a rather high degree of autonomy, whereas most of the towns lost their loose municipal status and were subordinated to the provincial government. But Zagreb and Osijek, the two largest towns, retained a high degree of autonomy. Modern taxation based on individual property replaced more archaic forms of taxation.[17]

14 Through the Press Law Jelačić, who intended to stop the 'radical' writing of Zagreb's journals, lost a considerable part of his popularity. The provisional press law had been sharply criticised in the press even before it was proclaimed. Markus, Hrvatski (n. 6), pp. 336–345; Dalibor Čepulo, The press and jury trial legislation of the Croatian Diet 1875–1907: Liberalism, fear of democracy and Croatian autonomy, in: *Parliaments, Estates and Representation* 22 (2002), pp. 176–177; Šidak, Studije iz hrvatske povijesti (n. 8), pp. 199–200; Vladimir Bayer, Suci-porotnici [Jurors], in: *Zbornik Pravnog fakulteta u Zagrebu* 3–4 (1955), p. 148; Gross, Počeci (n. 6), pp. 402, 174; Nikola Ogorelica, *Kazneno postupovno pravo* [Law on criminal procedure], vol. I, Zagreb 1899, pp. 67–68.

15 Markus, Hrvatski (n. 6), pp. 276–277.

16 Gross, Počeci (n. 6), pp. 67–69.

17 Beuc, Povijest (n. 2), pp. 263–269; Gross, Počeci (n. 6), pp. 84–86, 91–96, 32 ff.; Milan Smrekar, *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji* [A manual for the political-administrative service in the Kingdoms of Croatia and Slavonia], vol. I, Zagreb 1899, pp. 14–21, 329, 331–333, 454–455; Fran Vrbanić, *Rad hrvatskoga zakonarstva na polju uprave od godine 1861. do najnovijega vremena* [Works of the Croatian legislature in the field of administration from 1861 up to the recent time], vol. I, Zagreb 1889, pp. 62–66.

Municipal county courts depending in part upon county assemblies were transformed into state courts. Furthermore, a new rational organisation of the judiciary was established. It was founded on the principle of separation of judiciary from administration which were joined again in 1853 at the first instance level and in the Ban's High Court.[18] The ministerial order of 1860 established local courts (*mjesni sudovi*) in communes adjudicating upon informal small claims. The *mjesni sudovi*, adopted from Austrian legislation (*Ortsgerichte*), were composed of laymen elected from members and presided over by the head of the local council. Such courts had not developed in poor and weak Croatian local communes incapable of having their own judiciary because of their complete subjection to the landlords. In spite of their imported origin, *mjesni sudovi* proved to be usefull in the poor countryside with an uneducated population and a large number of small claims.[19]

The most important reform in this period was the introduction of the *ABGB* in 1853. In 1861 it tacitly became part of the Croatian legislation denominated *Opći građanski zakonik* (*OGZ*) and remained in force up until 1946. Even afterwards the OGZ was being applied in Croatia as a subsidiary source. Another important civil law reform was the Law on Civil Procedure (*Redoviti građanski postupak, Die provisorische Civil-Process-Ordnung*) that replaced archaic regulation dispersed in a large number of various acts whose core was the Tripartite. The Law on Civil Procedure remained in force until 1929. The Law on Advocacy (*Odvjetnički red, Advocaten-Ordnung*) of 1852 not only obliged all lawyers to pass the new bar examination according to the new legislation, but also established town advocacy boards supervised by the Ban. Although it significantly improved the Croatian legal profession by eliminating a large number of incompetent lawyers, the law soon became obsolete as it did not allow an autonomous bar association. The Law on Public Notary Service (*Bilježnički red, Notariats-Ordnung*), proclaimed in 1855 but only applied in 1858, laid the foundation of a modern development of this profession which unfortunately did not progress as successfully as the advocacy. Land-registry, established in Croatia as a provisional service in 1850, soon turned into a regular service.[20] In 1850 the General German Law on Exchange (*Allgemeine Deutsche Wechsel-Ordnung, Opći mjenbeni red*) was introduced in Croatia as provisional regulation, but it remained effective up to 1876 when the respective law of the Hungarian-Croatian Diet was enacted.

The emperor's decree of 1852 introduced the Penal Law on Crimes, Misdemeanours and Offenses (*Kazneni zakon o zločinstvih, prestupih i prekršajih, Strafgesetz über Verbrechen, Vergehen und Übertretungen*) and the Law on Criminal Procedure (*Zakon o kaznenom postupku, Strafprozess-Ordnung*). Although both laws, especially the latter, were blamed for being conservative, they significantly improved the archaic Croatian regulation which had been based on a large number of laws and edicts as well as on customary law as its main source. The Penal Law remained in force up to 1929, while the Law on Criminal Procedure was replaced in 1875 by a new Croatian law founded on the Austrian Law on Criminal Procedure of 1873. The Law on Criminal Procedure of 1875 remained effective up until 1929.[21]

However, legislation on the rights of citizens was severely restricted during the absolutist period. The extensive list of liberties and rights granted by the March Constitution and the respective legislation had not survived the imposition of absolutism. The Sylvester Patent of 1851 introducing absolutism explicitly abolished jury trial as well as some regulations concerning the principles of public and oral proceedings. The emperor's decree of March 1849 regulating the freedom of association and public assembly was replaced by the rigid Law on Associations in 1852 (*Zakon o društvih, Vereinspatent*) which forbade the establishment of any political associations. The matters of the press were regulated by the even more repressive Press Law of 1852 (*Tiskovni red, Presse-Ordnung*). It established various administrative means to control press activities as well as several repressive administrative sanctions.[22]

18 Beuc, Povijest (n. 2), pp. 305–306, 318–319.

19 Dalibor Čepulo, Dioba sudstva i uprave u Hrvatskoj 1874. godine [The separation between executive and judiciary in Croatia], in: *Hrvatska javna uprava* 2 (1999), pp. 255–257.

20 Gross, Počeci (n. 6), pp. 107–109, 129; Vladimir Bayer, Opći povijesni razvoj advokature u krajevima koji danas tvore SR Hrvatsku [The general development of legal advocacy in the regions of the present Socialist Republic of Croatia], in: *Odvjetnik* 9 (1968), pp. 53–54; Dalibor Čepulo, *Prava građana i moderne institucije: europska i hrvatska pravna tradicija* [The citizen's rights and modern institutions: the European and the Croatian legal tradition], Zagreb 2003, pp. 58–59; Nikola Gavella, Građansko pravo u Hrvatskoj i kontinentalnoeuropski pravni krug [The civil law in Croatia and the legal systems of continental Europe], in: *Zbornik Pravnog fakulteta u Zagrebu* 4 (1993), pp. 337–338.

21 Vladimir Bayer, *Kazneno procesno pravo – odabrana poglavlja. Knjiga II. Povijesni razvoj kaznenog procesnog prava* [Law of criminal procedure – selected chapters], edited by Davor Krapac, Zagreb 1995, p. 152.

22 Čepulo, The press and jury trial (n. 14) p. 177; Gross, Počeci (n. 6), pp. 402, 408; Ogorelica, Kazneno (n. 14), pp. 68–72; Dalibor Čepulo, Pravo na javno okupljanje u Hrvatskoj 1848–1918. i odrednice razvoja u europskim zakonodavstvima [The rigth of public assembly in Croatia 1848–1918 and its development in the European legislations], in: *Zbornik Pravnog fakulteta u Zagrebu* 3–4 (1999), pp. 403–404; Josip Horvat, *Povijest novinstva Hrvatske*

The Concordat of 1855, which provided the Catholic Church with a prominent position in the monarchy, was also applied in Croatia. Its introduction contributed to the closure of the dispute on whether the bishopric of Zagreb was to be raised to the status of archbishopric. The establishment of the new archbishopric directly subject to Rome was obstructed by the Hungarian *primas* who had enjoyed certain competences over the bishop of Zagreb.[23]

Modern law required educated lawyers Croatia had been lacking, so legal education in Zagreb was improved in order to enable future practitioners to apply new regulations. In 1850 the new Royal Legal Academy with three years of study was founded as the only high school in Croatia up to the establishment of the University in 1874. It replaced the Faculty of Law, founded in 1776 as one of the three faculties of the Royal Academy of Sciences, disbanded in 1850, which offered only biennial courses.[24]

However, the lack of educated personnel largely diminished the direct as well as the momentary effects of the reforms.[25] In fact, the main impact of the reforms introduced in the 1850s was a long-range one. In 1861 most of those laws tacitly became part of the Croatian autonomous legislation and highly influenced the Croatian legal system as a whole.

V *Attempts at modernization during the provisional constitutionality, 1860–1867*

Absolutism was followed by the introduction of provisional constitutionality and by convocation of the provincial diets which were to elect delegates for the Imperial Council (*Reichsrat*) in Vienna. However, the Hungarian Diet and the Sabor refused to elect their delegates, as this would have implied the acceptance of the abolition of their constitutions. Both diets intended to continue the processes that had been stopped in 1849 and to turn their aspirations for more independence into reality. But the starting positions and the attitudes taken by the two diets in 1861 as well as the outcomes varied.

In Hungary, laws introduced in the period of absolutism were abolished and the *ABGB* was replaced with the Tripartite. The Hungarian Diet also planned to return to the March Laws granting the Hungarian national state

[A history of journalism in Croatia], Zagreb 1962, p. 183; Smrekar, Priručnik (n. 17), vol. II, Zagreb 1900, pp. 970–971.

23 Gross, Počeci (n. 6), pp. 329, 335–337.

24 Dalibor Čepulo, Pravni fakultet u Zagrebu od 1776. do 1918. [The Faculty of Law in Zagreb from 1776 to 1918], in: *Pravni fakultet u Zagrebu/Faculty of Law, University of Zagreb*, ed. by Davor Krapac et al., Zagreb 2001, pp. 52–68.

25 Gross, Počeci (n. 6), p. 110.

planned to return to the March Laws granting the Hungarian national state modern constitutional individuality and public law structure, but the king's dissolution of the Diet prevented such a decision.[26]

In Croatia, a constitutional and legal basis comparable to the March Laws did not exist, so in 1861 the Sabor only accepted Article 42 that laid the ground for negotiations on new constitutional bonds with Hungary. It was based on the acquirements and principles of 1848 and it proclaimed, among others, that "the events of 1848 had had as a legal consequence the dissolution of all legislative, administrative and judicial bonds between the Triune Kingdom and Hungary except that of their common king".[27] At the same time the Sabor developed intense legislative activity which was to lead to the enactment of modern autonomous laws.

The political and constitutional basis for reforms was searched for in the concept of the Croatian state right (*hrvatsko državno pravo*, *Kroatisches Staatsrecht*) that was elaborated at the Sabor in 1861. The principles of the Croatian state right and the municipal institutions were supposed to be linked to modern legal principles in order to secure Croatian identity against intrusions by the king and the Hungarian government. At the same time, they were also expected to introduce a rational and independent organization of the government, as well as to lay the foundations of a modern society.[28]

Thus the Sabor undertook intensive work on laws that were to replace the absolutist legislation. The laws accepted in the Sabor or drafted in its

26 Mirjana Gross and Agneza Szabo, *Prema hrvatskome građanskom društvu* [Towards a Croatian civil society], Zagreb 1992, p. 135; Macartney, The Habsburg Empire (n. 7), pp. 487, 510.

27 The Sabor offered the Hungarian Diet negotiations on the future union based on individuality, equality and common interests and set up preconditions for them. The most important ones were that the Hungarian Diet should recognize the factual and constitutional break-up of the relations between the two territories in 1848, the actual and virtual Croatian borders according to the Croatian *state right*, the minimum of Croatian competences including autonomy in legislation and executive over internal administration, religion, education and judiciary. The agreement was to be drafted by two equal comittees and then ratified by both diets. However, as the Hungarian Diet was prepared to negotiate only a revision of the March Laws on the basis of their validity and in the framework of the Hungarian Diet, the Croatian offer was not accepted. Macartney, The Habsburg Empire (n. 7), p. 526; Gross and Szabo, Prema hrvatskome (n. 26), pp. 133–134, 168–170.

28 On the Croatian *Staatsrecht* see Gross and Szabo, Prema hrvatskome (n. 26), pp. 130–132; Ivo Banac, *The National Question in Yugoslavia: Origins, History, Politics*, Ithaca and London, 1984, pp. 85–89; Josip Nagy, *Historijsko pravo u pokretima šezdesetih godina* [The historical right in the movements of the 1860s], Zagreb 1930.

committees referred to the organization of the Sabor and to electoral issues, immunity of deputies, organization of the counties, towns and communes, dissolution of communal joint-families (*zadruga*) and Croatian *indigenate* (affiliation to the homeland). Among the prepared drafts was a civil code based on the *ABGB*, which also regulated the organisation of civil courts. The draft of a criminal code provided for the organisation of criminal courts and criminal procedure and for the establishment of jury courts with general jurisdiction, while the Press Law prescribed trial by jury in cases of press offences. The Sabor accepted or drafted the laws on the elementary and high school system, on the establishment and organization of a university as well as on the Academy of Sciences, the National Museum and on various other matters. The general method of the legislator was to adopt the respective Austrian laws, but some particular solutions were brought in when specific Croatian issues were at stake. Such were the questions of *indigenate*, communal joint-families or the organisation of the judiciary. The latter combined modern principles with the old municipal tradition which had not known a separation of the judiciary from the administration.[29]

The legislative work was not brought to an end, as the Sabor was dissolved only seven months after its convocation. The only act of the Sabor sanctioned by the king was Article 42:1861 concerning the relations with Hungary. However, the Sabor accepted its Standing Orders which became effective as an internal act of the Sabor about which the king was only to be informed. The provision of the Standing Orders on the Ban as an *ex officio* president of the Sabor illustrates the lack of real parliamentary tradition in the Sabor. Yet since 1865, the president of the Sabor was to be elected among the members themselves.[30]

Thus, the legislative work of the Sabor in 1861 hardly substantiated any effective outcome. However, unlike the Hungarian Diet in 1861, the Sabor tacitly accepted all laws enacted during the absolutism, unless they had not explicitly been abrogated by it. The attitude toward laws from that period was ambiguous in Croatia. Introduction of modern laws in the absolutist

29 Gross and Szabo, Prema hrvatskome (n. 26), pp. 140–150; Dalibor Čepulo, Zakonodavna djelatnost Hrvatskog Sabora 1861. – autonomija, modernizacija i municipalne institucije [The legislative work of the Croatian Diet], in: *Pravni vjesnik* 1–2 (2002), pp. 145–154; id., Sloboda tiska i porotno suđenje u banskoj Hrvatskoj 1848–1918 [Freedom of the press and jury trial in the Banate of Croatia], in: *Hrvatski ljetopis za kazneno pravo i praksu* 2 (2000), pp. 931–932; id., Pravo hrvatske zavičajnosti i pitanje hrvatskog i ugarskog državljanstva 1868–1918 – pravni i politički vidovi i poredbena motrišta [The right of the Croatian domicile and the question of Croatian and Hungarian citizenship], in: *Zbornik Pravnog fakulteta u Zagrebu* 6 (1999), p. 805.

30 Perić, Hrvatski (n. 10), pp. 245–250.

'package' was a reason to call for their abolishment. But on the other hand these laws represented an obvious advancement compared with former conditions. Therefore they were accepted as a provisional solution until better autonomous legislation could replace them. As already mentioned, the most important laws introduced in the 1850s continued to exist as part of the Croatian autonomous legal system.

The *OGZ*, i.e. the *ABGB*, had not been revised after it was tacitly accepted as part of the Croatian legal system, so that it diverged from the Austrian *ABGB* which was later amended. The Croatian application of the *OGZ* developed independently from the Austrian jurisdiction, although attention was paid to the Austrian judicature and commentaries on the *ABGB*. The attempt to draft a Croatian civil code based on the *ABGB*, undertaken by the Sabor in 1861, was never brought to an end. In 1905 however, Croatian professors of civil law and lawyers discussed the possibility of amending the *OGZ* in order to adapt it to the new circumstances, yet without results. In 1917 a version of the *OGZ*, mechanically completed with the amendments of the *ABGB* and with some Austrian civil law statutes, was drafted on the initiative of the Croatian government, but not enacted due to the breakdown of the state.[31]

In 1862 the king accepted the Sabor's initiative and established the Table of Seven as the Croatian Supreme Court with a cassation jurisdiction. It completed the Croatian judicial system as the highest national court, a position which until then had been filled by the Ban's High Court.

Another Sabor, only convened in 1865, spent most of the time with the question of re-organizing the monarchy and devoted less energy to modernization. Although that Sabor started off moderately pro-Hungarian, the majority of deputies turned later against the Austrian-Hungarian Compromise, because it was negotiated without the Sabor (*de nobis sine nobis*) and did not even mention Croatian rights. Faced with the perspective of dissolution, the Sabor accepted *en bloc* large parts of the laws prepared at the former Sabor of 1861. The Electoral Law and the Press Law were urgently enacted in order to liberalize political life after the dissolution of the Sabor. However, although the Press Law was based on the draft law of 1861, it omitted jury trial because the deputies feared that it would provoke the king to refuse to sanction the whole law. But the king did not sanction any of the Sabor's acts and dissolved the Sabor after it had abandoned the negotiations with the Hungarian Diet on the grounds of the Austrian-Hungarian Compromise.[32]

31 Gavella, Građansko pravo (n. 20), pp. 339–344.

32 Čepulo, Sloboda (n. 29), p. 933; Gross and Szabo, Prema hrvatskome (n. 26), pp. 191–213; Perić, Hrvatski (n. 10), 356.

VI *The Croatian-Hungarian Compromise* (Nagodba) *of 1868 as a constitutional framework of modernization*

After the dissolution of the Sabor in 1867, a pro-Hungarian majority (Unionist Party) won the manipulated elections which were held according to the Electoral Law imposed by the king without Croatian initiative. The new Sabor immediately negotiated an agreement with the Hungarian Diet and ratified the sub-dual Croatian-Hungarian Compromise (*Hrvatsko-ugarska nagodba* or, shorter, *Nagodba*). The reason for such a special sub-dual agreement inside Hungary lay in the constitutional tradition of Croatian autonomy.

The Nagodba, which approximately followed the model of the Austrian-Hungarian Compromise, established a kind of sub-dualistic structure in the Hungarian half of the monarchy. It distinguished between the competences of the common Hungarian-Croatian government and those of the autonomous Croatian government. The competences of the former were enumerated and they basically covered public finance, commercial and maritime law, customs and trade, post office and telegraph, railways and certain other topics. The remaining affairs (i.e. internal administration, judicial matters, education and religion) were left to the Croatian autonomous government. According to the Croatian interpretation this was a *unio realis inequalis*.

Common institutions were the Common Diet and the central government. The Common Diet, an extended variant of the Hungarian Diet, consisted of members of the Hungarian Diet augmented by representatives of the Croatian Sabor when issues of common competence were on the agenda. The number of Croatian deputies in the Diet varied between 6,6 and 9%. As they only had individual votes, they could be outvoted at any time.[33] Under these circumstances, the right of the Croatian deputies to address the Common Diet in Croatian was practically of no use. The central government was *de facto* almost identical with the Hungarian government. Its basis was the Hungarian government from which – when acting in matters of common competence – Hungarian ministers of the interior, justice, education and religion were excluded (because these matters were part of separate internal Hungarian and Croatian competences). Furthermore, the central government was completed by the "Croatian-Slavonian Minister" without portfolio as a Home Minister.

The Sabor and the Croatian Autonomous Provincial Government were the institutions of Croatian autonomy provided for by the Nagodba. As the Government did not exist before, it was to be established. The Nagodba also provided for an own Croatian judiciary with the Table of Seven as the Croatian Supreme Court at its head.

A grave burden on Croatian autonomy was constituted by the fact that all public finances belonged to the common competence. The central government fully created fiscal policy, collected taxes and proposed the budget to the Hungarian Diet. It was obliged to return 45% of all incomes collected in Croatia to the Croatian government. Such a position deprived the Croatian government and the Sabor of the real possibility to carry out its own fiscal policy and to improve transport conditions, especially the railway network. However, that obstacle did not have a direct impact on Croatian legislation. But apart from the obviously unbalanced participation in decision-making in the sphere of common competences, even the Croatian autonomous government was influenced by the central organs, particularly in the appointment of the Croatian Ban who played a central role in the Croatian political system. The Ban was appointed by the king but nominated by the minister-president of the central government who also countersigned the king's act. Therefore the Ban had to possess the confidence of the king as well as of the central government. In the Nagodba he was declared responsible to the Sabor and in 1874 a law on the impeachment of the Ban by the Sabor was enacted. Yet in such a political context legal responsibility did not mean much.[34]

33 According to the Nagodba, the Sabor sent 29 representatives to the House of Representatives, which was supposed to have 409 Hungarian deputies (413 from 1894 onward), and two to the House of Lords. The number of Croatian delegates was supposed to be adjusted according to the changes in the percentage of the population of Croatia-Slavonia to the whole Kingdom of Hungary. In 1873, following the first reintegration of the Military Border into Croatia, that number was increased to 34. However, in 1881 the Hungarian Diet made it a condition for the second phase of the reintegration of the Military Border into Croatia, which significantly increased the total number of the population, that the number was fixed at forty. Thus, the Croatian influence became insignificant. The Croatian representatives usually joined the parliamentary club of the governing Liberal Party. See Oscar Jászi, *The Dissolution of the Habsburg Monarchy*, Chicago 1961. On the statistics see also Macartney, The Habsburg Empire (n. 7), pp. 275 ff.

34 On the Croatian-Hungarian Compromise and the Croatian reforms see Dalibor Čepulo, Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom Saboru 1868–1871 [The Croatian-Hungarian Compromise and the Reforms of the Organisation of Government in the Croatian Diet], in: *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Supplement 1 (2000), pp. 117–148; Vasilije Krestić, *Hrvatsko-ugarska nagodba* [The Croatian-Hungarian Compromise], Beograd 1968; Josef Pliverić, *Das Verhältnis Kroatiens zu Ungarn*, Zagreb 1885; id., *Beiträge zum Ungarisch-kroatischen Bundesrecht*, Agram 1886; id., *Der Kroatische Staat*, Agram 1887. It is noteworthy that Josef Pliverić, professor of public law in Zagreb, challenged the thesis of Georg

More effective means of interfering with the Croatian legislative procedure were the king's approval ("sanction") of the Sabor's laws and his "pre-sanction" of draft laws of the Croatian government. Laws enacted in the Sabor (as well as in the Hungarian Diet) had to be submitted to the king for his sanction and promulgation. The king's refusal to sanction a law had the effect of an absolute veto and was not limited in any way. The Nagodba provided that laws accepted in the Sabor were to be transmitted to the king by the Croatian minister in the central government. According to the revision of the Croatian-Hungarian Compromise of 1873, the Croatian minister could not intervene in Croatian legislation and was obliged to transmit the law to the king without delay. However, he could object to the king about the content of the law, if it breached common competence or violated common interests, thus provoking royal refusal of sanction. In such cases the king theoretically acted as an arbiter between the Sabor and the central government, but in reality he always accepted the arguments of the stronger party, i.e. of the central government. This procedure allowed the central government to indirectly interfere in Croatian legislation. If the government intended to provoke the king's refusal of a Croatian law, it could search for some minor breach of common competence or it could interpret the law as a violation of common interests. This enabled the government to wilfully coin quite doubtful interpretations of the Nagodba. Due to such practices the Croatian government and the Sabor had to take care of the content of Croatian laws in advance, drafting them in a way that would not challenge the central government.[35]

An even more effective means of interference was the procedure of pre-sanction. The Croatian government, as well as the Hungarian and all provincial governments in the Austrian part of the monarchy, needed the king's approval for draft laws before submitting them to the Sabor as bills.

Jellinek on the position of Croatia as a province. Pliverić developed a thesis on Croatia as a state that entered into a revocable *unio realis inequalis* with Hungary and deliberately transferred parts of its competence to common bodies. As a result of that friendly discourse, Jellinek corrected his thesis on the provincial status of Croatia and developed the category of *Staatsfragmente* which included Croatia and Finland. See their correspondence in: Georg Jellinek und Josef Pliverić, *Das rechtliche Verhältnis Kroatiens zu Ungarn*, Zagreb 1985; Alexander Buczynsky and Stjepan Matković, Korespondencija Josip Pliverić – Georg Jellinek 1885. godine, in: *Zbornik Pravnog fakulteta u Zagrebu* 6 (2000), pp. 1053–84. See also Georg Jellinek, *Ueber Staatsfragmente*, Heidelberg 1896, pp. 36, 38.

35 On the institution of legislative sanction see Čepulo, Hrvatsko-ugarska nagodba (n. 34), p. 124.

The Croatian drafts had to be submitted to the king by the Croatian minister in the central government. However, unlike in the procedure of legislative sanction, the Croatian minister was not bound to send the drafts to the king without delay. Besides, the procedure of pre-sanction was intransparent not only because it was preliminary, but also because the communication between executive organs was concealed from the public. Therefore, the behaviour of the central government was not restrained by Croatian public opinion to be taken into account when deciding about the laws of the Croatian Diet.

The central government could keep draft laws of the Croatian government "in its pocket" for a long time. Or it could apply more rigid criteria than it would dare to, when the laws enacted in the Sabor were considered, in particular it could return the drafts to the Croatian government. Therefore, some Croatian Bans developed the practice of semi-formal consultations with the central government before officially asking the king to pre-sanction the draft laws in order to avoid the risk of obstruction. Given the fact that the great majority of the Sabor legislation was initiated by the Croatian government and not by deputies, the institution of pre-sanction developed for the central government into an effective means to curtail Croatian autonomy.[36]

From political point of view the question of the Croatian-Hungarian Compromise was controversial. Hungarian political parties considered it a generous concession of the Hungarian state to one of its particles, while the Croatian National Party understood it as a partial denouncement of Croatian autonomy. The National Party also denounced the Nagodba as unconstitutional, as it was negotiated and enacted by the Sabor that had been elected on the basis of the Electoral Law imposed by the king without Croatian participation. Although that opinion was highly doubtful, the National Party persisted in rejecting the Nagodba until 1873, when it came to a compromise with the Hungarian government in which a moderate revision of the Nagodba was achieved.

However, the Nagodba provided enough instruments for the central government to exercise indirect but efficient control over Croatian autonomy. But apart from that, the Nagodba introduced a stable constitutional and political framework of Croatian autonomy for the first time after 1848 – and that was an elementary precondition for modernization.

36 On the institution of pre-sanction see Čepulo, Hrvatsko-ugarska nagodba (n. 34), pp. 124–25; András Gerö, *Modern Hungarian Society in the Making. The Unfinished Experience*, Budapest 1993, p. 171; Mirjana Gross, Mađarska vlada i hrvatska autonomija u prvim godinama nakon Nagodbe [The Hungarian government and Croatian autonomy in the first years after the Compromise], in: *Historijski zbornik* (1985), p. 2.

VII *Restricted modernization in the framework of the* Nagodba, *1868–1872*

The execution of the Sabor elections in 1867, as well as the administration of Croatia after the ratification of the Nagodba, was in the hands of Ban Levin Rauch, a member of the Unionist Party and old-fashioned authoritarian former landlord. He was forced to resign in 1871, after the press had campaigned against him on the matter of corruption, and was duly replaced by another unionist. However, the dissatisfaction of the public with the Nagodba and Rauch's policy was reflected in an electoral victory of the National Party at the polls in 1872. The Unionist Party lost on a large scale and disappeared from the political scene. The result of the polls finally forced the central government towards a compromise with the National Party in 1873, which in return renounced its refusal of the Nagodba faced with the impossibility to come to power without the consent of the central government.[37]

The Nagodba prepared the ground for a reform of the Croatian administration and judiciary which were often accused of being incompetent and corrupt. The hybrid provisional regulation of administration drafted by a Croatian committee and decreed by the king in 1861 was a mixture of absolutist rules and municipal principles. The administration was inefficient and inaccessible to the citizens, while the lack of responsibility encouraged arbitrary and authoritative behaviour. The greatest problem was uneducated and corrupted personnel, incapable of carrying out reforms in a modern spirit. But in spite of the obvious need for extensive reforms, Rauch avoided more radical steps except those necessary for the implementation of the Nagodba.

One of the first laws of this period established the Autonomous Provincial Government in 1869. It consisted of three departments (Administration, Education and Religion as well as Justice, while a fourth department of National Economy was established in 1914)[38] with the Ban as president. The government was of presidential type, as the Ban and not the heads of the departments countersigned and executed Croatian laws sanctioned by the king. The departments were not headed by ministers, but by high-ranking civil servants appointed by the king, with only secondary responsibility to the Sabor. Yet during his administration Rauch avoided to propose a law on the responsibilities of the Ban and the heads of the departments. It should be noted that the Croatian laws sanctioned by the king were first countersigned by the Croatian minister in the central government who was responsible to the central Diet. Only then were they sent to the Ban for his countersignature.[39]

Another important piece of legislation was the Electoral Law enacted in 1870. It was the first electoral law of the Croatian Sabor, for all the elections since 1848 had been held on the basis of electoral laws decreed by the king. The law almost completely accepted the king's decree of 1867, on the basis of which the manipulated elections of 1867 had taken place.[40] In 1870 the Sabor also enacted the Law on the Organization of Counties retaining their municipal character but granting the Croatian government larger influence. This hybrid solution did not remove communicative problems or the lack of adequate personnel.[41]

The Law on Communal Joint-families of 1870 regulated the division of collective land ownership of communal joint-families into the private property of individual families. The process of the dissolution of poor and small Croatian communal joint-families into individual parts became a serious problem as it led to a further pauperisation of villages, while towns were not able to offer any alternatives. The law approached the problem from a liberal point of view as it did not pose serious obstacles to the division of communal joint-families, regarded as an archaic institution that should disappear in a modern age. Furthermore, the law granted women married outside of the communal joint-family an equal right to demand division, but such a provision caused a lot of problems. A particular problem was the arbitrary behaviour of local magistrates authorised to execute the division procedure. The consequence was the uncontrolled dissolution of communal joint-families, which increased social instability. Therefore, in 1872 the Sabor temporarily banned their division.[42]

37 Gross and Szabo, Prema hrvatskome (n. 26), 243 ff.

38 Until 1914 the department of National Economy had been a branch of that of Administration.

39 Čepulo, Hrvatsko-ugarska nagodba (n. 34), pp. 135–136, 138; id., Izborna reforma u Hrvatskoj 1875. – liberalizam, antidemokratizam i hrvatska autonomija [The electoral reform in Croatia], in: *Zbornik Pravnog fakulteta u Zagrebu* 3–4 (2002), pp. 672–674; Perić, Hrvatski (n. 10), pp. 21–25.

40 Čepulo, Izborna reforma u Hrvatskoj 1875 (n. 39), pp. 672–674.

41 Čepulo, Hrvatsko-ugarska nagodba (n. 34), pp. 140–142; id., Izgradnja hrvatske moderne uprave i javnih službi 1874–1876 [Building up of the modern Croatian administration and public services], in: *Hrvatska javna uprava* 1 (2001), p. 93.

42 Gross and Szabo, Prema hrvatskome (n. 26), pp. 387–38; Dragutin Pavličević, *Hrvatske kućne zadruge* [The Croatian communal joint-families], vol. I, Zagreb 1989, pp. 219–223.

The Law on the Equality of Jews, enacted in 1872, was sanctioned in 1873. This short law proclaimed the right of Jews to freely confess their faith and to enjoy full political and civil rights, but it left to the Croatian government its right of supervising religious affairs and school programmes. Closer regulation was provided in 1906 by the Law on the Organization of Jewish Confessional Communities.[43]

Despite the avoidance of any radical reforms, the period from 1868 to 1872 can be regarded as the outset of systematic reform legislation. The Croatian government drafted several important laws at that time, such as the laws on the press and trial by jury, and it even obtained pre-sanction for some of them, but then left them aside. These laws were later proposed to the Sabor and enacted by the next government, as the reform activity was highly intensified under the rule of the formerly opponent National Party.[44]

VIII *Extensive modernization, 1873–1880*

The administration of Ban Ivan Mažuranić (1873–80) was the most intensive and important time of modernization activity in the Sabor until 1918. Mažuranić, a liberally and nationally orientated Croatian politician, not only enjoyed the support of the Habsburg Court, but was also acceptable to the Hungarian government.

During the period of Mažuranić's administration, the archaic Croatian institutions and absolutist laws were finally replaced by modern ones based on values and models present in developed European countries. The modernization of legal structures was perceived as part of the building of a modern Croatian society. The goal to place Croatia among the developed European nations was explicitly stated at that time, and the adoption of values and institutions from leading European countries was seen as the adequate instrument.[45]

In fact, this period condensed the most important characteristics of the building process of modern statehood and of the legal system in Croatia in the 19th century. Therefore, the reform period of 1873–80, seen as an *Idealtyp* in Weber's sense, deserves particular attention.[46]

The extensive reforms of that time covered various issues of autonomous Croatian jurisdiction, e.g. administration, religion and education, judiciary.

43 Čepulo, Hrvatsko-ugarska nagodba (n. 34), pp. 143–144; Gross and Szabo, Prema hrvatskome (n. 26), p. 419.

44 Čepulo, Hrvatsko-ugarska nagodba (n. 34), pp. 138, 143–144; id., Sloboda (n. 29), pp. 934, 936.

45 Čepulo, Prava građana (n. 20), p. 181

46 Čepulo, Prava građana (n. 20), p. 182.

In this period the Sabor enacted about 60 laws which significantly changed the normative basis of the Croatian political and legal system. The most important ones were enacted in the period between 1873 and 1875 when the Croatian government started its intensive programme of key reforms. At that time reforms in Croatia were tolerated by weak central governments busy with the political crisis in Hungary. Another reason for tolerating the Croatian reforms was the fact that the central governments wished to demonstrate the advantages of the pro-Nagodba policy in Croatia. However, the takeover of the Hungarian government by the liberal nationalist Kálmán Tisza in 1875 obstructed the Croatian reforms. Tisza, a chauvinist politician, was determined to put Croatian autonomy under strict central control. Problems grew after the military occupation of Bosnia and Herzegovina in 1878 during the negotiations between the Croatian and Hungarian government on unifying the Military Border with Croatia. The obstacles put up by the central government semi-paralyzed the work of the Sabor and blocked reform activities of the Croatian government. Ban Mažuranić, attacked in the Sabor because of his weakness and opportunism towards the central government, resigned in despair in 1880.[47]

One of the first laws of the new administration was the Law on the Responsibility of the Ban and the Department Heads of the Autonomous Provincial Government. The law was based on the Austrian Law on ministerial responsibility of 1867, but its adaptation to the unicameral structure of the Sabor led to significant changes in the Croatian organization and procedure system. Moreover, compared with the Austrian model, the substantial basis of responsibility was loosened and focused on the protection of Croatian autonomy in the framework of the union with Hungary. The Ban, whose responsibility was juridical, could be impeached by a special court consisting of the highest judges of the Croatian courts and non-members of the Sabor elected by the Sabor. Political responsibility of the Ban never actually appeared in Croatian parliamentary practice, though the wording of the law opened some possibilities for such an interpretation *in extenso*. Two attempts to make the Ban accountable for his infringement of Croatian independence from Hungary (in 1885 and 1907) were blocked in the Sabor in the initiative phase.[48]

47 Gross and Szabo, Prema hrvatskome (n. 26), p. 372–373; Dalibor Čepulo, Središte i periferija: europske i hrvatske odrednice Mažuranićevih reformi ustroja vlasti i građanskih prava 1873–1880 [Center and periphery: the European and the Croatian derterminants to Mažuranić's reform of the government organization and of civil rights], in: *Zbornik Pravnog fakulteta u Zagrebu* 6 (2000), pp. 901 ff.

48 See Dalibor Čepulo, Odgovornost i položaj bana i članova hrvatske Zemaljske vlade 1868–1918. i ministarska odgovornost u Europi [Responsability and

Among the first and most important laws also were the laws on judiciary, in particular the Law on Judicial Power, which was a slightly abridged version of the respective Austrian law of 1867. It proclaimed the separation of the judiciary from the administration as well as the principle of judicial independence and its guarantees, i.e. tenure of judges, incompatibility, exclusive competence of the Sabor in regulating the judiciary etc. The law explicitly forbade the judicial review of constitutionality, but allowed the review of administrative acts by competent courts. The Law on the Disciplinary Responsibility of Judges, their Reassignments and Retirement granted *iudicium parum suorum* in disciplinary procedures against judges and required consent of the judge as a precondition for his retirement or reassignment before the retirement age.[49]

The judiciary was soon reorganized according to these principles. However, it is interesting that deputies successfully stopped the government's attempt to apply the principle of separation of judiciary and administration to the local courts (*mjesni sudovi*). The deputies argued that the main reason for their efficiency was cheap and simple organization and procedure close to both the uneducated parties and the lay judges, so that it should remain basically unchanged.[50] The reform of criminal legislation included the enactment of the new Law on Criminal Procedure in 1875 which was based on the Austrian Law on Criminal Procedure of 1873. But unlike its Austrian model the Croatian law avoided to mention jury courts and to define them as courts of general jurisdiction. On the insistence of the Croatian government, trial by jury was regulated by *leges speciales* and the competence of the jury reduced to crimes and misdemeanours committed by the press. Other special laws established the parole system and the Irish system in penitentiaries, whereas archaic punishments like beating and shackles were abolished.[51]

position of the Ban and the members of the Croatian autonomous government and the ministerial responsibility in Europe], in: *Zbornik Pravnog fakulteta u Zagrebu* 2 (1999), pp. 244 ff.; id., Prava građana (n. 20), pp. 61 ff.

49 Čepulo, Dioba sudstva (n. 19), p. 242.

50 Čepulo, Dioba sudstva (n. 19), pp. 256–257.

51 Čepulo, The press (n. 14), pp. 180–186; Gross and Szabo, Prema hrvatsome (n. 26), pp. 376–377; Vladimir Bayer, Stogodišnjica donošenja hrvatskog Zakonika o krivičnom postupku iz 1875. god. [The centenary of the enactment of the Croatian criminal procedure code], in: *Zbornik Pravnog fakulteta u Zagrebu* 1 (1976), pp. 17–33; Vladimir Ljubanović, 120. obljetnica donošenja i sankcioniranja hrvatskog Zakona o kaznenom postupku od 17. svibnja 1875 [120th aniversary on the enactment and sanction of the Croatian criminal procedure code of 17th May 1875], in: *Hrvatski ljetopis za kazneno pravo i praksu* 1 (1994), pp. 239–244; Čepulo, Prava građana (n. 20), pp. 63–66.

Correlated with the reforms of the judiciary, the Bill on Advocacy, which provided for the bar association and the autonomy of the profession, was to replace the old Law on Advocacy which had vested the Ban with full control, including the authority to appoint barristers and to revoke their licenses. The bill was accepted in the Sabor, but the king refused to sanction it, because the central government objected that the law provided a Croatian domicile, instead of Hungarian citizenship, as requirement for barristers in Croatia. This political issue was a conceptual one, as it concerned the question of Croatian citizenship, which shall be analyzed further on. But it was also a practical one, because the law denied Hungarian lawyers not residing in Croatia the right to practise in Croatian courts. For that reason, the Sabor avoided discussing the king's objections and dropped the bill, thus keeping in force the old law of 1852 which required a Croatian domicile for practising in Croatian courts.[52]

As to the administration, Mažuranić's intention was to establish an almost unrestricted position of the Croatian government, in order to control the implementation of modern reforms and to replace old personnel in the counties' administration incapable of implementing the new laws. However, the central government blocked his draft law, which combined the Austrian administrative organization of 1850 and 1854, objecting that the abolition of the county system was a breach of the Nagodba. In reality the central government feared the effects of such a reform on the Hungarian political scene where a similar debate concerning this matter was raging. By the compromise solution in 1875, Mažuranić did not abolish the counties, but left them as shells deprived of any authority, while the government communicated directly with fully empowered districts. In fact, the centralistic organization proved not to work rationally and was changed in 1886. Among other administrative reforms the most significant was the establishment or the improvement of rudimentary forms of public services, such as a public health service, statistical office and council for development of agriculture.[53]

The deputies in the Sabor, who were ready to accept such a centralizsation in 1875, changed their minds in 1879 when deciding on the Bill on Township Communes, which was discussed again in 1880 and sanctioned in 1881. They tried to retain the towns' autonomy, endangered by the government's intention to reform their archaic administration. One of the deputies' amendments, accepted only after strong governmental resistance, was the right of women to vote at the town councils' elections. The deputies' argument that

52 Čepulo, Pravo hrvatske zavičajnosti (n. 29), p. 81.

53 Čepulo, Izgradnja (n. 41), 94ff.; Gross and Szabo, Prema hrvatskome (n. 26), 378–379.

women did business and paid taxes like men was liberal, but probably inspired by the wish to widen the social basis of town autonomy. This only case of franchise for women in Croatia up to 1918 was omitted by the revision of the law in 1886 which severely reduced municipal autonomy.[54]

Concerning the rights of citizens, the most important reform was the press and jury trial legislation which consisted of the Law on the Press and two laws on criminal procedure (the Law on Criminal Procedure in Press Matters and the Law on the Establishment of Lists of Jurors) with the Law on Criminal Procedure here being a secondary source. The criminal regulation referred to the establishment of juries and procedure before the jury in cases of crimes and misdemeanours committed by the press. It was compiled on the basis of the moderately liberal Austrian legislation, but certain substantial changes made the Croatian laws more rigid. The Law on the Press replaced the slightly modified repressive *Presseordnung* of 1852, but it still preserved efficient means of state control through security as well as through rather extensive possibilities of confiscation of political journals in judicial procedure.[55] The Law on the Right of Assembly was almost a literal translation of the Austrian model, approaching that right as being a concession of the state. The right of association was never regulated by the Sabor legislation despite the promises of Mažuranić. The rigid Law on Associations of 1852 remained in force in Croatia, although it was replaced in Austria by a liberal one.[56]

The Law on the Right of Domicile regulated the basic preconditions of political rights in Croatia (i.e. electoral rights and the right to hold offices) which were to depend on membership in one of the Croatian local communes. Its model was the Austrian *Heimatrecht*, but the principal function of the latter was changed in a different social and political context. While the *Heimatrecht* of Austrian communes primarily ensured solidarity in case of poverty, the *pravo zavičajnosti* in Croatia served almost exclusively as a basis for particular political rights derived from the Nagodba. In fact, some Croatian constitutional lawyers developed theories on the existence of a particular Croatian citizenship. These theories, accepted partially by the political class in Croatia, were rested on the extensive interpretation of the *pravo zavičajnosti* or *Heimatrecht*, combined with the traditional concept of *indigenate* and supported by the analysis of the dual German citizenship. The

54 Dalibor Čepulo, Položaj i ustroj hrvatskih gradova prema Zakonu o uređenju gradskih općina iz 1881. godine [Status and organization of the Croatian towns accordung to the Law on township communes], in: *Hrvatska javna uprava* 1–2 (2000), pp. 93–118.

55 Čepulo, Prava građana (n. 20), pp. 180–181.

56 Čepulo, Prava građana (n. 20), p. 121.

common Hungarian-Croatian citizenship was interpreted in a federalist manner as the framework for separate Hungarian and Croatian citizenships. These purely academic theories, supplied by a doctrinal and normative analysis of the Nagodba with its pragmatic character and its dependence on the model of the Austrian-Hungarian Compromise, were at the political level only of symbolic significance.[57]

Amendments to the Electoral Law in 1875 severely reduced the role of the Croatian government in the electoral process and moderately extended elective franchise to some educated categories of the population. However, the initiative of some deputies for only a modest reduction of property qualifications was bitterly rejected. Although such a change would have only slightly extended the social basis of the Croatian electorate, its opponents stressed the danger of inclusion of the uneducated population into the political system in a backward country.[58]

Reforms in the field of education were also important. A university was established in Zagreb in 1874 with faculties of law, theology and philosophy. In fact, in 1868, as a reward for the ratification of the Nagodba, the duration of study at the Royal Legal Academy was extended to four years and its programme expanded into a universitary one. From this institution, which had continued a tradition of legal education since 1769 and 1776, a regular law faculty emerged in 1874. The role of legal education in shaping the modern Croatian legal system can be estimated as significant, considering the long tradition of legal education in Zagreb and the fact that by far the majority of the Croatian political elite and of Croatian lawyers were educated at the law schools in Zagreb or at universities abroad.[59]

Equally important in the field of education was the Law on Elementary and Teacher Training Schools of 1874 which secularized schools that had been run by the churches. It also prescribed the obligatory teaching of the Serbian language and history in areas with a considerable part of ethnic Serbs and granted the right to establish private schools under public auspices. The law was sharply criticized in the Sabor by the Catholic Church as well as by the Serbian Orthodox Church and the Sabor's deputies of Serb ethnic origin. The Catholic Church complained about an education without religious or moral

57 Čepulo, Prava građana (n. 20), p. 85. The discussion between J. Pliverić and G. Jellinek on the nature of the Croatian constitutional position was mainly, although not strictly, based on the question of *indigenate* and domicile (*Heimatrecht*). See n. 34.

58 Čepulo, Prava građana (n. 20), pp. 100–101; Čepulo, Izborna reforma u Hrvatskoj 1875 (n. 39), pp. 682–684, 688–690.

59 Čepulo, Pravni fakultet (n. 24), pp. 70–71 ff.

basis and the loss of a well-developed school system by the church. The Orthodox Church and the Serbian deputies denied the Sabor's competence in matters of religious education, vindicating them exclusively for the Serbian National and Church Congress, and insisted that the Orthodox schools granted an education in a Serbian national spirit. However, the competences of the Serbian National and Church Congress were regulated by Hungarian law and supervised by the Hungarian government in spite of the fact that its see was in Croatia. This was a clear infringement of the Nagodba. The proposed range of Serbian church autonomy and the demands of the Serbian deputies to exclude this issue from Croatian competence were interpreted in the Sabor as the first step towards a Serbian political autonomy on Croatian territory at a time when a Serbian national state was emerging nearby. However, the Sabor's Law on the Greek-Eastern Church, acknowledging the autonomy of the Orthodox Church in Croatia under the Ban's supervision enacted in 1875, was not sanctioned by the king because the central government insisted on the exclusivity of its control over the Greek-Eastern Church in the whole Hungarian half. The problem was resolved on a normative level in 1887 by a Sabor law which accepted the control of the central government in that issue, thus giving it a constitutional cover.[60]

Legislative activity concerning economy was moderate. The Croatian government definitely decided that special commercial courts would not be established in Croatia because of the lack of financial means as well as of experience with such courts. Instead, competent court jurisdiction in areas of intensive commercial activity was widened to the field of commercial law. The procedure of judicial enforcement was made more effective in order to encourage the yet meagre capitalist activity. However, another law constituted maximum interest rates on loans, deregulated in 1870, in order to prevent an exploitation of the countryside. The new Law on Communal Joint-families of 1874 allowed their optional division, but made it obligatory on the initiative of any member. In order to prevent manipulations and to slow down the dissolution of communal joint-families, the law restricted the right of married

60 It should be noted that since 1861 the learning of the Cyrillic alphabet was obligatory in all schools in Croatia. Dalibor Čepulo, Ivan Mažuranić, liberalne reforme Hrvatskog sabora 1873–1880. i srpska elita u Hrvatskoj [I.M., the liberal reforms of the Croatian Diet 1873–1880 and the Serbian Elite in Croatia], in: *Dijalog povjesničara – istoričara: Herceg-Novi*, edited by Hans-Georg Fleck and Igor Graovac, Zagreb 2002, pp. 279–282; Mirjana Gross, Zakon o osnovnim školama 1874. i srpsko pravoslavno Školstvo [The Law on elementary schools of 1874 and the Serbian orthodox schools], in: *Zbornik radova o povijesti i kulturi srpskog naroda u SR Hrvatskoj*, vol. I, Zagreb 1988, pp. 83–110.

women to demand their division,[61] yet the dissolution could hardly be controlled. In 1876 another law finally removed the remnants of feudalism, as it allowed the transition of "common" plots utilized by former landlords and peasants into the private ownership of the latter.[62]

The Croatian reforms from 1873 up to 1880 can be seen as part of a broader development of public law institutions in European countries. This process, determined by the intertwining of indigenous developments and exogenous influences, indicates the existence of a West-European nucleus and the adoption of its values, institutions and norms by less-developed countries. Their orientation towards the developed countries was motivated by a belief in the possibility of an accelerated imitation of the latter through a scientifically based adaptation of institutions. Moreover, accelerated development planned on the basis of adopted institutions was also seen as a response to the challenge by the developed European centre. Neutralization of the dependency on the developed countries and the inclusion within their circle was the final response to that challenge and the fundamental goal of the reforms.[63]

The reform period of Ban Ivan Mažuranić was part of such a development. The reforms were founded on liberal tenets, the German idea of the *Rechtsstaat*, predominantly German institutional models and on Austrian laws carrying both German and French influences. These influences were determined by the functional advantages of the accepted solutions as well as by the persuasiveness of the cultures and ideologies of the countries mentioned. Furthermore, the reforms of the seventies were determined by the tradition of the Croatian state right (*Staatsrecht*), the tradition of the reform efforts since 1848, as well as by internal political, financial, social and cultural factors. Primarily, the reforms were limited by the distribution of political power between the Croatian government and the central government in Budapest which acted in Hungarian interests. However, their rigidity was also affected by the political concepts of the Croatian reformers. Their fundamental goals were to make steps towards the integration of separated Croatian regions, i.e. the Military Border and Dalmatia, to lay down a basis for the speedy development of Croatia, to shape a modern Croatian identity,

61 Gross and Szabo, Prema hrvatskome (n. 26), pp. 389–390; Pavličević, Hrvatske (n. 42), pp. 231–233.

62 Gross and Szabo, Prema hrvatskome (n. 26), pp. 395–396.

63 Čepulo, Prava građana (n. 20), pp. 7–10 ff., 182–183; Dalibor Čepulo, Modernizacija prava u europskoj jezgri (Engleska, Francuska, Njemačka) i zemlje periferije 1780–1880 [Legal modernization in the European core (England, France and Germany) and the lands at the periphery], in: *Vladavina prava* 3–4 (2001), pp. 9–17.

to neutralize dependency, especially towards Hungary, and to create basic presuppositions for recognition among the developed European countries.[64]

The ideological basis of the reforms can be found in the liberal orientation prevailing in most European countries by the end of the 1870s which was also embraced by almost all political parties in the Sabor. Similarities between Croatian and European liberals were particularly visible in regard to the importance ascribed to education, to the ideas of progress and refusal of "backwardness", to confidence in science and rational organization of society. However, there were also differences. An important one was the lack of efforts concerning the separation of church and state in Croatia (except for the secularization of elementary schools), although sharp criticism of the church-state connection was almost a trademark of Western European liberal politics. This was probably due to the active role of the clergy in the Croatian national movement from the 1830s onward. Similar to this was the complete absence of any criticism of the military, not only avoided because it would have been unrealistic, but also because it would have meant a challenge to the fundament of the monarchy. In fact, even the most critical Croatian references to Vienna tacitly accepted the monarchy as a counterweight to Hungarian attempts on Croatian autonomy and as a guarantee of the Croatian position.

A conceptual difference towards Western liberal ideologies and politics was the intertwining of liberalism with the idea of national statehood, the latter simultaneously based on the legitimist concept of the Croatian *Staatsrecht* and on natural law. Thus, liberal determinations were strongly interconnected with historicism, while the idea of the State had particular importance comparable with the orientation of Hungarian and, partly, Austrian-German and German liberals. Another specific feature was the rigid anti-democratic attitude of Croatian liberals, reflected in the strong anti-democratic orientation of the reforms which remained a Croatian constant until 1918. As already mentioned, in 1875 it manifested itself in the explicit rejection of a moderate bill extending the elective franchise to lower social categories. The rejection was motivated by the fear of letting uneducated masses participate in the political system. Such an orientation was also expressed in the rejection to extend the jurisdiction of jury courts. The crucial arguments in the debate underlined that the social stratification of the poor and mainly peasant Croatian society did not represent a sufficient ground for a broader role of lay courts. However, the concern about possible reactions of the Hungarian government was also an important reason for that "deliberate" reduction.[65]

64 Čepulo, Prava građana (n. 20), pp. 183.
65 Čepulo, Prava građana (n. 20), pp. 101, 183–184.

The influence of the *Rechtsstaat* idea in the reforms of the 1870s can in particular be traced in the emphasis on organizational, instrumental and conciliatory dimensions of the reforms (i.e. the priority of building an organization of rational power, able to preserve the balance of interests) and in the view of the citizen rights being only of secondary importance. It can also be found in the implied concept of subjective public rights of citizens as a reflex of objective public rights.[66]

The priority of organisational reforms at the expense of those concerning civil rights can partly be explained by the need for reorganization of the old ineffective administration and judiciary as a precondition for further reforms. The intention of the reformers was to build a basis for the autonomous government and to establish a modern and effective administrative-political system that would transform their goals into reality. But such a "functional" determination was not the only reason why the rather moderate reforms in the sphere of the civil rights remained uncompleted. The other reason was that the government saw these rights as secondary, since they were derived from the self-restriction of the state authority and did not have their own sphere. Such a basic attitude was shared by most of the deputies and, except for some disagreements on details, there was no fundamental contention on this issue between the deputies and the government.

The reform laws were almost completely based on the respective Austrian laws of the 1860s and 1870s – except for the Law on Communal Joint-families, which obviously had no model – while administrative and judicial organization was rooted in the Austrian laws of the 1850s. The advantage of Austrian laws, familiar to the Croatian lawmakers, consisted in the fact that they had stood the test of practice and were closer to the Croatian conditions than other models, so they could be quickly incorporated into the Croatian legal system. Furthermore, following Austrian laws made royal legislative sanction easier. Austrian laws, based on the idea of the *Rechtsstaat*, were also politically acceptable to the sceptical liberalism of Croatian reformers, as they represented a moderate reception of liberal principles and models from more developed Western countries. The adaptation of Austrian laws to Croatian circumstances generally consisted in moderate restrictions of their liberal substance, i.e. the position of administrative authorities was strengthened and the subjective rights of citizens were weakened. This was due to the ideological orientation and limitations of Croatian liberals, but also to the policy of the central government. The main problem of the fast reception of Austrian laws was their insufficient accommodation to Croatian practice. Even if the

66 Čepulo, Prava građana (n. 20), p. 181.

policy of such an extensive and uncritical adoption of external models might be challenged, the development of own solutions would have taken more time and would have diminished their chances to be accepted.[67]

Although Mažuranić did not share the opinion which conceived the Croatian autonomy as statehood, it seems that he accepted the possibility of its growth. His program of reforms can be interpreted as having laid down the modern institutional basis of Croatian autonomy on which it could develop towards statehood. In fact, despite all limitations, the modernization of Croatian institutions undertaken in the seventies prepared the ground for a more independent position of Croatia in its unequal union with Hungary.[68]

In comparison with developed European countries, as well as with Austria and Hungary, Croatian liberal reforms of the 1870s were narrow in scope, moderate in substance and delayed in implementation. Their strong anti-democratic tendency was particularly noticeable. But in spite of their limits, Mažuranić's reforms definitely linked the nation-building process in Croatia with modern values, thus giving to the Croatian legal system the elements of modern European identity.[69]

IX *Modernization and integration of the Military Border into the Croatian legal system, 1871–1882*

Ban Mažuranić was not acceptable to the Hungarian government which feared that a liberalization of Croatian institutions would strengthen and extend Croatian autonomy. Moreover, the government was afraid that a modernized Croatia might become a beacon for the rest of the South Slavs in the monarchy and provoke their unification. That fear increased after the Austrian-Hungarian occupation of neighbouring Bosnia and Herzegovina in 1878. It was the main reason why the central government kept on obstructing unification of the Military Border with Croatia during Mažuranić's administration.[70]

For Mažuranić's government the unification with the Military Border was a strategic national goal as well as an important presupposition for the continuation of the reforms. Modernization in Croatia was blocked because of political obstruction by the central government which, due to the Nagodba,

67 Čepulo, Prava građana (n. 20), pp. 185–186.
68 Čepulo, Prava građana (n. 20), pp. 186.
69 Čepulo, Prava građana (n. 20), pp. 186–187.
70 Mirko Valentić, *Vojna krajina i pitanje njezina sjedinjenja s Hrvatskom 1849–1881* [The Military Border and the question of its unification with Croatia], Zagreb 1981, p. 310; Horvat, Stranke (n. 8), pp. 53, 210.

held public finances in its hands. Therefore, the main obstacle to the integration of the Military Border became the disposition over a rich fund consisting of the incomes from the exploitation of local woods. It was intended for the improvement of economy and communications in the Military Border and was run by the central command, the territory's provisional government. The Croatian government and the central government competed for the authority to administer that fund after the unification of the Military Border with Croatia. The king decided in favour of the central government which insisted that by virtue of the Nagodba it was entitled to administer all public finances. Mažuranić, faced with the obstruction of the unification and of the reform activity, resigned.[71]

Mažuranić was replaced by Ladislav Pejačević, a moderate Hungarophile politician who resigned in 1882 because of a hardliner Hungarian attitude against further reforms. Apart from that, he enjoyed enough confidence to execute the unification of the Military Border with Croatia. However, as a precondition, the Sabor was forced to accept a revision of the Nagodba's principle on proportional Croatian representation in the Hungarian Diet. Otherwise the enlargement of the Croatian population after the unification with the Military Border would have resulted in an increase of Croats in the Hungarian Diet. As the central government feared, it might have tipped the scales between the Hungarian parliamentary parties.[72] Only after this revision did the king proclaim the beginning of the integration on 1 January 1882.

In fact, the question of unification with the Military Border, which was connected with the necessity of a parallel modernization of this most backward region of the monarchy, had already arisen in the Sabor both in 1848 and 1861. However, it was only between 1869 and 1871 that the controversy about the Military Border between the Hungarian government and Austrian military circles was resolved by laying the issue in the hands of the Hungarian government. Only thereafter did the process of demilitarization of the Military Border and the preparation for its inclusion into civil administration begin.

In 1871 the most developed part of the Croatian Military Border was directly integrated into Croatia-Slavonia and most of the new territory was organized as a new county. The provisional military government which

71 Valentić, Vojna krajina (n. 70), pp. 279–299; Gross and Szabo, Prema hrvatskome (n. 26), pp. 357–358.
72 On the number of Croatian delegates in the House of Representatives see footnote 33. See also Macartney, The Habsburg Empire (n. 7), pp. 275 ff.; Jászi, The Dissolution of the Habsburg Monarchy (n. 33) and on the statistics Macartney, The Habsburg Empire (n. 7), pp. 275 ff.

administered the remaining part of the Military Border decreed *ad hoc* laws based on Austrian legislation in order to prepare the region for civil institutions. The judicial reform of 1872 separated judiciary from administration and introduced the tenure of judges earlier than in Croatia.

The introduction of these two principles in the Military Border before their introduction into the Croatian legal system influenced the dynamics of reforms in Croatia. The law by which the two principles were introduced in the Military Border provided for the introduction of the same principles in Croatia as a precondition for their unification. Ban Mažuranić understood the wording of the law as an announcement that the unification would follow soon after the two principles had been introduced in Croatia. This wrong conclusion, supported by the feeling that the backward militarized region had more modern institutions than Croatia itself, motivated Croatian reformers towards an immediate judicial reform in 1873 already mentioned, even though it lacked certain preconditions for its full implementation. But the unification with the Military Border was suspended in spite of the judicial reform in Croatia.[73]

The integration of the Military Border, inaugurated on 1 January 1882, consisted in a gradual introduction of civil Croatian institutions which replaced the ad hoc regulations imposed during the demilitarization from 1871 onward.

X Reformatio in peius: *the period of Ban Karoly Khuen-Héderváry, 1883–1903*

Ladislav Pejačević, who resigned as Ban in 1882, was replaced by Karoly Khuen-Héderváry, an ethnic Hungarian noble and Croatian resident who was member of the Liberal Party in Hungary, cousin of the Hungarian Prime Minister Kálmán Tisza and a man of the king's personal confidence. During his long administration (1883–1903) public law institutions that had previously been established were replaced by regulations amounting to authoritarian rule in constitutional forms. He compensated the authoritarian style in politics by providing space for the establishment of important national cultural institutions and by improving education in primary and secondary schools.

Khuen-Héderváry was appointed as a reliable agent of the central government in Croatia who was able to impose an own policy and who did not depend on the support of the Croatian political parties. Khuen-Héderváry's

73 Čepulo, Dioba (n. 19), pp. 240–241, 245–246; Gross and Szabo, Prema hrvatskome (n. 26), p. 429; Valentić, Vojna krajina (n. 70), p. 270.

task was to secure the dualistic structure of the monarchy by guaranteeing Hungarian predominance in its own half. Therefore, he was to take care of Croatian autonomy not becoming a challenge to Hungarian interests.[74]

Without any hesitation to instrumentalize both pressure and money to achieve his ends, Khuen-Héderváry utilized perturbations in Croatian political life turning the National Party into a governmental party and a supporter of his rule. The political fundament of his rule was secured by a narrow social base of the political system, further restricted by the Electoral Law of 1888, which remained in force until 1910. The electoral reform considerably restricted financial, professional and intellectual qualifications and restored the government's active role in the electoral process. As a consequence, less than 2% of the population enjoyed elective franchise while the government controlled elections. Control of political life was supported by the new Law on the Organization of the Sabor of 1887 which extended the legislative term from three to five years. Motivated by the same change in Hungary, this reform contributed to the stability of the deputies' positions so that they became even less dependent on their electoral basis, and that fact again allowed more room for manipulations. A revision of the Standing Orders of the Sabor institutionalized the repression of the parliamentary minority by the majority and silenced the opposition.[75] Khuen-Héderváry also granted privileges and protection to the political elite of the ethnic Serbs, thereby gaining their support. In fact, he practised a classical *divide et impera* policy in a hostile environment, privileging the minority in order to control the majority.[76]

74 Jaroslav Šidak et al., *Povijest hrvatskoga naroda g. 1860–1914*, Zagreb 1968, p. 120.

75 Čepulo, Prava građana (n. 20), pp. 102–103; Šidak et al., Povijest (n. 74), p. 124; Hodimir Sirotković, Organizacija Sabora Hrvatske i Slavonije u nagodbenom razdoblju 1868–1918 [Organization of the Croatian-Slavonian Diet in the period of the Compromise], in: *Hrestomatija povijesti hrvatskog prava i države*, vol. I, edited by Neda Engelsfeld, Zagreb 1998, p. 288.

76 Ethnic Serbs mostly lived in the Military Border so that their number in Croatia considerably increased after its reintegration into civil Croatia in 1882. See: Mato Artuković, *Srbi u Hrvatskoj (Khuenovo doba)* [Serbs in Croatia (the Khuen's period)], Slavonski Brod 2001; Vasilije Krestić, Politički, privredni i kulturni život u Hrvatskoj i Slavoniji [Political, economic and cultural life in Croatia and Slavonia], in: *Istorija srpskog naroda*, vol. VI.i, edited by Andrej Mitrović, Beograd 1983, pp. 375–431; Andrija Radenić, Srbi u Hrvatskoj i Slavoniji 1868–1878 [Serbs in Croatia and Slavonia], in: *Istorija srpskog naroda*, vol. V.2, edited by Vladimir Stojančević, Beograd 1981, pp. 232–79; Nicholas John Miller, *Between Nation and State. Serbian Politics in Croatia before the First World War*, Pittsburgh 1997.

Neither Khuen-Héderváry nor the central government obviously wanted unconstitutional forms of rule in Croatia, as they could have become a precedent for an encouragement of the Court to introduce unconstitutional measures in Hungary. Therefore, in order to exercise an authoritarian policy in Croatia in a constitutional form, Khuen-Héderváry had to change the liberal institutions established in the previous reform period of the seventies.[77] Two principal changes undertaken soon after Khuen-Héderváry's arrival consisted in the abrogation of the judge's tenure and the suspension of jury trial.

In 1884 the Croatian government initiated a three-year suspension of parts of the Law on Judicial Power concerning the tenure of judges. The same year, the Law on Disciplinary Responsibility of Judges, their Reassignments and Retirement was abrogated and "provisionally" replaced by the absolutist Law on the Interior Organization of Judiciary of 1853, authorising the Ban to reassign judges to other courts. In 1887 the suspension of the tenure of judges was extended to another three years. A permanent solution was found in 1890 in the enactment of the Law on Personal Relations, Official Duties and Disciplinary Responsibility of Judicial Clerks based on the principles of the above-mentioned absolutist law of 1853.[78]

Once again in 1884 the government initiated a three-year suspension of jury trial which was extended by another two years in 1887. It was the institutional cover for persecution of the oppositional press. The government justified the suspension by arguing that even the most obvious offences prosecuted by the state attorney before a jury ended with acquittal. The government insisted that in such circumstances jury trial had lost its meaning and criticism by the press had gone beyond the acceptable. The opposition argued on the contrary that trial by jury was a guarantee for the objectivity of the court in a country in which the judiciary was not provided with any guarantee against influence from the government. Jury trials were reinstated in 1890 after the Croatian political scene had been pacified. But in 1897, following a political crisis, jurisdiction on misdemeanours by citizens was transferred from jury courts to county courts. This enabled state officials to sue critics publishing in the press as private citizens on the grounds of misdemeanours. In such cases regular single judges in county courts, which had been divested of the guarantees of judicial independence since 1884, were competent. Apart from that restraint, jury trial was suspended again in 1903 after the eruption of anti-governmental and anti-Hungarian demonstrations

77 Čepulo, The press (note 14), p. 29.
78 Čepulo, Prava građana (n. 20), pp. 66, 67–68.

in Zagreb which had been triggered by polemics between the Serbian and the Croatian press over Serbian support for the government. Although the suspension was not even temporally limited this time, it still passed through the Sabor without objection.[79]

In 1886 Khuen-Héderváry reinstated the county system in order to replace the centralized administration introduced by Mažuranić. The change was necessary as the Croatian government, burdened with communication with the districts since Mažuranić's reform, could not concentrate on policy-making. The revision of the Law on the Township Communes in 1886 incorporated the towns into the system of provincial administration by way of the Ban's appointment of mayors, who previously used to be elected, and through the government's competence of close supervision. As already mentioned, the women's right to vote in town council elections was omitted by this revision.[80]

Important pieces of Khuen-Héderváry's legislation were laws regulating the position of the Orthodox and Protestant churches. These questions were also entwined with the question of autonomy.

The Law on the Competences of the Greek-Orthodox Church and the Use of Cyrillic, enacted by Khuen-Héderváry in 1887, acknowledged the status of the Serbian Orthodox Church in Croatia, but it left the central government the right to supervise the church in whole Hungary. It also granted religious and school autonomy to orthodox Serbs as well as the parties' right to use the Cyrillic alphabet in official proceedings in areas with a Serbian majority. Thus, in a way, the law also regulated minority rights.[81]

The protestant religion in Croatia had been acknowledged by the emperor's decree of 1859 which had a provisional validity after the return of the constitution in 1860. But it was not before 1898 that the Croatian Sabor acknowledged the Evangelic Church. The Law on the Status of the Evangelic Churches of Augsburg and Helvetian Confessions granted the Ban the right of supervision, but it also acknowledged the automatic application of church laws enacted by the central church authorities in Hungary. Soon the opposition objected to the practice of the Hungarian church authorities, who demanded that candidates for priesthood had to speak Hungarian and to complete their education in Hungary. However, the government's promise to revise this law in 1907 remained unfulfilled.[82]

79 Čepulo, The press (n. 14), pp. 186–189.
80 Čepulo, Položaj (n. 54), p. 117.
81 Gross, Zakon (n. 60), pp. 110–114; Miller, Between Nation and the State (n. 76), pp. 36–38, 42–43.
82 Čepulo, Prava građana (n. 20), pp. 171–172.

In 1889 the Law on Communal Joint-families introduced new restrictions on their division by prescribing as prerequisites the grant of minimal plots of land, the consensus of a majority of the members and the approval of administrative authorities. The intention of the law was to keep this archaic institution alive as a traditional Croatian institution and as a guarantee for social stability.[83]

XI *Unfinished re-liberalization between 1906 and 1918*

Khuen-Héderváry left Croatia in 1903 when the king unsuccessfully appointed him as president of the Hungarian government in order to suppress tendencies towards independency in the Hungarian Diet. After his departure the Croatian-Serbian Coalition, a small cluster of democratic parties, won a majority in the Sabor and participated in the Croatian government twice for a short time (1906/07 and 1917/18) after having come to a compromise with the central government. That period was characterized by a moderate re-liberalization of press and jury legislation as well as of elective franchise. Further liberalization that had been announced was not undertaken because of an internal political crisis, and also because of the outbreak of the First World War, due to which the Sabor was largely dissolved.[84]

The status of judges, regulated by the Law on Personal Relations, Official Duties and Disciplinary Responsibility of Judicial Clerks of 1890, was not improved in spite of the efforts of the Association of Croatian Judges made in 1907. In fact, the government's bill on revision of that law was passed by the Sabor in 1907 but it was not sanctioned by the king, although its grants for judicial independence were still below those of the legislation of 1874. The law of 1890 was considerably changed only in 1917 when the instruments for the Ban's influence on judges were limited.[85]

The revision of the trial by jury had a better outcome. The new Croatian government reinstated jury trial in 1906, and in 1907 a small set of reforms of the outdated laws on press and on jury trial was undertaken. The requirement of security was forbidden and a second jury court was established in the town of Osijek. The government hinted at the fact that some repressive parts of the legislation on jury trial were not yet removed out for fear of the central government and because the Croatian government still relied on such instruments of transition from a repressive regulation to the freedom of the press.[86]

Substance, dynamics and political correlation of the Croatian press and jury trial legislation from 1875 to 1918 can be presented through the table below.[87]

GOVERNMENT	LEGISLATION
Ban Ivan Mažuranić and National-Liberal Party 1873–80	1875 – Law on the Use of Printed Matters – Law on Criminal Procedure – Law on Criminal Procedure in Printed Matters – Law on Establishing a List of Jurors
Ban Karoly Khuen-Héderváry and National-Unionist Party 1883–1903	1884 – abrogation of the principle of separation of judiciary and administration and of tenure of judges (independence of judiciary abrogated) – suspension of jury trial for three years 1887 – suspension of jury trial for two years 1890 – reinstatement of jury trial 1897 – limitation of jurisdiction by jury 1903 – indefinite suspension of jury trial
Croatian-Serbian Coalition 1906/07, 1917/18	1906 – reinstatement of jury trial 1907 – liberalization of the Law on the Use of Printed Matters (security abolished) – establishment of a second jury court

In 1910 the new Electoral Law was enacted. It was partly influenced by the movement for the introduction of general elective franchise, which appeared at the beginning of the 1890s as a reflection of a similar development in Austria. The law extended elective franchise to practically every male of higher education, lowered property and tax qualifications for all categories of voters and removed indirect election. In this way, the segment of the population with elective franchise increased to 8%. In 1917–18 a substantial electoral reform was undertaken when the Electoral Law introduced general male elective franchise and secret ballot. However, the law, proclaimed in September 1918, came too late to be applied – only shortly

83 Ferdo Čulinović, *Državnopravna historija jugoslavenskih zemalja XIX. i XX. vijeka* [Constitutional history of the Yugoslav Lands in the 19th and 20th centuries], vol. I, Zagreb 1956, pp. 151–155.
84 Šidak et al., Povijest (n. 74), pp. 213, 21 ff.
85 Čepulo, Prava građana (n. 20), pp. 67–71.
86 Čepulo, The press (n. 14), pp. 189–190.
87 Čepulo, Prava građana (n. 20), p. 159.

before the establishment of the new State of the Slovenes, Croats and Serbs.[88]

An important piece of legislation was the Law on Inter-Confessional Relations of 1906 which based matrimonial and family relations on the principle of equality of the legally acknowledged religions and not, as was the case in Austria, on the freedom of belief. It prescribed that everybody should belong to one of the acknowledged religions, but only conversion to the Christian faith was allowed. In 1916 a special law, enacted after the Austro-Hungarian annexation of the Muslim-dominated Bosnia and Herzegovina in 1908, acknowledged Islam. The law contemplated the enactment of a special matrimonial law for Muslims and proclaimed that the OGZ-rules on matrimony did not imply an infringement of their religion. The law explicitly authorized state authorities to provide for fines and necessary repressive measures in cases of breach of jurisdiction or passive disobedience to the law by official bodies of the Islamic church organization.[89]

Thus, a complete list of religions acknowledged by the law included the Catholic and Serbian Orthodox Churches, the Evangelic Churches of Augsburg and Helvetian confessions as well as the Jewish and Islamic faith.

XII *Conclusion. Modernization in Croatia in the centre-periphery perspectives*

The formative process of modern institutions in Croatia from 1848 to 1918 can be divided into seven periods.

The first period is to be set in the year 1848. The introduction of equality of citizens and the principle of their representation in the Croatian Sabor provided the basis for further modernization. However, further steps were not taken due to various indigenous and exogenous reasons.

88 Čepulo, Prava građana (n. 20), pp. 106–109; Anto Milušić, Temeljna obilježja izbornog sustava za Hrvatski Sabor u njegovome izbornom redu iz 1918. godine [Basic characteristics of the electoral system for the Croatian Diet in the Electoral order of 1918], in: *Pravni vjesnik* 1–2 (2000), pp. 127ff.; id. and Josip Vrbošić, Saborska rasprava o Osnovi zakona o izbornom redu za Hrvatski Sabor iz 1918. godine [The parliamentary debate about the Bill on the electoral order for the Croatian Diet], in: *Pravni vjesnik* 3–4 (1999), pp. 418 ff.

89 Čepulo, Prava građana (n. 20), p. 177; Karl Goss, *Udžbenik crkvenoga prava Katoličke crkve. Preveo i dopunio s osvrtom na posebne pravne odnose u Kraljevini Jugoslaviji Dr Milan Novak* [Handbook of canon law of the Catholic Church. Translated and ammended with comments on the specific legal relations in the Kingdom of Yugoslavia by Dr. Milan Novak], Zagreb 1930, p. 71.

During the period of false constitutionality and neoabsolutism (1849–60), a number of reforms were imposed by Vienna. Apart from centralism and Germanization, the reforms changed archaic Croatian regulations in administration and judicial organisation as well as in both private and penal law and procedure. They also improved legal education.

The period of provisional constitutionality (1861–1867) was characterized by the intensive legislative activity of the short-lived Sabor of 1861. Its ideological platform was the intention of the reformers to merge Croatian municipal traditions with modern values and models. However, the attempt proved ineffective because of the early dissolution of the Sabor.

Although the Hungarian-Croatian Compromise of 1868 defined Croatian autonomy in an ambiguous way enabling control by the central government, it still set up a stable institutional framework which was a presupposition for modernization.

In the period of authoritative administration by the politicians of the Unionist Party (1868–73), who were strongly backed by the central government, the reforms necessary for the implementation of the Nagodba were mostly undertaken. However, the enacted laws as well as some draft laws marked the beginning of serious and intensive reform activity in the next period.

Such was the period of Ban Ivan Mažuranić's rule (1873–1880), initially supported by the National Party, the Court and the central government. During extensive modernization concerning all issues of autonomous competence, archaic regulations and the absolutist laws were replaced by modern institutions enacted in the Sabor. The reforms proved semi-effective primarily because of the obstacles imposed by the central government, but also because of indigenous limitations including the conservatism of Croatian liberals. Due to obstruction by the central government, the process of integration of the Military Border, started in 1871 with the demilitarization and modernization of its institutions, was only finished in 1882.

The long period of administration of Ban Karoly Khuen-Héderváry (1883–1903) meant a regression in the development of the public law. This particularly refers to the restrictions of the rights of citizens and the instruments of their protection (franchise, freedom of the press, jury trial, separation of judiciary and administration, tenure of judges). The period was moulded by Khuen-Héderváry's authoritarian style of rule veiled in constitutional or semi-constitutional forms and by the clear domination of external interests.

Finally, the period from 1903 to 1918 was characterized by the predominance of the Croatian-Serbian coalition in the Sabor and its short participation in the Croatian government (1906/07, 1917/18) as well as by a moderate re-liberalization of press laws, jury trial and elective franchise. Further liberalization was stopped for various indigenous and exogenous reasons.

In a general view of modern Croatian history, the modernization during Mažuranić's period proves to be an *Idealtyp*, perfectly combining all the characteristics of the process. Therefore a sketch of its determinants can serve as a model of modernization in Croatia in the 19th century.

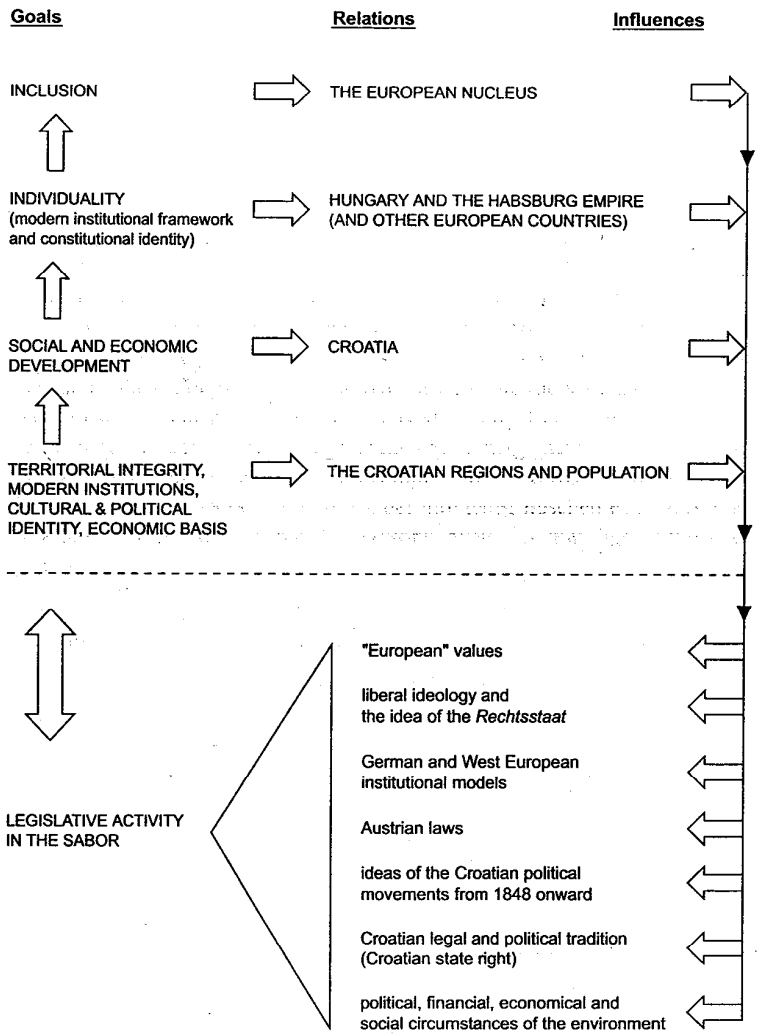
Modernization in Croatia can be presented in graphic form as a process determined by influences, goals and relations. It took place by receiving inputs from the environment, i.e. objective circumstances, Croatian traditions, European values, liberal ideology and the idea of the *Rechtsstaat*, Central-European models and Austrian laws, Croatian liberal ideas, Croatian legal and political traditions as well as the political, financial, economical and social circumstances. The goals of modernization can be seen as on a four-level hierarchical ladder where higher levels presupposed the fulfilment of the lower. The goals were 1) to consolidate Croatian regions, to create modern institutions and a modern Croatian cultural and political identity; 2) to raise the development potentials in Croatia, especially its economics; 3) to extend and consolidate the Croatian constitutional particularity versus Hungary and the Habsburg monarchy and, consequently, versus other European countries; 4) to include Croatia among the "civilized European nations" as a country with modern cultural and political identity and a developed economy. These goals interacted with influences from the environment, which is represented graphically at the end of the article.

From a structural and cultural point of view the described position of Croatia can be interpreted as peripheral. The adoption of modern European values, institutions and laws can be seen as a manifestation of the peripheral position of Croatia in regard both to the European and to the Viennese cultural and political centres. The restrictions from Budapest as the political centre were another important dimension of the centre-periphery relations. It is noteworthy that the principal Croatian intentions were the neutralization of the dependency primarily in regard to Budapest and the response to the challenge from the European centre through a step-by-step integration of Croatia.

When taken together, Croatian relations with the European centre and the domestic centres of the monarchy (Vienna and Budapest) suggest the position of Croatia as a double periphery. Perhaps this position can be compared with similar cases, for example with the position of Finland towards the European and Russian centres. This opens up the question of possible common characteristics in the development of modern legal institutions in peripheral countries as a distinct theoretical and historical model.

Dalibor Čepulo (Zagreb)

MODERNIZATION OF THE CROATIAN LEGAL SYSTEM IN THE 19TH CENTURY
(Goals, Relations, Influences)[90]



90 Čepulo, Prava građana (n. 20), p. 188.