

RIISING VOICES OF THE PEOPLE: ECHOES OF THE REVOLUTION OF 1848 IN SERBIAN LAW

Abstract

The paper discusses the influence of the Revolution of 1848 on the law of the Principality (later Kingdom) of Serbia, where young liberal-minded men, educated abroad, brought modern ideas of political representation and debate after the “Serbian Revolution” in Hungary in 1848-49. The author focuses on parliamentarism as the primary and freedom of press as the secondary demand of this liberal intelligentsia, and traces their evolution over four decades – from the St Peter Assembly of 1848, that first made these demands, to the Constitution of 1888, that finally fully enshrined them in positive law.

Keywords: Serbia, parliamentarism, political representation, freedom of press, National Assembly

1. Prologue: Serbia 1804-1848 – a Background

The main touch of Serbs as a people with the Revolution of 1848 was, of course, that of the Serbs living in Hungary and the so-called Serbian Revolution or Serbian National Movement in 1848-49. These events are not the subject of this paper: suffice to say that they failed to drastically change the

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position of Serbs in Hungary.⁵⁵⁵ However, their sound echoed across the border, in the Principality of Serbia, still an autonomous province under Ottoman rule. There are many aspects that could be analysed, but we shall focus on the two main demands made by Serbian liberals of that time: in the first place, political representation (parliamentarism), and, secondary but still relevant, the freedom of press. The greatest attention will be devoted to the direct aftermath of the Revolution, the Assemblies of 1848 and 1858, but we shall then briefly trace the outline of development of these two key issues until their (not quite final) realisation four decades later, in the Constitution of 1888.

After four centuries of direct Ottoman rule, the uprisings of 1804-1813 and 1815, and an unstable period of dual government of Ottoman and Serbian organs in 1815-1830, the Principality of Serbia was granted internal autonomy by the *hatt-i-humayun* of 1830 and 1833, under the reign of Miloš Obrenović. Miloš passed the first Serbian Constitution, the Sretenje (Candlemas) Constitution in 1835:⁵⁵⁶ however, as it was written as if Serbia were an independent country, without acknowledging Ottoman sovereignty, Miloš was forced by the Great Powers to abolish the Constitution after only six weeks.⁵⁵⁷

Still, he pressured the Porte to enable a constitution to be passed, which led to a new one in 1838 – issued by the Sultan in the form of a *hatt-i-humayun*, and known later as the Turkish Constitution. The main structure of power remained highly similar: both the legislative and executive were shared by the Prince and the (State) Council,⁵⁵⁸ made up of officials that he appointed for life, some of whom were ministers (and could lose that post), and some ordinary councillors. However, the Council now limited the Prince

555 An extensive bibliography exists on this subject; see e.g. Perović 1952; Pavlović 1986; Popović 1990, pp. 207-309; Gavrilović 2000; Krkljuš 2008, 2010a, 2010b.

556 See all texts of Serbian constitutions in Jovičić 1988.

557 Older literature mistakenly believed that Miloš was pressured into issuing the Constitution by Mileta's revolt in 1835 and thus didn't regret its abolition; however, it is now known that he had ordered drafts to be made as early as 1829 and that he genuinely wanted to see the Constitution succeed. Whether he could have reigned as a proper constitutional monarch is a different matter. See Popović 1996; Avramović 2010, translated into English as Avramović 2020.

558 In 1835, the organ was called State Council; in 1838, only Council, in order to deny any allegations of Serbian statehood. While the name State Council was later restored, it was often referred to only as Council in short.

more strictly, and for a councillor to be deposed, a judicial verdict was no longer sufficient: the Porte's consent was required, in direct contradiction with the previously proclaimed autonomy. Among other important changes, the National Assembly, that was primarily a consultative organ in 1835, but without whose approval no taxes could be introduced or increased, and that took part in changing the Constitution along with the Prince and Council, wasn't even mentioned in 1838; individual rights were also proclaimed far more explicitly and in more detail in 1835. Any existence of an Assembly and citizens' rights was seen as a seed of the French Revolution by the Great Powers, and the Porte would not have those in its constitution for Serbia.⁵⁵⁹

Dissatisfied with the new Constitution that was imposed on him, Prince Miloš abdicated in 1839, after a failed attempt to change the regime. His son and heir, Milan, inherited the throne gravely ill and died soon afterwards, and the younger son, Mihailo, was deposed by a clique of powerful officials in 1842. They brought Aleksandar Karađorđević – son of the leader of the First Uprising – as the new Prince, confirmed by an Assembly summoned for that purpose and by the Porte (though his title, unlike his predecessors', wasn't hereditary), and largely obedient to the clique for the most of his reign. The name they became known for in Serbian history is *Ustavobranitelji* – Defenders of the Constitution, as they prided themselves on establishing institutional order in autocracy's stead. However, that order evolved into a rigid bureaucracy that contained almost no political participation of the common people, whom they perceived as children incapable of governing their own interests.⁵⁶⁰

As Jovanović notes, the broader population did not begrudge this at first but was, on the contrary, grateful that private rights were properly guaranteed now: it was only when this basic need of safety was met that an appetite for political freedom awoke.⁵⁶¹ Assemblies used to be the part of a long customary tradition in Serbia. In the Middle Ages, the *Sabor*, an assembly composed of nobility and the Church (but no third estate) reigned along with the monarch, helping him with all the more important decisions. The fall of the Serbian state to the Ottomans brought an end to this type of assembly,

⁵⁵⁹ More on this period in English in Popović 2021, pp. 3-39.

⁵⁶⁰ Jovanović 1990a, pp. 49-63.

⁵⁶¹ '*Apetit za političkom slobodom još se nije bio probudio i nije se mogao probuditi; trebalo je da se, prvo, jedna preča potreba, potreba za pravnom bezbednošću, zadovolji.*' Jovanović 1990a, p. 28.

but it lived on in a somewhat modified form under Ottoman rule, that of ecclesiastical assemblies with the participation of the most prominent lay leaders, a model that was brought over and regulated more formally by the Serbs in Hungary as well. The military nature of the First Uprising brought lay leaders to the fore again, turning the Assembly into a political body of local elders and military officers that Karađorđe frequently consulted. After the Second Uprising, Miloš managed to take the majority of power to his own hands and to partially influence the composition of assemblies, but he still had the habit of at least summoning and consulting them on a frequent (if not formally regular) basis.⁵⁶² While the medieval roots were not remembered by the common people at the time, the uprising era assemblies were fresh in their memory, and the Defenders' elitist order seemed to take away from the common folk even the simplest right to present their plights and problems to those in power who might solve them.

Similarly, the press wasn't free in this period. A Proclamation of Prince Miloš in 1832 limited it, and the Regulation on Censorship of 1841 expanded on the same ideas, forbidding the publication of any texts directed against members of government personally or against their official acts, as well as anything insulting the Christian religion and public morality.⁵⁶³ According to Slobodan Jovanović, "nothing even resembling political critique was tolerated."⁵⁶⁴

During the 1840s, a large number of young Serbian men were sent for schooling abroad, mostly to German universities,⁵⁶⁵ with a government stipend, stipulating that they would return to a job in state administration and there implement the knowledge gained at prominent foreign universities. In addition to practical skills and knowledge, those young men often came back with new political ideas gained in the surroundings where they studied. In 1848 and its aftermath, a number of them returned with ideas of political freedom, demanding a democratic constitution, sovereign National Assembly (parliament), freedom of press, ministerial responsibility etc. While

562 See Radojčić 1940; Blagojević 2008; Kršljanin 2017; Točanac 2008; Točanac Radović 2014; Mitrinović, Brašić 1937, pp. 19-47; Kandić 1960; Kandić 1961.

563 Simić 1993, p. 547; Petrović 2016, pp. 19-23.

564 'Ništa ni nalik na političku kritiku nije se trpelo.' Jovanović 1990a, p. 384.

565 They were mostly colloquially known as *Parizlije* (Parisians), but most of them only came to Paris at the end of their studies, having previously studied in Germany, Austria or Hungary. See Trgovčević 1996, pp. 33-46; Jagodić 2009; Tatić 2019.

national liberation was initially one of the key ideas as well,⁵⁶⁶ it soon gave way to the purely political demands, both also echoing with the students of the Lyceum in Belgrade. Economic issues, particularly those relating to the rural population, weren't of particular interest to them and were often even derided, while some demanded reforms in education.⁵⁶⁷

2. The Saint Peter Assembly of 1848 and Its Aftermath

As more and more people demanded to join the struggle of Serbs in Hungary, the Prince and Council summoned an Assembly to hear out the demands. No law was passed to allow it: merely a short regulation determining that one deputy be elected for every 250 taxpayers, and a number of representatives by position: all district heads, one county head and one priest from each district, one monk from each eparchy and two from the archdiocese, two officers of the border army, representatives of both sections of the Appellate court, president of the Supreme court, all bishops and the metropolitan of Serbia.⁵⁶⁸

The Assembly was supposed to be held on June 1st, but as movement of the deposed Obrenović Princes was noticed at that time (Prince Mihailo arrived in Novi Sad, the old Prince Miloš in Zagreb), it was postponed for St Peter's Day, June 28th. It met in an open field, as was customary, in the presence of the Prince and Council, with no formal procedure; arguments often broke out, and the deputies were angry at the Government⁵⁶⁹ for not summoning an Assembly in five years.⁵⁷⁰ Jovanović describes it as a revolutionary crowd, akin to the Assemblies of 1842 and 1843,⁵⁷¹ a gathering of Vučić's supporters ready to attack anyone who opposed him, similar to a country gathering or an insurrection army.⁵⁷²

566 It is worth noting that, unlike the previous generation, these young liberals had no personal experience in fighting against the Ottoman Turks, and thus viewed the idea in a somewhat distant, romantic light. Milićević 1964, pp. 20-29.

567 *Ibid.*, pp. 29-35; Vasiljević 1987, p. 25.

568 Mitrinović, Brašić 1937, p. 56.

569 When the word "Government" (Правителство, *Pravitelstvo*) is used in documents of this period, it means not a separate organ composed of ministers, but rather refers to the Prince and Council as the governing organs of the state.

570 Mitrinović, Brašić 1937, p. 56.

571 On them see *ibid.*, pp. 53-56.

572 Jovanović 1990a, p. 212.

No official records or protocols were made during the Assembly, but a list of deputies' demands and pleas was made, and the Prince's answers to them, positive or not, were afterwards printed in the official Collection of Laws for the years 1847-48.⁵⁷³ There are 95 items listed, in the order of the number of districts that had made demands of a certain kind, going down to the individual ones. Most of those concern local, everyday matters: taxes, duties and fines, local administration, the wages of village elders and doctors, bride-price and premarital exams, the conduct of local priests etc. Some concerned matters of global importance, but not directly involved in internal politics: the founding of new schools – a teachers' school, a military school and one of economics – and academic freedom of teaching, or the final removal of Turks from the territory of Serbia.⁵⁷⁴

The first on the list and the only one addressed by all 17 districts was the issue of the length of judicial proceedings, with various factors, from bad laws to the behaviour of attorneys, being mentioned as the cause. The Prince replied that the problem was well-known and that the Government was working on it, briefly listing existing reforms and a committee that the plea was forwarded to. Other pleas for judicial reform were rare. The Kragujevac district asked for county elders to preside in courts of the peace (municipality courts) and for those courts to be allowed to try bigger cases. It also asked for the instituting of a commercial court. Both were also forwarded to the judicial committee.⁵⁷⁵

The second, addressed by all but the Užice district, concerned the summoning of Assemblies in the future: 11 districts demanded that it be done every year, three that a smaller assembly be summoned every year, and a Great Assembly once every three years. One county found an assembly every three years to be acceptable, and one considered the Prince should summon it when circumstances required it. The Prince replied that the people's wish should be fulfilled, but that a regulation in this regard should first be passed, so the Constitution would not be broken, and that he has named a committee to address the issue. However, in the minds of the majority of the population, the Assembly was still an organ meant for the direct expression of the

573 Рѣшеніе 1849, pp. 173-204.

574 The Prince merely replied that the Government had already taken necessary steps.

575 Some demands for changes in material law were forwarded to the same committee – for example, the request of the Rudnik county that a new civil code be made in the spirit of the Serbian people.

wishes and needs of the common people, and not a modern parliament. This is obvious from a demand made by 11 districts, that partisanship be abolished among the people, and the creation of parties strictly punished. (Such parties as existed at the time were informal gatherings of politically like-minded individuals: no formal registration yet existed.) The Prince merely replied that it was illegal to begin with, that the police had the authority to act against parties and that he himself had issued a proclamation reminding people of that at the start of the Assembly. Six districts asked to be allowed to review the state treasury, and three more demanded accounts for the past six years.⁵⁷⁶ The Rudnik county demanded that the decisions of the Assembly be printed and publicly available, which led precisely to the printing of the demands and answers in the Collection of Laws.

Some demands concerned the executive power as well. All districts but one also made two demands regarding state officials – that those of foreign origin be fired, or at least no longer employed in the future, so that native Serbian officials could be employed, and that state officials be prohibited to engage in commerce. On the first point the Prince answered that Serbian men will be employed whenever there is a need, but that those of foreign origin could neither be fired nor excluded from consideration for service. The second demand was met – both officials and priests (regarding whom only two districts demanded it) were prohibited from engaging in commerce. Eight districts asked for members of the Council to come one from each district. There were 17 of them, as there were districts in Serbia at the time, but no relation was set by the Constitution. The Prince promised to keep that in mind when appointing Councillors in the future.⁵⁷⁷ Six districts requested

⁵⁷⁶ According to the 1835 Constitution (art. 88), the Ministry of Finance had to submit financial reports to the Assembly each year.

⁵⁷⁷ Some of the demands on this subject seem to show that deputies were not too well-informed, as they asked for things already in place in positive law. Six districts demanded that officials who take bribes be fired, to which the Prince pointed out that such a possibility, along with even harsher penalties, was already prescribed in the Regulation on Officials in 1842, reminding the executive to enforce it properly. Five districts requested that officials who lose their position due to misdemeanours by a court or Assembly's decision should lose their pensions. The reply was that those expelled from service after a court's verdict already lost their right to pension, while the Assembly had no right to dismissed state officials. Four districts demanded that officials be hired and promoted according to their capabilities, which was again already prescribed in the 1842 Regulation, and the Prince merely instructed the government to pay extra attention to the issue. The Kragujevac district demanded that incompetent officials be immediately fired, to which the

that the heredity of the princely title in the Karađorđević dynasty be negotiated about with the Porte.

The freedom of press was one of the minor demands. Only the Belgrade district asked for it, proposing already what it saw as reasonable limitations: the sanctity of the Prince's person, and no personal attacks against any citizen or the ruling and the patron Court (i.e. the Ottoman Porte). The Prince, however, replied that since "the freedom of press in our fatherland is not subject to any other limitations but those which are demanded by the interests of the fatherland and other necessary concerns, based on the current state of education in our country",⁵⁷⁸ and that thus the demand could not be met.⁵⁷⁹ Still, the importance of this issue would grow in the coming years: as Simić remarks, there was barely a session of the Assembly after that without the issue of the freedom of press being raised.⁵⁸⁰

A committee appointed by the Council had indeed drafted a law on the National Assembly soon afterwards, according to which it was to be composed solely of the representatives of the people, elected in counties and district cities. Representatives of the local administration, judiciary and Church, which had taken part in the assemblies prior to this one, were no

Prince replied, again, that the Regulation did not allow for incompetent men to stay in state service. When we look more closely, however, we see that those requests show not (necessarily) that the deputies were ignorant of the law, but that the law was not properly and uniformly enforced in practice. A similar conclusion can be drawn from a slightly different demand by three districts that three officials shouldn't be appointed from the same house. Although this familial factor was dismissed by the Prince as irrelevant and discriminatory compared to individual capability, this demand clearly shows the image of nepotism that common people could perceive in the standing of well-to-do families with many members in state service. Two districts asked that the wages of higher officials be reduced, which was refused. The Podinje district requested that county heads be appointed from the county in question, and members of district courts from that district, which was deemed to be against the common interest, but the Prince promised to keep it in mind when possible.

578 '...слобода печатнѣ нїе подложена у отечеству нашемъ никаквомъ другомъ ограничению, него ономъ, кое интереси отечества и друга нужна призрѣнія, основана на садашнѣмъ станю просвете у нашей земльї, изискую...' Рѣшенїе 1849, p. 202.

579 It is worth noting that a request for proclaiming the freedom of press had been made in March by a group of intellectuals gathered around the Belgrade Reading Room (*Čitalište beogradsko*), and the Prince and Ministry of Education seemed to view it in a favourable light: however, it is believed that this was caused by fear of revolutionary events, and that the attitude expressed after the Assembly more accurately reflects their views. Petrović 2016, pp. 23-24.

580 Simić 1993, p. 548.

longer included. However, the draft was never promulgated: the Prince and Council did not trust the people sufficiently.⁵⁸¹

3. The Saint Andrew Assembly and Miloš Obrenović's Second Reign (1858-1860)

The Saint Andrew assembly of 1858 marked the culmination of popular displeasure with the Defenders' reign (and the social and economic crisis accompanying it⁵⁸²) as well as the conflict between the Councillors and Prince Aleksandar. Having failed in the plans to bring down the Prince with the aid of the Porte or European powers, Vučić and Garašanin decided to summon an Assembly for it. As the Prince was loath to do that, they relied mostly on Obrenović supporters and young liberal intelligentsia to pressure him.⁵⁸³ However, just as he and the Council agreed to summon the Assembly the Porte voiced its opposition, withdrawing it only when Russia and France proclaimed that to be a breach of the Paris treaty of 1856, which guaranteed Serbia internal autonomy.⁵⁸⁴ After some political manoeuvring of the Prince and opposition⁵⁸⁵, the new National Assembly Act was passed on October 28th, 1858.⁵⁸⁶

While based on the 1848 draft,⁵⁸⁷ the Act took a step back regarding the composition of the Assembly: in addition to elected deputies (one for every 500 taxpayers), it included the presidents of all district and higher courts, district heads (and the governor of Belgrade), district archpriests and a prior from each of the four eparchies (§1-2). The deputies were explicitly proclaimed to represent both their county or city, as well as the entire people (§3). The date and place of the Assembly were determined by the Prince (§8), but it had the right to elect its own president (chair), vice-president and two secretaries, who could be officials outside the Assembly, with no right of vote (§4). Its purpose was 'to be in front of the face of the Government a

581 Jovanović 1990a, pp. 212-213.

582 Milićević 1964, pp. 52-57.

583 Jovanović 1990a, pp. 203-204.

584 *Ibid.*, pp. 210-211.

585 Jovanović 1990a, pp. 211-212.

586 Законъ о (Народной) Скупштини 1858.

587 Jovanović 1990a, p. 212.

faithful and accurate expression of the popular state and popular feelings’;⁵⁸⁸ its competence involved giving its opinion on matters brought before it by the Prince and Council through their ministers, informing the Government of the people’s plights and suggesting means to resolve them, as well as the people’s wishes and means of fulfilling them (§6). However, it is explicitly stated that the Assembly’s proposals have no binding force until the Prince and Council issue laws regarding them, according to the Constitution (§7).

Both the parliamentary procedure and the election of deputies was regulated in a fair amount of detail. It is worth noting that active suffrage belonged to all male citizens of age who were never convicted of a crime, except servants, though officials could not vote in districts where they worked (§29). Passive suffrage belonged to men over 30, except officials and priests (§31). This restriction was new, and was agreed upon by the Prince and Garašanin in order to prevent Vučić, the President of the Council, from entering the Assembly; for the same reason, they excluded a provision of the 1848 draft allowing Councillors to attend and speak at the Assembly’s sessions.⁵⁸⁹ Ballots were direct in cities and indirect in counties (§33), but voting was public (§38),⁵⁹⁰ a system that will remain in place for three more decades. All the sessions of the Assembly and voting within it were likewise public, while the 1848 draft had allowed secret sessions and votes.⁵⁹¹ Deputies nominally had freedom of speech and immunity for the opinions expressed in the discussions, but, simultaneously, they were not allowed to propose anything “that could offend and break the public peace and the existing legal order in the land” (§18-19).⁵⁹²

The new young generation of liberal opposition was mostly educated abroad, combining progressive ideas with romantic nationalism and the idea of fighting the Ottomans for independence based mostly on second-hand information from their elders and books. For the most part, they were divorced from the masses, but a few of them (Jovan Ilić, Milovan Janković, Ranko Alimpić) did engage in popular agitation in the countryside prior to

588 ‘...да буде предъ лицемъ Правительства вѣрно и точно израженіе народногъ станя и народны’ осеѣаня.’

589 Jovanović 1990a, pp. 213-214.

590 In the case of a tie between two candidates, preference would be given to the older one.

591 Jovanović 1990a, p. 214.

592 ‘...што бы явно спокойство и постоеій законый редъ у земљи вреѣати и нарушити могло.’

the Assembly.⁵⁹³ While most liberals did not inherently support the Obrenović dynasty, the agitation for which was growing again, they were willing to accept its return if it came with political reforms, though they preferred Mihailo Obrenović (younger, well-educated, European rather than Oriental) to his father Miloš.⁵⁹⁴

The Assembly still resembled those of old, with the deputies arriving on horseback, armed and in traditional dress. However, it was held indoors, in a hall of the 'Great brewery', with deputies sitting by district and much more formal proceedings. The Prince was prepared to dissolve it by force of arms should it turn to revolt against him (the building was, not at all accidentally, right across the street from military barracks), yet he was overthrown and fled to the Ottomans in the Belgrade fortress and then to Austria, while Miloš Obrenović was summoned back, despite other ideas and pretenders, with the Assembly itself playing the role of regent until his arrival.⁵⁹⁵ However, the dynastic change was by no means the only goal of this Assembly: the liberals were highly interested in passing a new act on the Assembly, which would turn it into a regularly summoned and more influential body – and doing so before the new Prince, whoever it may be, is instated.⁵⁹⁶ Jevrem Grujić even wanted the Assembly to pass the act on its own, as a bearer of popular sovereignty, contrary to the Constitution, claiming that the people may at any time take back the legislative power that rightfully belongs to it.⁵⁹⁷ Being the only group at the Assembly with distinct political views (as opposed to supporting a particular person's claim to power)⁵⁹⁸, well-organized and politically efficient, they managed to play a significant role despite all being young and thus mostly unknown to the public.⁵⁹⁹ Overall, the majority of the political proposals put forth at this Assembly originated from the influential

593 Jovanović even had revolutionary ideas – to surround the Assembly with armed men and to arrest the Prince and Council – that were never put to practice. Jovanović 1990a, pp. 229-230; Milićević 1964, pp. 66-69.

594 Jovanović 1990a, pp. 205-209, 216-220.

595 See more in Jovanović 1990a, pp. 215-259; Mitrović, Brašić 1937, pp. 58-60.

596 Jovanović 1990a, pp. 227-232.

597 Jovanović 1990a, p. 233.

598 The other three prominent groups at the Assembly were supporters of the Obrenović and Karađorđević dynasties, as well as a group who supported mostly Ilija Garašanin and Toma Vučić Perišić, long-time members of the State Council, seen as *de facto* rulers.

599 Vasiljević 1987, p. 52-53.

and organised actors, and were not a spontaneous expression of the people's desires.⁶⁰⁰

The Assembly was in session from November 30th to January 31st, and it passed a total of 385 decisions of various sorts.⁶⁰¹ Its workings were at times haphazard, but concrete goals were reached. At one point, the progressive young deputies gained the upper hand and on December 8th managed to draft a National Assembly Act, mostly authored by Grujić, fairly revolutionary in content and style, with provisions such as anyone who opposed free assembly proceedings being proclaimed an enemy of the people (§2) and no power being allowed to limit the rights of the Assembly (§3).⁶⁰² Still, as a compromise with Garašanin, the liberals toned down some provisions and agreed to submit the draft to the Council, instead of passing it in a revolutionary manner.⁶⁰³ Thus, even in this Act the Assembly was not proclaimed as the main legislative power: laws concerning the Prince, Council, ministers and the Assembly itself could not be issued or changed without the Assembly being heard (§4). That meant that the rest of the legislative power remained in the hands of the Prince and Council, and the problematic word 'hearing' (*saslušanja*) might mean mere consultative, not necessarily legislative power.⁶⁰⁴ Still, the Assembly had the right to propose laws (§6), control public debt, taxes and budget (§7-8) and file criminal accusations against government officials before a court (§10). It was to be summoned every year in the capital, and should elections not be held on time, last year's deputies counted as re-elected (§12-14). The suffrage base was broader, as there were no limitations by profession (§16), and no deputies by position, but only elected ones. Also noteworthy is §35: in the case of a great need, the Prince and Council could summon an extraordinary Assembly, which could be greater, but not

600 Not so with some other requests and proposals, such as those related to criminal law and criminal procedure: while the young men educated abroad were not too interested in such issues at the moment, rural deputies were well-acquainted with problems in practice. They proposed the strict punishing of fraud and bribery, criminalizing usury, punishing priests who overcharged for their services, but also reducing the strictness of punishments for theft (where even the death penalty was possible) and increasing the effectiveness of criminal procedure. Vasiljević 1987, pp. 103-106, 116.

601 Mitrinović, Brašić 1937, p. 60.

602 Milićević 1964, pp. 82-83; Vasiljević 1987, p. 25. See the text in Mitrinović, Brašić 1937, pp. 60-61.

603 Jovanović 1990a, p. 233-234.

604 The original version contained a much clearer "confirmation" (*odobrenja*). *Ibid.*, p. 234.

smaller, than the ordinary one, and would not delay the holding of the ordinary one. This is the root of the institution of the Great Assembly, which will be introduced in 1861.

However, this act never came to life. Even before the return of Miloš Obrenović, the Council made drastic changes to the Assembly draft before passing it on January 5th, 1859,⁶⁰⁵ and then changing it again (albeit minimally) on January 14th.⁶⁰⁶ While the initial general provisions remained similar (§1-4), they were toned down – e.g. anyone opposing the free holding of the Assembly was no longer an enemy of the people, but an enemy of the law, and was to be punished most strictly. The Assembly's financial competences were reduced (§7-10), it could not directly accuse officials, but had to supplicate the Council for it, and this did not extend to ministers (§11), and was to be held in 1859, but only once every three years subsequently (§13). Suffrage restrictions for servants were reintroduced (§17).⁶⁰⁷ Still, it had a consultative quasi-constitutional power, as no laws regarding the Prince, Council, ministers or the Assembly itself could be issued or changed without it being heard out (§6). The only prominent addition in the January 14th version was §2, proclaiming the freedom of press as the first and most important guarantee of the Assembly's proper work and development. It was proclaimed generally, while details were to be regulated by a special law. Miloš passed yet another National Assembly Act on June 30th, 1860.⁶⁰⁸ The changes were very minor, the only truly relevant one being that the Assembly was much smaller, with a deputy elected not on every 500, but 1000 taxpayers (§21, 25).

Miloš did not intend to build a representative government: his intention was to keep ruling more or less as he had before, but his second reign was short, cut by his death on September 26th, 1860. While the promised Press Act was never passed, press under Prince Miloš was, in fact, fairly free, as he rarely intervened to stop writings in newspapers,⁶⁰⁹ though it is noteworthy

605 Законъ о Народной Скупштини 5.1.1859

606 Законъ о Народной Скупштини 14.1.1859. The numbers of paragraphs in the text correspond to this later version.

607 See also Jovanović 1990a, pp. 276-277, though he allows for some confusion regarding the versions of the Act.

608 Законъ о Народной Скупштини, 30.6.1860.

609 Jovanović 1990a, p. 384.

that several changes of editors of the official gazette, *Srbske novine*, took place.⁶¹⁰

4. Mihailo Obrenović's second Reign (1860-1868)

Prince Mihailo reigned in the spirit of enlightened absolutism (leading to young liberals' opposition to his regime), setting out to solve the main internal and external problems of the country.⁶¹¹ Unable to formally change the Constitution without the approval of the Porte,⁶¹² in 1861-1862, he issued a set of laws concerning the central institutions of the state, considered to be a new uncoded constitution by some scholars.⁶¹³ Major changes were made to the executive as well – the Prince got the right to forcibly pension members of the (again State) Council, while the Ministerial Council was founded as a separate organ for the first time, responsible to the Prince. However, what concerns us most here is Mihailo's National Assembly Act of 1861 and the changes to the position of the Assembly.⁶¹⁴

While its competence remained consultative, and its regular sessions were still held every three years, it had to be consulted regarding the ceding or exchanging of a part of state territory, increasing taxes or changing the tax system, and changing the Constitution (§3). The Assembly could demand to inspect state finances (§4) and ask questions of ministers, but they could refuse to answer if they thought speaking publicly of an issue too early could be harmful (§36), and either way they were not responsible to the Assembly. A Great National Assembly was introduced,⁶¹⁵ with the competence to elect a new Prince if one died heirless, to approve the adoption of an heir to the throne if a Prince had no progeny, or to appoint

610 Petrović 2016, pp. 26-29.

611 See Jovanović 1990a, pp. 347-350.

612 At this point, this was a matter of form and principle rather than substance. The Porte offered Mihailo to write the text of the Constitution however he pleased (and he already had several drafts), as long as it was enacted as a *hatt-i-humayun* by the Sultan; but it was precisely this that he was unwilling to accept. *Ibid.*, p. 358; Pavlović 1997, pp. 174-193-

613 Pavlović 1997; Marinković 2019, pp. 29-30.

614 Законъ о Народной Скупштини 17.8.1861.

615 More on its nature and development in Jovanović 1900; Kršljanin 2019.

regents in a Prince was underage or unable to rule directly for another reason (§6).⁶¹⁶

The number of deputies was further reduced, as one was elected on every 2000 taxpayers (§26), while the Great Assembly had four times that number (§11). Ballots were direct in cities and indirect in the countryside (§22-23). All deputies were elected, but suffrage restrictions remained (§19-20), including a ban for those convicted of election fraud or proven to have sold their vote. It was now forbidden to attend elections or the Assembly armed (§31). The Assembly was no longer necessarily held in the capital (the Prince determined the place, §10), its dignitaries were now appointed by the Prince, who could even depose the President (§32).

While it could be argued that the Assembly's importance was marginalised,⁶¹⁷ and its importance in day-to-day governing of the state was indeed minor, it must be noted that the Assembly's power in extraordinary matters was increased. Still, Mihailo was against introducing parliamentarism, believing that the level of education and political prowess among the population was too low for it to make sense: well-known is his retort that it would be frivolous to introduce parliamentarism so Milovan Janković and a few of his friends could hold parliamentary speeches that a mere dozen men could follow.⁶¹⁸ However, in the last years of his reign, Mihailo intended to change the Constitution and, among other things, give legislative power to the Assembly: several drafts were made that show this idea clearly. Mihailo's untimely death prevented this constitutional change, but the drafts were later used as a basis for the Constitution of 1869.⁶¹⁹

There were demands for free press on all three Assemblies held during Mihailo's reign (in 1861, 1864 and 1867), and he intended to pass a Press Act. Three drafts were made between 1861 and 1866, all limiting the press to some degree with permits for printing papers and the liability of persons involved for crimes committed in a published text, but no draft was enacted. Mihailo's attitudes towards the press varied. He was ready to tolerate scholarly critique of legislation, even to provide funding for moderate, 'semi-official' political papers such as the *Vidovdan*, but he wanted to prevent any direct political

⁶¹⁶ It is worth noting that changing the Constitution during regency was expressly forbidden (§14).

⁶¹⁷ Jovanović 1990a, pp. 377-379.

⁶¹⁸ *Ibid.*, 383-384.

⁶¹⁹ Jovanović 1990a, pp. 520-522; Stefanovski 2016, pp. 13-31.

critique of the government, which included the writings of young liberals, who were growing increasingly disillusioned by his regime, and several papers were extinguished as a result.⁶²⁰

As a result, the liberal opposition published papers mostly in the Serbian Vojvodina, on Hungarian territory, where it could criticise Mihailo's policies without the constraints of Serbian censorship. The criticism grew immoderate, coming to condemn every part of Mihailo's reign. The liberal press even condemned Mihailo finally driving the Ottoman garrisons out of Serbia and receiving the keys of the cities – for the fact that he managed to gain this diplomatically, and not through force of arms.⁶²¹

Still, the liberal opposition did not primarily reside in Hungary. Many liberals became members of scholarly or youth organisations – *Društvo srpske slovesnosti* (Society of Serbian Letters, forerunner of the Academy of Sciences) and *Ujedinjena omladina srpska* (United Serbian Youth), as well as teachers at the Lyceum/Great School or judges. Unlike state administration, these positions gave them a greater freedom of speech, as any government interventions could be qualified as assaults against academic freedom, youthful patriotism or judicial independence.⁶²²

An incident that took place on January 26th, 1864, is very illustrative: the Society of Serbian Letters overstepped the line. Vladimir Jovanović and Milovan Janković proposed the awarding of honorary membership to Giuseppe Garibaldi, Ferenc Deák and Richard Cobden, and corresponding membership to a number of similar, albeit less prominent figures, such as Nikolay Chernishevsky or Saint-Marc Girardin. The Minister of Education, Kosta Cukić, who was President of the Society by position, refused to support this initiative, and disorder broke out among the members and students present in the audience. As a result of this, Prince Mihailo disbanded the Society on the very next day. Its successor, *Srpsko učeno društvo* (Serbian Scholarly Society), was formed on July 29th.⁶²³

Many more examples could be given, but summarily speaking, Mihailo's rule brought great progress to Serbia on many accounts, but its rigidity caused

620 Jovanović 1990a, pp. 384-387; Petrović 2016, pp. 31-33.

621 Vasiljević 1987, p. 54. He remarks that a later explanation attributes this to Mazzini's views that freedom cannot be gained from a ruler or through foreign aid, as that only means replacing one form of slavery by another. See also Jovanović 1990a, pp. 466-471.

622 Vasiljević 1987, p. 54.

623 *Ibid.*, p. 55.

a growing dissatisfaction of the opposition, particularly liberal youth.⁶²⁴ After his assassination in 1868, with the causes and motives of the crime still unclear,⁶²⁵ the issue of liberalisation of government was among the first on the agenda.

5. The Regency Constitution and Subsequent Laws (1869-1870)

The Great National Assembly met on June 20th, 1868, and appointed to Mihailo's underage heir, Prince Milan,⁶²⁶ a Regency composed of Jovan Gavrilović, Jovan Ristić, and Milivoje Petrović Blaznavac. However, the Great Assembly also made some demands of a political nature, requesting regular Assembly sessions every year and laws on the freedom of press and ministerial responsibility.⁶²⁷

The Regency decided to take a safeguard against any further attempts of dynastic change by pacifying the opposition with a new, more liberal constitution. The weakened Ottoman Empire, having lost its garrisons on Serbian soil, was no longer an obstacle. However, the regents acted illegally in two ways even where Serbian law was concerned, with no more than a *raison d'état* as their grounds: they changed the Constitution during the ruler's minority, contrary to the National Assembly Act, and they persuaded the State Council to renounce its constitutional power in favour of the Great National Assembly, as if an organ's competence was a private right for it to

624 Jovanović 1990a, pp. 471-476, 506-510.

625 According to the current state of scholarship, it seems most likely that the assassination was motivated by reasons of foreign policy, as Mihailo was close to starting a military action to liberate from Ottoman rule the territory of Bosnia, which he saw as historically and ethnically Serbian, but that Austro-Hungary also had pretensions towards. See e.g. Rajić 2015, p. 63.

626 Some political actors interpreted the provisions on inheriting the throne more narrowly and believed that only the descendants of Miloš Obrenović could inherit, and that thus Milan – grandson of Miloš's brother Jevrem – had to be elected Prince by the Great Assembly. However, the view that he was heir to the throne prevailed, perhaps not uninfluenced by the fact that Blaznavac arranged for the army to proclaim Milan as Prince. See more in Kršljanin 2021b, pp. 72-79.

627 *Протоколи* 1868, p. 36.

freely dispose of.⁶²⁸ The first breach of the law was needed for the change to take place at all; the second, for it to have greater legitimacy in the eyes of both the liberal opposition, and the people in general.

Known in Serbian constitutional history as a compromise between liberalism and bureaucracy that didn't fully please either side,⁶²⁹ the Regency Constitution brought a much-needed but cautious step forward towards parliamentarism. Finally, the National Assembly became a legislative body, but only the Prince had legislative initiative (art. 4, 54, 58). Up to ¼ of the Assembly was appointed by the Prince, and, unlike elected MPs, the appointed ones could be officials or attorneys (art. 45), ensuring the presence of educated people in the Assembly, but also ensuring the dominance of the numerically fewer appointed MPs.⁶³⁰ The Government was non-parliamentary (ministers could not be MPs) and politically answered only to the Prince, and the Parliament could only initiate criminal proceedings against ministers for taxatively listed crimes (art. 99-104). The Government couldn't be overthrown even on the issue of the budget, as the Prince could extend last year's budget if the Assembly didn't adopt the proposed new one (art. 64-65), turning budgetary power into a mere choice of the lesser of two evils. The Great National Assembly was now vested with the power to change the Constitution, in addition to its earlier competences (art. 89), in accordance with the regular Assembly getting legislative competence. In October 1870, these issues were expanded by several laws concerning parliamentary elections, rules of procedure, and ministerial responsibility.⁶³¹

Under this regime, parliamentary practices were developing, slowly, but steadily. Initially the poorly educated elected MPs followed the lead of the Prince's MPs, debates were few and often showed simple misunderstandings rather than a profound difference in political views. However, new generations of MPs gradually developed political acumen and managed to lead constructive debates, criticise and even influence the government. The most prominent example occurred in November 1874, when Jovan Marinović's government stepped down due to profound disagreement with the Assembly

628 The Regency had also organised a special committee, composed of state officials and intellectuals, to give its opinion on the nature of the upcoming reforms; however, this opinion was subsequently mostly ignored. See Jovanović 1990b, pp. 62-72.

629 Jovanović 1990b, p. 80-86; see also Stanković 2021.

630 Jovanović 1990b, pp. 73-75.

631 *Ibid.*, pp. 76-78; Kršljanin 2018.

regarding the contents of the reply to the Prince's throne speech that opened the session of the Assembly – despite the fact that the Constitution didn't provide for political responsibility of ministers.⁶³²

As for the press, it was proclaimed free, but within the boundaries of the law (art. 32). The subsequent Press Act,⁶³³ however, set such boundaries fairly strictly. A permit of the district police authorities was needed for the printing or sale of printed material, though the police had no discretionary power in granting it (art. 2). While there was no censorship in the sense of altering the contents of printed material, printers did have to submit copies of newspapers for approval at least an hour before distribution (24 hours or 3 days for books), and if the police found something suspicious, it could forbid the publication; if the authorities were silent, the paper could be distributed (art. 6). While the final decision was made by the court, several months could pass before a verdict was given – and should it be against the paper, then the author, editor, publisher and printer could all be criminally responsible as accomplices (art. 23-28), and all copies of the paper and plates used to print it would be destroyed (art. 48). If a paper constantly adopted an anti-government policy, a ban on publication for up to three months could be passed, and by the Minister of Internal Affairs rather than a court (art. 46). In practice, this often extinguished the paper for good. To avoid the costs of printing an issue of a paper they wouldn't be allowed to sell, papers resorted to bringing their texts to the police in the pre-print stage, and the police advised which parts of text should be removed; printers also often cut problematic parts of the text on their own initiative in the last minute, in fear of conviction. Thus, an informal censorship operated instead of a formal one.⁶³⁴

The Press Act was amended in 1875 by Kaljević's government, relaxing the control over the press. The obligation to give a copy to the police for inspection was abolished, and so was the police permit for public sale of papers and books. The paper could only be confiscated if the text committed a crime (felony, *zločin*), insulted the Prince or betrayed military secrets in wartime, and the primary person responsible was the author of the text, and other persons could only be charged in the absence of a known author. Deadlines for police decisions were set where there used to be none in place, and

⁶³² Kršljanin 2021a; Mirković 2021.

⁶³³ Закон о печатњи (штампи), 23.10.1870.

⁶³⁴ Jovanović 1990b, pp.79-80.

decisions that previously could not be appealed now could be.⁶³⁵ However, during the war years of 1876-1878 the Press Act was suspended by the Prince several times with the justification of wartime circumstances.⁶³⁶

6. The Laws of 1881: a Progressive Breakthrough

A significant change took place when the new Progressive government of Milan Piroćanac passed a line of important new laws. The Press Act of March 12th, 1881⁶³⁷ was the most liberal one yet. The permit for the issuing of a newspaper was replaced by a simple registration (art. 5), and the editor no longer had to have a faculty diploma. A paper could be seized only for insulting the ruler or inciting the people to revolt. If the police issued an order forbidding publication, it had to be filed to a court for confirmation within 24 hours (previously there had been no fixed deadline), and the court had the same time to decide the matter (art. 10). The Belgian system of successive liability of the people involved in the making of the paper was introduced, and the system of penalties was milder. Finally, the prescriptive period was very short (three months) and uninterruptible. This enabled the defendants to stretch out the proceedings to avoid punishment. Jovanović assesses that even courts practically couldn't convict journalists and editors even when they *had* obviously broken the law, turning the freedom of press "within the boundaries of the law" to unrestricted freedom in practice.⁶³⁸ It was amended thrice – in 1882, 1884 and 1898 – with the most prominent addition being the prohibition on propagating nihilism and communism in 1882.⁶³⁹

On April 1st, 1881, the very first Gatherings and Associations Act was passed. Gatherings were free and could be held without police permits: up until then, any political gatherings required a police permit, which was practically never granted. Non-political associations could now be registered without a police permit, while political ones – which had previously been illegal – needed a permit, but it could only be refused if the association's statute contained illegal provisions. Still, authorities had the right to monitor

635 Jovanović 1990b, pp. 250-251; Petrović 2016, pp. 41-42.

636 *Ibid.*, pp. 42-43.

637 Закон о штампи 1881.

638 Jovanović 1990c, pp. 69-70.

639 Petrović 2016, 74-77; Измене и допуне 1882.

the work of political associations – to send representatives to their meetings and have access to all their protocols.⁶⁴⁰ Three main political parties that had until then existed as informal groups – the Liberal, Progressive and Radical – were registered immediately, and the number of parties gradually increased over the years.⁶⁴¹

The Progressives also submitted a draft of a new Constitution in the same year, and again in 1882, as the 1869 Constitution (art. 131) demanded that two successive regular Assemblies approve of a constitutional project for the Great Assembly to be summoned. However, the last step never took place due to a political crisis in 1883. The project was supposed, among other things, to guarantee all these rights on a constitutional level and to give the Assembly full parliamentary powers. Another unsuccessful draft by the Radical Party also significantly improved ministerial responsibility.⁶⁴² However, the realisation of these ideas would have to wait for five more years.

7. The Constitution of 1888: Voices Heard at Last

The 1888 Constitution of the Kingdom of Serbia, the first after the country's formal independence,⁶⁴³ is also hailed as the triumph of liberalism. This was the first constitution to adopt parliamentarism, fully embracing those reforms where the 1869 Constitution had gone halfway. The manner of its creation is also worth noting: King Milan assembled a committee of representatives of all three parties, chairing it himself and insisting that they reach a compromise on all accounts, which the Great Assembly would later just adopt with no amendments.⁶⁴⁴

The National Assembly got the legislative initiative, and was finally the King's equal in this respect: the King couldn't even pass temporary laws in a state of emergency. MPs could present questions and interpellations to ministers (who could now be MPs themselves), and full budgetary power existed. All MPs were elected, no longer individually, but by party lists (using the

⁶⁴⁰ Jovanović 1990c, pp. 70-71.

⁶⁴¹ More in *ibid.*, pp. 123-135; Janković 1997.

⁶⁴² See more on these drafts in Marinković 2021.

⁶⁴³ Serbia was recognised as a sovereign country at the Congress of Berlin in 1878, and was proclaimed a kingdom in 1882.

⁶⁴⁴ See more in Jovanović 1990c, pp. 345-360.

D'Hondt method), and the issue of their level of education was resolved by an obligation to have at least two men with higher education on every district list (art. 100).⁶⁴⁵ For the first time, ballots were secret (art. 78), disabling the means of electoral pressure that happened on multiple occasions in the past. Key issues were still in the competence of the Great Assembly, with only cosmetic differences (art. 130-131).⁶⁴⁶

Press was now deemed free on the constitutional level, and censorship and other measures that would prevent the publishing or sale of papers were prohibited (art. 22). No prior permit was required for issuing newspapers, and printed material could only be seized in three expressly prescribed cases: if it contained insults against the King and royal house, insults against foreign rulers and their houses, or a call to arms against the state. The deadlines were the same as in the 1881 Press Act, and the liability still successive, i.e. the author of the text was primarily liable, and others were involved only if the author was unknown, resided outside Serbia or could not be legally liable. The list of other rights was also expanded and their guarantees improved, including the freedom of association (art. 25). It's worth highlighting that the death penalty could no longer be prescribed for purely political crimes, except the assassination (or attempt of one) of the King or members of the royal house (art. 13), and that the King could no longer temporarily suspend civil rights.⁶⁴⁷

8. Epilogue: an illusion and a promise

Naturally, the Constitution of 1888 was not an infallible happy ending: on the contrary, the political actors didn't seem to have been ready for all the intricacies of advanced parliamentarism. The parties abused majority when they won it, while the new regime of citizens' rights was often deemed too liberal to be put into practice.⁶⁴⁸ King Alexander abolished this constitution in 1894 (the second in a line of coups d'état of his making), restoring that of 1869 with accompanying laws, in a scandal involving precisely the freedom

645 More of this institution in Kršljanin 2015.

646 Jovanović 1990c, pp. 347-349.

647 *Ibid.*, p. 346.

648 Krstić-Mistrizdelović 2018.

of press. His own short-lived Constitution of 1901 is considered somewhat of an exception, if not an aberration, in the development of Serbian constitutionalism, being the first to introduce bicameralism, not include the Great National Assembly, etc.⁶⁴⁹

However, the Constitution of 1888 was restored after King Alexander's assassination in 1903, with minor changes focusing on further limiting the ruler's power and strengthening the Assembly, ushering in the so-called golden age of Serbian parliamentarism.⁶⁵⁰ Although this was interrupted by the Great War, it was, again, precisely this constitution that formed the basis for the first constitution of the newly formed Kingdom of Serbs, Croats and Slovenians – the Vidovdan (St. Vitus' Day) Constitution of 1921. Naturally, the nature of the new state and the spirit of the new century brought with them new challenges and problems that parliamentarism tried – and at times failed – to conquer.⁶⁵¹ But that fight was fought – not meaning to disparage the modern addenda – on the basis of the Constitution of 1888.

Naturally, the line between 1848 and 1888 is not a straight one. One would be wrong to claim that all the advanced solutions of the Constitution had directly evolved from the political demands made by the Revolution of 1848, or at the Saint Peter Assembly. Various influences had mixed and fought during these four decades for the result to be achieved. Yet one of the main seeds that bloomed in 1888 was planted by the old generation of liberals, fighting for the people's right to decide and to be heard in an era when the National Assembly was most marginalised, and freedom of press almost unthinkable. And that seed was carried, at least in part, by the winds of 1848.

⁶⁴⁹ Popović 2021, pp. 70-73.

⁶⁵⁰ *Ibid.*, pp. 75-83.

⁶⁵¹ See Gligorijević 1979; Kršljanin 2020; Pavlović 2022, pp. 265-302.

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