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CONSTITUTIONAL TOPICS IN ĐORĐE TASIĆ'S JURISPRUDENCE

Abstract: Đorđe Tasić is one of the most important Serbian legal theoreticians in the field of public law in the period between the two world wars. He deserves credit mainly for the foundation of new scientific disciplines, such as legal sociology, theory of law and philosophy of law, while equally successfully he dealt with the problems related to administrative law. However, in the research of Tasić's work to date, his contribution has been omitted in examining constitutional institutions and concepts. In his voluminous oeuvre, key theoretical dilemmas can be identified – about legal connection (or the lack of connection) of constitutional power, the role and place of the constitution in the legal order, court jurisdiction in assessing constitutionality and legality, the function of power division in establishing constitutional equilibrium, the nature of the parliamentary system etc. In his numerous works, Tasić covered a wide range of constitutional topics, from constitutional principles to certain institutions, such as human rights protection, change of the constitution, autonomy of judiciary power, disbanding of the assembly, general and equal voting right. In line with political and social circumstances, Tasić delved into the analysis of the positive legal regulations of the time, dedicating his attention to constitutional history, as well as comparative constitutional law. For example, he explored the constitutional-legal development of the Balkan states, but also the legal nature of complex states, such as regionalism and federal states.

In the research of constitutional topics, all characteristics are recognized of Tasić's theoretical approach: good knowledge of domestic and foreign law, excellent familiarity with the methodological procedure in which he crossed the exegetical method with the historical, sociological and comparative methods, analyticity, systematicity and originality.

According to the subject of his research, he covered almost all fields of classical constitutional law, constitutional statics and dynamics, often pointing to the discord between nominal (normative) and semantic constitutions. Nevertheless, just as with administrative

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law, the entire works were not published in the form of a textbook or a scientific monograph about constitutional law, which, according to Tasić's claims, represents a pure legal science or a general theory of the state.

Keywords: constitution, constitution maker, constitutionality, judiciary autonomy, rights and obligations of citizens, parliamentarism, democracy, constitutional order, national sovereignty, complex state.

ĐORĐE TASIĆ – A FAMOUS LEGAL WRITER

> [...] the people do not have to govern themselves, but to manage wisely and sensibly [...]
>
> (Tasić, 1926b: 41)

Between the two world wars, the Faculty of Law of the University of Belgrade lived its "golden age". The former department of the Lyceum grew into a faculty in 1863, and half a century later, it acquired the epithet of a modern European law school. The Faculty of Law earned this status thanks to the international reputation of its prominent professors. Most outstanding were Slobodan Jovanović, Živojin Perić and Toma Živanović. Slobodan Jovanović is responsible for founding several scientific disciplines in Serbia, such as political science and legal sociology. His magnificent scholarly opus consists of works on the theory of constitutional law and volumes of Serbian constitutional and political history. Živojin Perić is a rare example of a well-educated lawyer. Besides his career in law teaching, he published scientific works in the field of public law on legal, philosophical, constitutional, political and international relations matters in foreign journals.[2] Toma Živanović is recognized worldwide for his theory of causation and tripartite system. Like Jovanović and Perić, Živanović believed that scientific disciplines were connected and that a scientist must not, despite his specialization, confine himself to his home scientific field, which he demonstrated in his work *System of Synthetic Philosophy of Law*.

In 1920, Đorđe Tasić defended his doctoral dissertation (*Problem of Justification of the State*)[3] before the aforementioned dignitaries of the Faculty of Law, which foreshadowed his brilliant scientific career. The members of the doctoral defence committee will influence his creativity and scientific engagement. Following the example of Toma

[2] Živojin Perić was a supporter of uniting European states into a complex alliance, but he changed his beliefs, as Olga Popović Obradović writes (Popović, 2001: 336-337), after the "Great War". Foreshadowing the later "clash of civilizations", Perić believed that Western individualism would succumb to the East, in which Christian values would be preserved.

[3] In the same year, the first edition of the shortened version of his doctoral dissertation, the subject of which was the legitimacy of the state, was printed. Tasić concluded that the state had several functions, and that its "permanent function... is legal", which is why the state is "one form in which law appears" (Tasić, 1920a: 6, 10).

Živanović, Tasić was a supporter of the synthetic method in legal sciences (Vasić, 2001: 1993), which he confirmed by combining the Theory of Social Solidarity and Social Rules of Leon Duguit and the Theory of Positivism of Hans Kelsen (Kelsen, 2001: 104). Like Živojin Perić, he adopted a versatile approach to legal problems, published articles in foreign magazines and, as a public activist, participated in debates on constitutional and political changes in the Kingdom of Yugoslavia. With Perić, he shared a cautious belief that the Kingdom of Yugoslavia could be transformed into a federation, but not a conservative understanding of society. His relationship with Slobodan Jovanović can be described as a complex and peculiar one.

According to his current political proliferation, Tasić classified himself as a liberal democrat (Milosavljević, 2013: 59) with sympathies towards the leftist movement and the ideas of social democracy.[4] Certain starting points of Slobodan Jovanović were acceptable to him, but he did not agree with others.[5] Both of them will devote their careers to the study of the state and law,[6] starting from a methodological approach to the study of legal and political institutions that involved the application of sociological and normative methods. However, according to the normative method and theory, Tasić takes a more critical position (Tasić, 1931: 113-114; Lukić, 1977: 1).[7] Slobodan Jovanović is considered responsible for the development of sociology as a science in these regions, but Tasić's contribution is more significant because he is more consistent in the application and development of sociological research, and he is known as the real founder or founder of the sociological school in Serbia.[8] Although they share the idea that the state participates in the creation of law, Tasić views law, above all, as a product of society and social relations. Although both of them taught constitutional law (Tasić admittedly occasionally), only one left a systematic work in this area. The latter presented its starting points in a series

[4] In his youth, Tasić expressed interest in the ideas of socialism and Bolshevism. Later, in his scientific works, he is inclined to the concept of social democracy, which he will show, for example, in his views on the function and nature of private property and criticism of fascism and National Socialism. In the mid-summer of 1940, he was also one of the initiators of the founding of the Society of Friends of the Soviet Union, but this is simply not proof that he was a Marxist or an orthodox leftist.

[5] For example, Tasić had different views within the proposal for the reform of the political and constitutional system of the Kingdom of Serbs, Croats and Slovenes, and later Yugoslavia, especially towards coalition governments, the electoral system, federal organization, etc. Their divergence is also present in other theoretical questions, such as whether the state is a sovereign legal entity (Tasić, 2009).

[6] Stevan Vračar noted "the invaluable merit of S. Jovanovic for Serbian sociology in all its ramifications, from the most general to the most specific", and that was continued by Đ. Tasić (Vračar, 1998: 73).

[7] Tasić claims that when interpreting the law, the legislator should not only adhere to what is written in the constitution, but also take into account the social context, certain standards and "logical requirements" because the law is a social phenomenon (Tasić, 1926c: 187-188). Criticism of the normative theory is also a plea for his interpretations of the constitutional discontinuity of the state of Serbs, Croats and Slovenes and the dictatorship of King Aleksandar Karađorđević.

[8] On Tasić's contribution to the development of sociology in Serbia, see: Lukić, 1959: 9–12.

of articles, shorter studies and discussions. We find the reason in the fact that Tasić's basic scientific preoccupation is the philosophy of law. Slobodan Jovanović's scientific creativity was formed within a span of more than half a century, while Tasić's career was interrupted at a mature age. In a period of only two decades, he left a significant body of work and started writing new works that remained unfinished. Out of that reason, we assume that Serbian legal science was deprived of many gifts by his violent death, because Tasić was also active as an editor of scientific journals, initiator of associations, an exceptional lecturer and transferor of knowledge to younger generations.[9]

Tasić's scientific career and academic occupation in constitutional law were made official at the newly founded Faculty of Law in Subotica, from his election as Assistant Professor, continuing in Ljubljana, and ending in Belgrade. At the Faculty of Law in Ljubljana, he was appointed Associate Professor of philosophy of law and constitutional law (1922), and three years later, Full Professor of public law. He was appointed Full Professor of encyclopaedia of law at the Faculty of Law in Belgrade in 1930,[10] and Dean on the eve of World War II. In the report on Đorđe Tasić's appointment to the position of Full Professor, Slobodan Jovanović gave a flattering assessment, classifying him as "the most outstanding philosopher of law, who raised our legal philosophy to the level of a European discipline and gained European reputation" (Kandić, 1998: 36).

Đorđe Tasić is one of the extremely prolific legal authors of the period between the two world wars, whose scientific work includes hundreds of sources (Vasić, 1995: 9), among which are numerous works in French, German and Italian. Academician Radomir Lukić showed special respect for Tasić, and edited two collections of his works (*Đ. Tasić*, 1984; *Đ. Tasić*, 1992) emphasizing his immeasurable influence on the development of legal science. According to Lukić, Tasić traced the paths of its methodological development, freeing it from dogmatism, hinting at the application of the synthetic method and the sociological method (Lukić, 1984, p. 13), demonstrating an original approach and belonging to the "most prominent scientists in the world in their field" (Lukić, 1959, p. 2). That is why, in his opinion, Tasić is, along with Toma Živanović, one of "smartest minds" in the social sciences in Serbia and Yugoslavia between two world wars. (Lukić, *Ibid.*). His methodological pluralism or multidisciplinary approach was also reflected in the study of several legal areas, primarily the philosophy of law, but also constitutional law (Vasić, 1995: 10).

[9] Before his tragic end, Tasić was simultaneously preparing several books - on the interpretation of laws, on the state and an introduction to sociology.

[10] Đorđe Tasić wrote a textbook for this subject called "Introduction to Legal Sciences - Encyclopedia of Law". In the textbook, he noted that "the task of this science [...] is to determine what law is (its concept), its value, goal and meaning (idea of law), as well as its social function, and to determine basic legal concepts" (Đorđe Tasić, 1995: 135). In accordance with Tasić's title, this course was later named – Introduction to Law. For Tasić, Introduction to Law is a science of an integral character because in the study of the state and law it includes the viewpoints of other sciences about the state, such as constitutional law, philosophy of the state, politics and sociology (Tasić, 1995: 409).

In evaluating Tasić's concept of constitutional law and constitutional institutions, we encounter several obstacles. First, constitutional law is not his main theoretical preoccupation. Although he also taught constitutional law, considerations about constitutional institutions and concepts stemmed from his legal hermeneutics – the theory of the state and law. In this regard, trying to classify Tasić into one of the theoretical doctrines is not an easy task, because his work contains an admixture of eclecticism, but also original thoughts, efforts to integrate the ideas of French solidarism and English pluralism into the classical liberal doctrine. Second, Tasić's work on constitutional law is contained in several sources, so an attempt to determine the key trends of his thought in this scientific field implies the use and selection of numerous sources from his voluminous scientific oeuvre and connecting meanings about political and legal institutions. Ultimately, the problem is that his work in constitutional law gives the impression of incompleteness, sometimes remaining on the surface of basic theses and partial explanations, revealing the essence of the problem, but not going into the elaboration in detail. On the other hand, in dealing with constitutional law, Tasić showed all the qualities of his scientific engagement and approach.

THE CONSTITUTION AND CONSTITUTIONAL LAW IN THE WORK OF ĐORĐE TASIĆ

In order to evaluate Tasić's scientific orientation and work, we have to take into consideration the environment and time in which he worked. Constitutional law science developed rapidly between the two world wars. Violent social changes and the crisis of liberal constitutionalism gave rise to new models of constitutions - Soviet (socialist) and authoritarian. In countries with liberal democratic constitutionalism, classical parliamentarism is "rationalized" – in Austria, Hans Kelsen's concept of putting the control of constitutionality and legality in the hands of a special state body was realized, and in Spain, the normative basis of the regional state was prescribed as a form of state organization. The states created in the territory of the collapsed European empires adopted their own constitutions, and in other countries, the constitutional legal systems were revised. Numerous constitutional institutes were modified. Between the two world wars, there was also a tide of delegated legislation, a form of government called the semi-presidential system was taking shape, and the category of social and economic rights was becoming increasingly important.

Dynamic political changes and the strong momentum of constitutional law also affected the country where Đorđe Tasić spent the last two decades. In the Kingdom of Serbs, Croats and Slovenes, and later in the Kingdom of Yugoslavia, two constitutions were adopted (the Vidovdan Constitution from 1921 and the September Constitution from 1931), and constitutional issues attracted the attention of legal experts and public opinion, especially discussions on territorial decentralization, forms of state organization and state power and reform of parliamentarism. It is also a period of maturation of the science of constitutional law, and its accelerated emancipation from other legal disciplines

maturation with specific goals, methods and research subjects. Đorđe Tasić also wrote about the mentioned topics in foreign and domestic constitutional law. The independent starting point meant that he thought about most institutes of constitutional law not only theoretically, explaining opposing doctrinal positions, but also from a practical point of view, citing examples from comparative legal systems and finding solutions to dilemmas that concerned domestic law. At the same time, his approach is not rigid, because he did not serve any ideology or scientific school of thought, but it is also unsystematic because his thought is found in a series of articles, essays, book reviews, published lectures, sporadically in books. In addition, he developed it over time, expanding it, but also correcting it, in which occasional (in)coherence and (in)consistency can be noticed.

For Tasić, the subject of constitutional law or the general theory of the state is the constitution and constitutional order, that is, the law and the state, the way the state is legally organized. Constitutional law is the science of the constitution and constitutional order, a legal discipline that "studies the state as a whole and its bodies in their mutual relationship" (Tasić, 1995, p. 408), for which other names are also used, such as the science of state law.[11] As a representative of the modern understanding of constitutional law, he did not focus on the study of the constitutional text, as was the rule in the classical understanding of constitutional law, but also on emphasizing the importance of constitutional tradition,[12] constitutional conventions and customs, and political and social relations. For him, constitutional law is inseparable from administrative law because its task is to study the "political structure and physiognomy of the state", which also means administrative power, which is still an accepted concept in the United States of America and the countries of Anglo-Saxon law (Constitutional and Administrative Law). In his writings, we also come across discussion on the problems of executive (administrative) law, such as the organization and status of the administrative authority and the discretionary authority of the executive (administrative) authority. On the other hand, Tasić rejects a static approach to constitutional law, considering that in accordance with his methodological position on the dynamic development of law, constitutional institutions evolve into a positive direction or "break down".

Previous studies of Tasić's scientific creativity did not observe that the subject of his interest were comparative constitutional and political systems. Tasić started researching the constitutions of other countries in the surrounding region and in the countries of Western Europe from the second half of the 1930s.[13] In his study entitled *Contemporary Political Systems and Concepts of the State*, a number of problems are presented very

[11] On the development of this science by Tasić (1936a: 43).

[12] Tasić, unlike Slobodan Jovanović, has no published works on Serbian constitutional and legal history, nor did he show a penchant for legal history.

[13] Tasić seems to have had the ambition to prepare a brief study on the constitutional and legal development of the Balkan states, but that remained his unfulfilled intention. We assume that the reason for it, as he stated himself, were difficulties in finding appropriate sources and literature (Tasić, 1936: 391).

succinctly.[14] In the first part of the monograph, Tasić defines the modern concept of democracy as the rule of the majority in which the constitutional rights of citizens are respected. Explaining its shortcomings, he claims that it is necessary to transform the liberal model in the direction of social democracy, which will ensure more complete equality and equality of citizens ("equal opportunities") and a greater degree of solidarity and integration of social groups. In this respect, as an example of the inclusion of these ideas into the constitutional systems, he cites the solutions of the Weimar Constitution on social rights and the participation of workers in the management of enterprises.

In the above-mentioned book, we also come across theoretical dilemmas about whether democracy has the right to defend itself by non-democratic means if its survival is threatened (Tasić, 1936a, p. 7). Tasić anticipates the problems of contemporary jurisprudence, which is also a feature of his scientific work. His study appeared a year before the famous text of Karl Loewenstein, a German constitutionalist and political scientist, on militant democracy (1937),[15] which offered a doctrinal basis for banning and restricting political parties and the right to freedom of association.[16]

The second part of this study presents his view of the "new" political systems - fascism, that is, National Socialism and the Soviet system. Compared to democracies, there is no opposition in them, one party rules and there is no division of power. Tasić comments on the legal nature of these systems, exposing their political background. In these countries, human rights are not protected, and even the Soviet regime, although with certain democratic features, is not a legal state because it does not guarantee "subjective public rights of citizens".[17] Just as non-democratic and democratic political systems are distinguished according to the criteria of respect for human rights, formal and material concepts of the rule of law also differ. In the first case, the state is legal or legal, but not legal in the material sense (Tasić, 1925: 8-10; Vasić, 2001: 435).

In the third part, entitled "Contemporary understandings of the state", Tasić looks at the then German, English and French understanding of constitutional institutions. Noting the variations among these legal systems, he says that constitutions and

[14] This book was written as a result of his lectures. This also speaks of how much energy Tasić devoted to pedagogical work, considering that, in accordance with the idea of liberals, it is necessary to educate citizens in the direction of adopting democratic values and principles.

[15] Lowenstein's doctrine is "summarized in the following message - it is unacceptable for anti-democratic elements to use tools of democracy for the destruction of democracy itself. In democracies, there is no place for parties who seek to fight against its values and (or) fight for abolishing those values" (Radojević, 2023: 208).

[16] Tasić is quite cautious and even ambiguous in his opinions, thus stating that, although democracy is a political system with flaws, it is allowed to defend itself against its enemies, but also that no one has the right to violently oppose the will of the people, which does not exclude the possibility of being replaced by some other political form of government.

[17] That Tasić often deviates from his basic ideas can also be seen in the fact that, in another place, he classifies the Soviet system in Russia as a form of "workers' democracy", that is, a type of "social democracy" (Tasić, 1984: 156-157).

constitutional institutions are the expressions of the political state and morals of society. In the example of the development of the English constitution, he singles out four forms, layers or parts of the constitution. The first is symbolic; the second is the legal or written constitution, which consists of constitutional acts that do not have greater legal force, nor are they different from ordinary laws; the third is the "conventional constitution" and the fourth is the real constitution, which exists in all countries. In English constitutional law, the interweaving of the principles of conservatism and democracy produced good results because, along with respect for traditions and customs, the idea of democratization of society took hold. Under the influence of English pluralists, he advocates for a wider participation of citizens in the exercise of power (Tasić, 1936a: 70-72),[18] which to some extent influenced his proposal for a second house in the Yugoslav parliament as a representation of various social groups.

The mentioned study ends with a description of the proposal for the constitutional reform in France. The contemporary importance of Tasić's thoughts can be found in his discussions of parliamentarism, the institution of the president, the assembly and the referendum.[19] Consistency with the distinction between quasi-parliamentary ("false") and real parliamentarism is manifested in the definition of parliamentarism as an order in which authorities are mutually limited and dependent on voters (Tasić, 1936a: 75). Tasić once again uses the opportunity to point out that law is an emanation of society and to warn that the constitutional reform is doomed to failure if it is not an expression of social consensus and does not serve to reorganize the life of political parties and develop the feelings of social responsibility and duty (cf. Tasić, 1936a: 80).

In the same year when the study on contemporary political systems was published, Tasić wrote about the constitutional development of Albania and Greece. The title of the text indicates his intention to expand the research to other Balkan and European

[18] Given that Tasić stayed in the United States for professional training, it would be very interesting to investigate the influence of the theory of legal realism, American and British pluralists and American constitutionalists on his starting points about the state, the role of social groups, the idea of normative consensus and distrust in representative democracy.

[19] For more details about the French constitutional order, see his article entitled "Constitutional Order" (Tasić, 1938: 17-24). Although he is an advocate of democracy and believes that democratic institutions are the best cure for its ills, Tasić criticizes the referendum as a mechanism of supplementing correct representative democracy, because he believes that the electorate can be manipulated more easily than the people's deputies. Therefore, when judging institutions, the constitutional maker must be guided by "common sense". "Leaders of the people, from Napoleon and Napoleon III to Mussolini, used the deception that they only wanted to hear the so-called 'voice of the people', but it was only the sweet sound of Pan's flute. For populists, a referendum in the form of to a plebiscite has special importance, because it allows them to increase their power, amnesty themselves from possible guilt for risky decisions and convince the people that they really exercise power as such. That is why, in autocracies, it becomes an ideal means of conquering power and dismantling democracy and civil society. Due to these threats, in theory and political practice, mistrust and reservations are also expressed towards other forms of direct democracy. The referendum is being carefully approached in modern democracies, and not frequently used" (Radojević, 2022b: 188).

countries, but unfortunately, that did not happen. The lack of empirical material is the reason to suggest the scientific cooperation of the Balkan countries and the creation of a library fund for the study of comparative legal systems. Based on this research, Tasić transfers the field of his analysis to the extra-legal field and concludes that political and social factors influence the formation of constitutional systems (Tasić, 1936b). Here we see that he partially adopts the sociological premise of the dichotomy between the real and factual constitution (Ferdinand Lassalle), and states that "the same text can acquire different content and meaning according to political circumstances" (Tasić, 1936a: 67) Nevertheless, Tasić is not consistent in accepting Ferdinand Lassalle's starting point because, for example, he does not consider those written constitutions as legal expressions of class relations, but he accepts that constitutional issues are the consequence of real power relations (Lassalle, 1942: 30-31).

The modern understanding of constitutional law is also expressed in Tasić's definition of the constitution. The term is not unambiguous since it has a normative, political and sociological character (Tasić, 1995, p. 239).[20] The constitution is the will of the state and the act of the constitution maker.[21] In political terms, the constitution is identified with the system of government organization in which power is exercised by political bodies. From a formal point of view, it is a legal act with the highest legal force, which is passed in a different way from ordinary laws (Tasić, 1995: 244-245). Such a meaning takes shape in the modern (civil) state. The term "modern state" in Tasić's jurisprudence is important because the criterion for evaluating political systems is inseparable from the principle of democracy or popular sovereignty, the hierarchy of bodies and the division of state functions based on the principle of separation of powers. In the rule of law,[22] citizens are guaranteed rights protected by an independent judiciary, and the branches of government perform separate functions.[23]

At the beginning of his scientific career, Tasić declares about the properties and role of the constitution as "the basic law of a state". In his opinion, "the wisdom of law makers is reflected mostly in the wisdom of creating a constitution" (Tasić, 1921c: 72), so a constitution should respond to social relations and shape social reality legally (the so-called constitutional balance). On the contrary, constitutions as abstract and programmatic declarative acts are not a good solution, because they contribute, as in France, to frequent changes and social instability (Tasić, 1921c: 73). Tasić, however, corrected some of his views over time, e.g., in relation to his ideas about the procedure for changing the constitution. He summarized his understanding of the solidity of the constitution in the thesis of its elasticity, with the fact that he accepted that the citizens also directly

[20] Cf. Marković, 2013: 36-38.

[21] The constitutional authority, as a state function, is part of the legislative function.

[22] For Tasić's understanding of the rule of law, see Vukadinović, 1993; Vasić, 1993; Vasić, 2001.

[23] In his article "An attempt to divide state functions in a formal and material sense" (Tasić, 1984: 23-93), Tasić presented the criteria for distinguishing state functions, stating the differences between judicial and administrative acts, again making it a new and original way, as stated by his contemporary Laza Kostić (Kostić, 2000: 663).

participate in the process of the constitution because he found in it the realization of the principle of national sovereignty. In order to change the constitution, it is important that it is done in a legal way, which means that the constitutional revision procedure is respected. The content of the constitutional change is of less importance (Tasić, 1930: 115). In this way, he adhered to the opinion that the constitution maker is relatively bound by the previous constitution because in the case of revolutions and other major changes, he is completely free to create a new constitutional order. Here, his approach is realistic, certainly different from Kelsen's understanding and normativism, but also from the German legal school (Karl Schmidt). Tasić's constitution maker or "ultimate power" is the people (Tasić, 1921a: 25).

Among other things, the fact that he discussed the control of constitutionality in several of his theoretical works testifies to Tasić's fondness of constitutional law topics. Explaining the arguments *pro et contra*, he concludes that the courts should be entrusted with the competence to decide on the control of constitutionality. In support of judicial control of constitutionality, he cites legal and political reasons, and takes the side of the then ruling French theory which claims that the task of the court is to protect legality, and thus the balance of power, but also Kelsen's argument about constitutional judicial control, which respects the hierarchy of the legal order and sanctions violations the constitution as the highest law (Tasić, 1925: 412). Judicial review of constitutionality is a barrier against the omnipotence of the parliament. Unlike the "neutral" court, the parliament as a political body is unsuitable for performing this function (Tasić, 1927a: 376). We emphasize Tasić's perspicacity on this occasion as well, because he hints at the expansion of constitutional control and the Austrian model after the Second World War.

In Tasić's scientific opus, special attention is focused on parliamentarism and parliamentary institutions.[24] Parliamentarianism denotes a system of cooperation between the executive and legislative authorities, which in practice manifests itself in its various types.[25] According to the model of the English cabinet government, he expresses respect because in it there is no "tyranny of one party over another" (Tasić, 1926: 267). In the "cradle of parliamentarism", despite the shortcomings concerning the class character of society and the right to vote, a culture of solidarity and tolerance among political dissenters was developed. Apart from "real" parliamentarism, there is also "false" parliamentarism, synonymous with authoritarian systems and dictatorships. At the core of a true parliamentary system, the government is formed and depends on the trust of the parliamentary majority, which is its key principle (Tasić, 1926: 270; Tasić, 1928: 428).

The rules of the parliamentary system are partly contained in legal regulations, norms and customs. If these rules are not harmonized, it will affect the functioning of

[24] For Tasić's understanding of parliamentarism and parliamentary institutes, see the text by M. Stefanovski (1993).

[25] At the same time, Tasić combines different understandings, adhering to the opinions of French constitutionalists about parliamentarism as a form of government in which there is a government of ministers responsible to the parliament.

constitutional institutions. Tasić also mentions the institutes of rationalized parliamentarism, which he sees as an attempt to adapt parliamentarism to changes in the new era (the entry of the masses into politics) and the crisis of the traditional model (Tasić, 1928: 436). In another place, he concludes that the constitutional proclamation of parliamentarism is not a declarative norm, but is useful for the interpretation of other legal institutes in the absence of norms that directly regulate these issues (Stefanovski, 1993: 640).

Within parliamentarism, as one of his favourite topics, Tasić discusses the position and role of the head of state, other institutions such as coalition and expert governments, i.e., the non-parliamentary composition of governments, the influence of the electoral system etc. Free elections are the *conditio sine qua non* of democracy (sic!) because they allow the will of the people to be reflected in the parliament. If a voter sells his vote, either because he is unenlightened or blackmailed, democracy and parliamentarism are in danger (Tasić, 1992a: 154), which is a clear allusion to and criticism of the electoral practice in the former Yugoslavia. Tasić is a supporter of the expansion of voting rights (Tasić, 1921b) and a proportional electoral system. The proportional electoral system promotes compromise between political parties and solidarity among political groups, which ultimately contributes to the stability of political systems.

Given that Tasić is not a "dry" theoretician, but strives to make his thought serve the unravelling of practical problems, the subject of his polemics is the parliamentary regime in Yugoslavia between the two world wars. Almost always cautious in his conclusions, on this occasion he points out that governments do not depend on the confidence of the parliamentary majority, and elections are not free (Tasić, 1992: 189). The king, that is, the head of state, in parliamentary constitutional monarchies must not influence the formation of parties and choose ministers (Tasić, 1928: 435). If the king governs the parties, it means that the power has passed into his hands. Such governments are weak, and the parliament is unproductive. The cure for the diseases of Yugoslav parliamentarism lies in the "reorganization" of the parties and the formation of the upper house as representatives of socio-economic groups (socio-economic bicameralism). In addition, depoliticization and professionalization of public administration are necessary (Tasić, 1928: 442), freeing the administration from political constraints. Unlike other theoreticians, Tasić observes a feedback loop between the party and the constitutional system. According to his understanding, the proper "balance" between the parties is necessary for the functioning of the division of power and parliamentarism.[26] Political parties in the Kingdom of Serbs, Croats and Slovenes and later in the Kingdom of Yugoslavia were criticized for their tribal character,[27] lack of internal democratic structure, and for putting party interests before public interests ("partisanship").

[26] Unlike Slobodan Jovanović, Tasić was not an opponent of coalition governments because he believed that, in addition to stability, in a society it is important to take into account the cooperation of social groups represented by parties.

[27] That Tasić's point of view is authoritative for the legislator is corroborated by the fact that a year after the publication of this text, in the Kingdom of Serbs, Croats and Slovenes, on the basis of the Law on Protection of Public Safety and Order in the State (Article 3), the ban on political

He also expressed his broad interest in constitutional law in the debate on the creation of the new state of the Kingdom of Serbs, Croats and Slovenes (Tasić, 1921a). As he often did in other cases, he took the debate about the institute of emergency on two levels: theoretically - by criticizing Karl Schmitt's theory of the sovereign, and legally-politically - about the dictatorship of King Aleksandar Karađorđević of 6 January 1929. In understanding the institution of the state of emergency, he again demonstrates a non-dogmatic approach by delving into the complex nature of the institution itself and the theoretical aporia. For Tasić, the theory of a sovereign dictatorship based on the delegation of power is unacceptable, but he admits that "in the field of constitutional law, it is necessary to take into consideration the reality of political life and the state of the relationship between forces that act and constantly exert their influence on the constitution". Applying a sociological starting point, he concludes that constitutional law is "between rules, norms and political reality, a permanent state for a period of time of the forces that operate" (Tasić, 1992: 194-195).

The comprehensiveness of the subject of constitutional law as a field of research and the consistency of Tasić's scientific thought can be seen in the understanding of constitutional rights as a guarantee of freedom and a limit to the unrestrained expansion of power. Equality of citizens is "the basic principle of democracy" and has a great practical scope (Tasić, 1930: 329) because it also includes many other rights, such as the right to appeal against the actions of the government (Tasić, 1984: 253). Tasić points to the ambiguity of equality and advocates the premise that equality implies social justice. Although he believes that people are not factually egalitarian, he concludes that the equality of citizens in the formal legal sense is necessary, which implies the right to personal equality. Social equality includes the absence of discrimination and the right to "equal opportunities". He admits that this means encountering a slippery slope because we abandon the legal notion of egalitarianism (Tasić, 1930: 426). Equality acquires its content according to "the spirit of the constitution and according to the main tendencies expressed in it; individualistic or solidaristic" (Tasić, 1939: 432).[28] The call for the constitutionalization of political, economic and social rights based on the Weimar Constitution is the result of Tasić's commitment to the rule of law and democracy.

Argumentation in favour of state interventionism, in which Tasić was again one step ahead of his time, is based on the belief that a broader role of the state in economic and social policy contributes to a more just society (Tasić, 1925a: 29-31). This does not mean that he is in favour of nationalizing economy and economic life according to the Bolshevik model, because private property is a "sacred" right,[29] but a hint of the welfare

parties with religious or tribal symbols was prescribed. The Constitution of 1931 expanded the reasons for the ban because parties could not be founded on "religious, tribal or regional grounds" (Radojević, 2022b: 27). In practice, this provision was not consistently applied.

[28] When Tasić speaks about the "spirit of the constitution", he has an idea of it in a liberal sense, which implies that rights derive from the constitution even when they are not explicitly stated.

[29] In his earlier works, Tasić is an advocate of the limitation of private property in the public interest, that is, he believes that it is necessary to constitutionally establish the principle of the social function of private property (Tasić, 1921c: 73).

state (Social Welfare), a form of organization of societies in certain European countries after the Second World War. Tasić's aforementioned understandings stemmed from his understanding of politics, founded on ethical principles, and law in the service of general interests. In accordance with "value relativism", he tried to outline the characteristics and importance of legal institutions and principles, but warned that these were only forms, and that the real causes of problems were of a social nature (Tasić, 1938: 24). As a modern theoretician, he assessed the validity of the legal order by combining value and rational criteria, whereby the influences of the modern school of natural law and the rule of law are recognized.[30]

Rejecting one-sided understandings of legal phenomena and institutions, he is inclined to reconsider his previous conclusions. Thus, he notes that some of the social and collective rights conflict with the individual right to equality. On the other hand, if social and economic conditions are not ensured, a gap will arise between proclaimed political (constitutional) rights (*de iure*) and their realization in practice (*de facto*). Political problems should be resolved by agreement and consensus, and when interpreting constitutional norms, the "evolution of social power relations" should also be taken into account (Tasić, 1923: 198).

Tasić's other points of view also have a current quality, for example on judicial authority, in which he was also ahead of his time. Tasić writes about the independence of the judiciary and judges, expressing a deep and complex understanding of the problems related to this branch of government. The first is possible only in the rule of law, that is, in democracies (Tasić, 1935: 5), and the second only for those judges who proceed according to the law and enjoy certain guarantees of their position. For legal technical guarantees of independence to be realized, political and social assumptions are necessary. The judge should be freed from all pressure, which means political orders. He has to be appointed to this position for life, to be materially taken care of, that is, to have a "good salary". The best way to appoint him is by the judicial bodies themselves. Thus, protection is provided against political abuses and party influences.[31] This way of electing judges is in accordance with the principle of separation of powers and "makes judges aware of their independence" (Tasić, 1935: 11-13). However, this system of electing judges is not without flaws, as it creates a "guild spirit" and "coterie".[32] Therefore, certain control of the executive power is necessary, which is formalized in the fact that the decision of the

[30] For example, although he is a supporter of democracy and believes that democratic institutions are the best medicine for its ills, Tasić criticizes the institution of the referendum as a mechanism of complementing or correcting representative democracy, believing that the electorate can be more easily manipulated than the people's representatives. He expects the legislator to be guided by "common sense" (Tasić, 1936: 79).

[31] Tasić rejects the election of judges by the head of the executive power or parliament because they enable the exercise of political influence.

[32] Tasić's argumentation is relevant in expert and professional debates on the adoption of judicial laws in Serbia in 2022. Namely, he belonged to the 'lone theoreticians who stated the advantages of electing judges through special professional (judicial) bodies (Radojević, 2022c: 638, footnote 43)

judicial panels is confirmed by the competent minister, and that the advancement of judges depends on objective criteria (Avramović & Jovanov, 2021: 502). Tasić, as when considering other legal institutes, tried to propose the most suitable solution or model. In this case, it is a balance between the demands for independence and the accountability of judges. Finally, he also believed that it was necessary to develop the awareness and conscience of judges about their role in protecting citizens in relations with the state and executive power. The judge does not have only the task of representing the "mouth of the law", to reveal the will of the legislator (the so-called classical or traditional understanding of the judicial function), but his role is also creative, especially in the case of legal gaps, when a new legal rule is created (Simić, 1973: 308, 316).

Tasić published several articles on decentralization and the complex state. At that time, the theory did not have a built-in conceptual apparatus as it does today, when local self-government is defined as a form of territorial decentralization and a form of realization of a special right recognized by international documents (the right to local self-government). In addition, at the time he wrote these articles, in the unitary constitutional system of the Kingdom of Serbs, Croats and Slovenes, later Yugoslavia, self-government was a form of administrative decentralization. Tasić, therefore, states that it is an indefinite, contradictory or "relative" term (Tasić, 1927b: 106; Tasić, 1927c: 184). Municipal self-government is guided by the constitution and performs entrusted ("administrative") competencies. On the other hand, there are self-governing bodies, elected at the local level, which perform certain tasks. Observing the difference between the formal and real status of local self-government, he notes that it is about "two tendencies". According to the first, a municipality is not a state function nor does it have an original or independent right to manage its affairs, that is, it is not a form of independent management of local affairs (Tasić, 1927b: 91), but a form of administrative decentralization (Tasić, 1926: 34). According to the second tendency, citizens win the right to local self-government, to elect their bodies and perform certain tasks (Tasić, 1927b: 99), so it is accordingly a right regulated by the state.

He considered decentralization important for the development of democracy, but claimed that it was of "secondary importance" in relation to the organization of government at the central level (Tasić, 1926b: 40). The political importance of local self-government lies in the fact that it is the basic level at which citizens are taught to manage public affairs. Tasić is also against the typical organization of local self-government units. The size of municipalities and cities is the criteria by which the status of local self-government units should be determined. According to their social and cultural structure, they should be allowed the possibility of multi-level organization and association of municipalities or cities.[33] In the jurisdiction of the local self-government, apart from communal affairs, a significant part of the affairs must be related to social policy.

Before World War II, Tasić studied federalism. In his views, he expresses scepticism towards changes or reforms in the legal system and the concept of transplanting or

[33] Tasić also researched the problem of regions as administrative and self-governing units in France and Germany.

uncritically taking over solutions from other legal systems (Tasić, 1939). In his opinion, federalism should not be rejected *a priori* as a solution to the problems of the Yugoslav unitary state because its positive side is in encouraging feelings of creating a broader community and solidarity. At the same time, it is necessary to look at similar examples of the functioning of federalism in other countries, such as the United States of America and Switzerland, and to consider doctrinal criticisms of federalism. However, one should start from the fact that "every system and every arrangement has its good and bad sides" (Tasić, 1939: 483), taking into account the fulfilment of the assumptions that the federation would be effective in the political system. In the Kingdom of Yugoslavia, unity was opposed by the call for independence and autonomy, i.e., as Tasić says, "the desire for power", which are "all the stronger if they were suppressed by one nation or tribe for a long time in the course of history". Accordingly, it is necessary to have the form of historical circumstances when deciding on the forms of state organization (Tasić, 1939: 483).

ĐORĐE TASIĆ – A MODERN CONSTITUTIONALIST

Tasić's scientific creativity stemmed from the time and environment in which he lived. In the understanding of constitutional law, his erudition, jurisprudential and sociological starting points about law as a social phenomenon were manifested, and in the interpretation of constitutional institutions, a humanistic vision of a just society. Tasić is considered the embodiment of a contemporary and original theoretician of constitutional law and constitutionalism, which is noticeable from his methodological approach and critical attitude toward the influential theories of Hans Kelsen and Karl Schmidt. In a large number of scientific works, he covered a multitude of constitutional law topics, from the concept and change of the constitution to the form of state organization and control of constitutionality. His intention was not only to leave a deeper mark in science, but also to refine practice. This can especially be seen in his thoughts on the rule of law, parliamentarism, protection of human rights, criticism of party interests in the political system and the role of the monarch in the formation of governments, as well as in his interpretation of the concept of independence of the judiciary and views on the problems of decentralization.

For Tasić, the term constitution is multifaceted – it is a legal, political and sociological phenomenon. Therefore, when interpreting the constitution and constitutional institutions, it is important to know the constitutional text, but also the constitutional tradition, constitutional conventions and customs, political and social relations, that is, the "evolution" of social power relations and historical circumstances. Unlike his contemporaries, he apostrophized the influence of the party system on the functioning of the constitutional order, explaining that, due to the action of political and social factors, the *de facto* and actual constitutions in a country often diverge.

In the period of the crisis of parliamentarism between the two world wars, the emergence and development of constitutionalism brought it into connection with democracy,

the rule of law and human rights, raising them to the pedestal of basic constitutional values (principles), as criteria for evaluating systems and distinguishing non-democracies or authoritarian societies. For Tasić, society rests on justice and solidarity, and the task of the modern state as a legal organization is to serve social and cultural development.

In his scientific works on constitutional problems, he showed a gift for analysis, although often with a difficult and not-so-clear and elegant style, as was the case with Slobodan Jovanović's writing. However, his virtue is in exposing the flaws and virtues of the research object, discovering the causes and determining the legality. In his analyses, following the relativity of truth, he assumed the imperfection of law, political institutions and democracy itself. Accordingly, he often warns that any constitutional reform is doomed if it is not an expression of social consensus, social responsibility and duty of public authorities.

Tasić is an important legal theoretician who pointed out problems in methodology and shed light on a number of problems in constitutional law, but also anticipated the development of constitutional institutions. His constitutional jurisprudence foreshadows the problems that constitutional law science will deal with almost a century later, such as effective control and balance of power, legitimate limitations of political (constitutional) rights, state intervention in the area of public freedom, protection of minorities and collective rights, citizen participation and social groups in government, decentralization and control of constitutionality etc. That is why he is considered a contemporary thinker and theoretician of the rule of law, whose work, unfortunately, has not been sufficiently explored.

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