

SEPARATION OF POWERS AND PARLIAMENTARISM
THE PAST AND THE PRESENT
LAW, DOCTRINE, PRACTICE

PODZIAŁ WŁADZY I PARLAMENTARYZM
W PRZESZŁOŚCI I WSPÓŁCZEŚNIE
PRAWO, DOKTRYNA, PRAKTYKA

In memoriam
Dr. Jacek Jędruch and Prof. Stanisław Russocki, distinguished members
of the International Commission for the History of Representative
and Parliamentary Institutions

**SEPARATION OF POWERS AND PARLIAMENTARISM
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and Parliamentary Institutions in Cracow and Radom (5-8 September 2005)

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Wacław UruszczaK, Kazimierz Baran, Anna Karabowicz



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clairement manifesté leur volonté d'envoyer au Parlement surtout des hommes qui n'avaient pas fait partie des précédents *establishments* politiques et gouvernementaux ou, en définitive, des personnes qui n'étaient pas considérées responsables des derniers événements politiques. Le choix des électeurs a porté surtout sur des hommes ayant eu une certaine expérience administrative ou judiciaire locale ou qui jouissaient d'un prestige social élevé au niveau local; b) cette volonté a pu aussi se réaliser parce que le gouvernement, étant à sa première expérience électorale, n'avait pas encore tout à fait mis au point — comme il le fera successivement — ses méthodes de pression sur l'électorat (cette considération semble avoir été généralement négligée par les "interprètes" de ces élections); en outre, même lorsque les pouvoirs publics ont eu la possibilité de faire jouer en plein le poids de leur intervention et de leurs influences administratives et politiques, ces effets ont été limités ou même carrément annulés par des situations particulières et des circonstances socio-politiques, dont certaines — préexistantes (comme la société secrète des Chevaliers de la Foi) ou occasionnelles (la "terreur blanche", l'occupation des armées étrangères) — ont fini par contribuer de manière déterminante au succès des candidats de tendance plus conservatrice. Mais il ne fait pas de doute que cela correspondait, dans l'ensemble, à la volonté politique de l'électorat²⁶.

²⁶ Selon T. Beck, le résultat surprenant des élections de 1815, tout en étant redimensionné par la suite par le vote de 1816 (après la dissolution de la "Chambre introuvable"), marquera le début — malgré les changements sociaux dans la composition de la nouvelle Chambre — d'une tendance politique bien précise qui caractérisera toute la période de la Restauration (cf. T. Beck, *French Legislators. A study in quantitative history. 1800–1834*, Berkley–Los Angeles–London 1974, pp. 61, 62). Pour un regard d'ensemble sur les institutions politiques dans la période examinée, cf. M.S. Corciulo, *Le istituzioni parlamentari in Francia (1815–1816)*, Naples 1996 et, en outre, I. Backouche, *La monarchie parlementaire (1815–1848). De Louis XVIII à Louis-Philippe*, Paris 2000.

Dalibor Čepulo

ZAGREB, CROATIA

AUTONOMY, DEPENDENCE AND MODERN REFORMS IN CROATIA-SLAVONIA 1848–1918

1. Introduction

The period from 1848 to 1918 was a time when the modern Croatian legal system was shaped through several sets of reforms introduced in various political circumstances. Those legal reforms intertwined with a broader nation-building process and reflected more complex determination that affected formation of the modern Croatian society in general. However, the primary importance in the complex pattern belonged to the autonomous position of the Kingdoms of Croatia-Slavonia in the Kingdom of Hungary, consisting in autonomous legislation, executive and judiciary.

I will reconstruct here the main features of the process of modernisation of the Croatian legal system as seen primarily through the prism of autonomy — dependence relations. Apart from that I will also describe the elements of political technology that characterized relations between the centre and its autonomous part. Before that I will briefly underline the roots and basic characteristics of the Croatian autonomy necessary in order to follow the analysis.

2. Croatian autonomy from medieval times to 1848

The Croatian medieval principality that emerged in the 9th century was turned into the kingdom in 925 but the independent Croatian state ceased to exist at the beginning of the 12th century. The empty Croatian throne was occupied by the Hungarian Arpád dynasty probably after some kind of feudal compromise had been reached between the Croatian aristocracy and the new king. Political subjectivity of the land did not disappear as Croatia preserved its own aristocracy and because Hungarian kings ruled Croatia as a distinct land from Hungary. The institutional background of the autonomy was the institution of the *ban*, i.e. the highest executive official (inherited from the previous period), and the legislative *Sabor* (Diet) that appeared in the 13th century. Because of that, the authority of the Hungarian central institutions was not directly effective in the Croatian territory. However, continuity of the autonomous institutions was preserved only in the Kingdoms of Croatia-Slavonia because the coastal region of Dalmatia was definitely annexed by Venice at the beginning of the 15th century even though its name continued

to be used occasionally in the name of the land (“Kingdoms of Dalmatia and Croatia”, “Kingdoms of Slavonia, Croatia and Dalmatia” etc). With the fall of the Venetian Republic in 1797, Dalmatia became an Austrian province, but only after an intermediate period of the French rule 1805–1813. Apart from that, a piece of the Croatian-Slavonian territory that bordered with the Ottoman Empire was put under direct Austrian military administration at the turn of the 16th century to the 17th century (Military Border).

In the 17th century it was established that four delegates of the *Sabor* participate in the Hungarian Diet and it was with their consent that laws enacted in the Hungarian Diet were extended to Croatia-Slavonia. In 1790, following the end of the Josephin absolutism, the *Sabor* deliberately delegated part of its executive and fiscal authority to the Hungarian Government and the Hungarian Diet. This “provisional” delegation of authorities should have reinforced common resistance against potential absolutist attempts as well as against influence of French revolutionary ideas. However, it resulted in extension of direct competences of the Hungarian government to Croatia-Slavonia and marginalized the role of the *Sabor*. From 1820s to 1848 discussions in the Hungarian Diet challenged the remaining part of Croatian autonomy that was threatened with further reduction and by subordination of the *Sabor* to the Hungarian Diet as well as by introduction of Hungarian as the official language in Croatia. Croatian political resistance was based on the defence of the Croatian traditional legitimistic rights (*iura municipalia*) that granted its autonomy. The tensions escalated to an open conflict in 1848¹.

3. Modernisation and dependence in Croatia-Slavonia 1848–1918

The Croatian-Hungarian conflict in 1848 was the continuation of previous political quarrels but it was triggered by the enactment of the March Laws in the Hungarian Diet. The March Laws abolished feudalism and set down modern institutional ground of the national Hungarian state. But some of these laws — accepted in spite of protestation of the Croatian delegates — reduced the Croatian territory, considerably reduced autonomous competences and made Croatian laws dependent upon laws of the Hungarian Diet². Soon, the “Demands of the People”, an extensive petition of rights set up by the Croatian national movement was accepted at the political assembly in Zagreb. Partly, it was

¹ Reviews of the Croatian history until 1848 see in I. Goldstein, *Croatia. A history*, London 1999; I. Perić, *A history of the Croats*, Zagreb 1998; L. Steindorff, *Kroatien. Vom Mittelalter bis zur Gegenwart*, Regensburg 2001. Review of the Croatian medieval legal history and institutions see I. Beuc, *Povijest institucija državne vlasti kraljevine Hrvatske, Slavonije i Dalmacije (pravno-povijesne studije)*, Zagreb 1985, pp. 3–230.

² On the March Laws see A. Csizmadia, *L'instauration du droit bourgeois au cours de la révolution hongroise de 1848*, *Acta Juridica Academiae Scientiarum Hungaricae* 25, 1983, 3–4, pp. 311–350; C.A. Macartney, *The Habsburg Empire 1790–1918*, London 1969, pp. 336–341, 380.

a reaction to the March Laws. The Demands of the People were based both on the legitimistic ground (seen as the cornerstone of autonomy) as well as on the natural law principles of civic and national freedom and subjectivity. On this double basis, the petition demanded integration of the Croatian regions as the constitutive parts of the virtual Triune Kingdom (Kingdoms of Dalmatia, Croatia and Slavonia) and introduction of a number of national institutions (Croatian ministry of finances, national bank, national postal service, etc.) as well as modern regulatory principles such as equality by law, national sovereignty, representative diet, responsible government, civic liberties (freedom of the press, freedom of public assembly and of association, trial by jury, fair judiciary) etc. Such an ambitious program could hardly be executed in the circumstances of the time and the “Demands of the People” can be seen as a very general program whose core was executed only gradually, reaching the climax in the 1870s³.

The reforms proposed by the “Demands of the People” could not be initiated in the old *Sabor* where the majority composed of conservative nobility would probably obstruct any attempt to abolish serfdom. Thus, instead of convening the old *Sabor*, ban Jelačić decreed the Electoral Law and convened the new *Sabor*. The new electoral order was based on the principle of elective franchise for males with minimal prerequisites (possession of any real estate or high school degree or civil servant status) while passive elective franchise was pre-conditioned by literacy and by affiliation to the religions acknowledged by law, i.e. Catholic or Orthodox. The latter provision excluded a small number of protestant who were presumably pro-Hungarian oriented. The law kept traditional distinction between direct elections in towns and indirect in villages as well as bi-componential structure of the *Sabor* (virile members and deputies)⁴. Before convening the *Sabor*, the ban proclaimed abolishment of serfdom and break of all connections with Hungary on the ground of Hungarian violation of the old constitution, i.e. because of the breach of Croatian autonomy. Both decrees were approved by the new *Sabor* of 1848 that only one month after having convened postponed its work indefinitely due to the radicalisation of the crisis with Hungary. In that short period the *Sabor* was concentrated on drafting the future constitutional position of Croatia in the Monarchy. One of the main *Sabor*'s acts was the programmatic concept of Croatian autonomy in

³ On the Demands of the People see T. Markus, *Hrvatski politički pokret 1848.–1849. godine*, Zagreb 2000, pp. 69, 70; D. Čepulo, *Razvoj ideja o ustroju vlasti i građanskim pravima u Hrvatskoj 1832–1849*, *Pravni vjesnik* 2000, Nos. 3–4, pp. 41–44; P. Korunić, *Hrvatski nacionalni i politički program 1848/49. godine. Prilog poznavanju porijekla hrvatske nacije i države Hrvatske, Povijesni prilozi* (1992), pp. 211, 212; J. Šidak, *Studije iz hrvatske povijesti za revolucije 1848–1849*, Zagreb 1979, pp. 33–74, 51, 52.

⁴ L. Polić, *Povijest modernoga izbornoga zakonodavstva hrvatskoga*, *Mjesečnik Pravničkoga društva u Zagrebu* 1908, No. 8, pp. 657, 658, 659; H. Sirotković, *Jelačićev izborni red za prvi hrvatski građanski Sabor 1848. godine i provođenje izbora, Hrvatska 1848. i 1849. Zbornik radova*, Zagreb 2001, pp. 60, 62.

the decentralised Monarchy with autonomous units and the central parliament in Vienna. Thus Austro-Slavic concept replaced the traditional concept of autonomy based on the legitimistic rights. However, reforms of Croatian institutions were left ahead due to scepticism about political and social preparedness of the Croatian society for reforms as well as because of uncertainty about the concept of reforms. It seems that the political elite at that time was more prepared to accept replacement of the traditional institutions with the new ones than to reform traditional municipal institutions “in the new spirit”⁵. However, the draft-laws prepared by the Sabor’s committees in 1849 indicate a compromise approach that preserved elements of the traditional municipal order. That return to tradition was probably a reaction to the imposition of the false March Constitution that introduced modern institutions but neglected Croatian autonomy — thus old municipal institutions that granted rather free political life in the counties regained their value⁶. It was only in September 1849 that the Croatian authorities proclaimed enforcement of the March Constitution to Croatia but the Sabor was not convened again, so that the planned reforms were not accepted.

Thus, 1848 was in a way a missed opportunity for introduction of modern Croatian laws. In fact, modern legal reforms were imposed upon Croatia-Slavonia from Vienna during the centralistic periods of the false constitutionalism 1849–1851 and Bach’s absolutism 1852–1859. The laws introduced in Croatia-Slavonia at that time were part of the reforms undertaken in the whole Monarchy as preparation for legal unification of the Monarchy and its efficient administration from one centre. A number of important laws were introduced in Croatia-Slavonia, mostly in 1852–1853, regulating judicial and administrative organisation, civil and criminal law, civil and criminal procedures, school system and legal education. The new laws mainly improved conditions in their respective spheres. After the reinstatement of constitutionalism in 1860, some of these laws were tacitly accepted as integral parts of the autonomous Croatian legal system (like the Austrian General Code and Penal Code) while some others indirectly affected Croatian laws (like the ones on organisation of judiciary and administration). The most important of these laws remained in force up to the legal unification of the Kingdom of Yugoslavia in 1929 and some of them even up to 1945⁷.

The return of constitutionality in 1860 in Croatia-Slavonia was followed by the intensive double-track reform activity of the Sabor of 1861. The Sabor was mostly occupied with regulation of the Croatian-Slavonian autonomous position in the Monarchy, primarily in regard to Hungary, but it also attempted to

⁵ Markus, *Hrvatski*, pp. 89, 123, 124, 144–147; Polić, *Povijest*, pp. 652–658; I. Perić, *Hrvatski državni Sabor 1848–2000. Prvi svezak: 1848–1867*, Zagreb 2000, pp. 141–143, 148 ff., 172 ff.

⁶ Markus, *Hrvatski*, pp. 276, 277.

⁷ D. Čepulo, *Building of the modern legal system in Croatia 1848–1918 in the centre-periphery perspective*, T. Giaro (ed.), *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, Frankfurt am Main 2006, p. 59.

introduce new institutions in all spheres of autonomous competences and replace regulation imposed during absolutism. The two spheres were seen as connected because autonomy that would depend upon archaic internal institutions could not be effective while the idea to keep institutions that had been introduced in the absolutist period was unacceptable because of political reasons. The political basis of reformism at the Sabor 1861 merged the ideology of the Croatian *Staatsrecht* grounded on historical rights with the liberal concept of national and individual freedom based on natural law. The Sabor and its committees drafted a large number of laws from all spheres of autonomous competences. Those drafts were mostly based on the Austrian laws from the previous period, adapted to the Croatian circumstances. As they regarded administration and judiciary, the legislators also tried to include elements of the Croatian traditional regulation derived from the county organisation based on municipal autonomy. It was again reaction to the previous absolutist period as the county organisation was seen as a traditional bulwark against absolutism. However, these reform attempts were unsuccessful because the Sabor was dissolved only six months after the convocation due to its refusal to accept the centralist concept of organisation of the Monarchy⁸. Another Sabor of 1865 paid far more attention to reorganisation of the Monarchy than to the reform of the institutions. However, the Sabor was dissolved in 1867 after its National Party majority protested against the Austrian-Hungarian Compromise concluded between the king and the Hungarian Diet because it neglected Croatian individuality⁹.

Elections for the Sabor were carried out in the new dualistic framework of the Monarchy, Croatia-Slavonia being a piece of the Hungarian part. The pro-Hungarian orientated Unionist Party won these elections largely as a result of pressure from the newly established Hungarian government in Pest and from the Court. The Sabor of 1868 with a pro-Hungarian majority and the Hungarian Diet soon set up the sub-dual Croatian-Hungarian Compromise that remained in force till 1918, with only minor revisions being undertaken through that time. The Compromise defined the constitutional framework of Croatian autonomy by delimitating spheres of common and autonomous competences and providing for a structure of power. Croatia-Slavonia was granted autonomy in administration, religion and education, and in judiciary having its own legislation (the Sabor), the executive apparatus with the government responsible to the Sabor and the judicial system with the Supreme Court at the top (it was established in 1862). Croatia-Slavonia participated in the common government but its structure granted absolute Hungarian predominance with largely symbolic

⁸ M. Gross, A. Szabo, *Prema hrvatskom građanskom društvu*, Zagreb 1992, pp. 140–150; D. Čepulo, *Zakonodavna djelatnost Hrvatskog Sabora 1861. — autonomija, modernizacija i municipalne institucije*, *Pravni vjesnik* 2002, Nos. 1–2, pp. 145–154.

⁹ Gross, Szabo, *Prema hrvatskome*, pp. 191–213; Perić, *Hrvatski*, p. 356; D. Čepulo, *Sloboda tiska i porotno suđenje u banskoj Hrvatskoj 1848–1918*, *Hrvatski ljetopis za kazneno pravo i praksu* 2000, No. 2, p. 933.

Croatian participation. The common government retained control functions of Croatian autonomy in order to protect the common sphere but the control was executed in the Hungarian interests. Among the most important features of the control were: a) the ban was appointed by the king on the proposal of the Hungarian Prime Minister; that essentially diminished effects of the ban's legal responsibility to the Sabor, b) the Croatian delegates participated in the Common Diet where they were in an insignificant minority with individual votes (not possessing the collective vote like in the feudal Diet) due to which they were without any real influence, c) the "Croatian-Slavonian Minister" in the central government was responsible to such Common Diet, d) public finances were defined as part of the common competences, i.e. only the common government could execute fiscal policy and collect incomes from Croatia-Slavonia out of which 45% were allocated for the Croatian budget and 55% for the common budget, e) laws of the Croatian Sabor were submitted for the king's sanction through the central government; the central government could complain to the king on the ground that the Croatian laws breached the common competence or violated common interests, the king always settled such disputes by accepting Hungarian arguments and denying to sanction the Croatian laws¹⁰. Apart from the institutional arrangements built in the Compromise political constellations in Croatia and Hungary also affected the factual reach of Croatian autonomy and reflected on the intensity and content of the modernisation.

But apart from the Croatian dissatisfaction with the Croatian-Hungarian Compromise (the National Party refused to accept it till 1873), it provided a necessary basis for systematic modernisation in an autonomous framework. An essential presumption for autonomous reforms was a stable constitutional framework and it was set down only with the Croatian-Hungarian Compromise.

Such a position of the Croatian-Hungarian Compromise made it the object of primary interest of the Croatian legal scholars who paid most of their attention to the question of the nature of the Croatian position. The most typical argument was that Croatia-Slavonia had preserved its statehood in the deliberately formed revocable *unio realis inequalis*. It is worth to mention a discussion between Josip Pliverić and Georg Jellinek that resulted in Jellinek's modification of his previous thesis on the provincial status of Croatia-Slavonia and the development of the category of *Staatsfragmente* in which he encountered Croatia-Slavonia and Finland¹¹.

¹⁰ On the Croatian-Hungarian Compromise see Čepulo, *Building*, pp. 61–67; Gross, Szabo, *Prema hrvatskome*, pp. 232–239; D. Čepulo, *Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom Saboru 1868–1871*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci 2000, Supplement 1, pp. 117–148; N. Krestić, *Hrvatsko-ugarska nagodba*, Beograd 1968; J. Pliverić, *Das Verhältniss Kroatiens zu Ungarn*, Zagreb 1885; *idem*, *Beiträge zum Ungarisch-kroatischen Bundesrecht* Agram 1886; *idem*, *Der Kroatische Staat*, Agram 1887.

¹¹ Correspondence of the two authors see in Georg Jellinek–Josef Pliverić, in *Das rechtliche Verhältniss Kroatiens zu Ungarn*, Zagreb 1985; and A. Buczynsky, S. Matković, *Korespondencija Josip Pliverić–Georg Jellinek 1885. godine*, Zbornik Pravnog fakulteta u Zagrebu 2000, No. 6, pp. 1053–1084. See also G. Jellinek, *Ueber Staatsfragmente*, Heidelberg 1896, pp. 36, 38.

After the enactment of the Croatian-Hungarian Compromise, the Croatian-Slavonian government was in hand of the Unionist Party that was strongly backed by the central government. That period (1868–1871) was characterized by the authoritative style of the rule and the undertaking of only those reforms that were necessary for implementation of the Croatian-Hungarian Compromise. The Unionist autonomous government avoided undertaking of more extensive reforms — even though public pressure forced it to draft several reform laws — fearing that they would turn against the government itself. The most important reform laws enacted in that period were the ones on organisation of autonomous government and on equality of Jews. Another important law was the one that liberalized division (individualisation) of the collective ownership of communal joint-families (*zadruga*), but its implementation soon triggered the beginning of a social crisis so that the law had to be suspended in 1872. But even such moderate reformism announced the beginning of serious and intensive reform activity in the next period¹².

Despite strong support from the central government, the Unionist Party lost elections for the Sabor in 1872 and disappeared from the political scene. But in spite of winning the elections, the National Party was allowed to participate in the autonomous government only after concluding a political compromise with the central government by which it accepted the Croatian-Hungarian Compromise in return for its minor revisions¹³.

The next period of ban Ivan Mazuranić (1873–1880) was a climax of modernisation in Croatia-Slavonia. Mazuranić was politically close to the National Party but he was also acceptable to the Court and to the central government. During his administration the remaining pieces of archaic regulation and the laws stemming from the absolutist period were replaced with the modern institutions modelled upon the Austrian laws. The liberal reformists perceived modernisation of the Croatian legal system as part of the building of a modern Croatian society. They explicitly formulated that their goal was to place Croatia among the developed European nations through adoption of values and institutions that were present in the leading European countries. The reformists believed in a possibility of accelerated development of society, based on adaptation of institutions that were already verified as functional in developed countries. Progress should be manifested not only through improved conditions in the society but also through neutralisation of dependency upon the closer and the broader environment. At the same time development would help to confirm national subjectivity in regard to the environment. In the Croatian case an important dimension of development based on modernisation would be realization of the crucial national goals i.e. consolidation of autonomy as

¹² Čepulo, *Hrvatsko-ugarska nagodba*, pp. 135, 136, 138, 140–144; *idem*, *Izgradnja hrvatske moderne uprave i javnih službi 1874–1876*, Hrvatska javna uprava 2001, No. 1, p. 93; Gross, Szabo, *Prema hrvatskome*, pp. 387, 388.

¹³ Gross, Szabo, *op.cit.*, p. 243 ff.

a necessary precondition for its extension as well as integration of the still separated Croatian regions of Dalmatia and the Military Border that otherwise could not be demanded by a backward country¹⁴.

The reforms undertaken from 1873 to 1875 were particularly intensive and they introduced new principles in the Croatian legal system. Thus, the new laws introduced legal responsibility of the ban to the Sabor, they granted judicial independence, rationalized organisation of judiciary and administration, introduced modern criminal procedure and the jury trial for offences committed through the press, the new laws granted freedom of the press and regulated the right of assembly (even though in a rigid way), elementary schools were secularized and turned into the state schools and the university in Zagreb established. The intensive reforms until 1875 were tolerated by the weak central government that was busy with the political crisis in Hungary and also wished to demonstrate the advantages of the pro-Compromise politics for Croatia. However, coming to power of the Hungarian liberal nationalist Kálmán Tisza in 1875 significantly slowed down the Croatian reform activities. The reforms continued until 1878 but they were of lesser importance and occasionally obstructed by the central government that demanded changes of the draft-laws as well as of the laws of the Sabor submitted for royal sanction. The reforms were almost fully blocked after 1878 partly because of the Austrian occupation of neighbouring Bosnia and Herzegovina in 1878 but more because of the obstruction by the central government. After 1878 the Croatian government was concentrated on ending negotiations with the Court on unification of the Military Border with Croatia. However, the process was blocked by the central government that did not want to let the Croatian nationalistic autonomous government grow politically stronger. Being between the hammer and nail, i.e. between such politics of the central government and the criticism coming from Croatian deputies about his passivity, the ban Mazuranić resigned in despair in 1880¹⁵.

As it has been indicated before, the reforms in this period were by and large based on transfer of the Austrian institutions. The process of transfer had its structural as well as cultural and value dimensions. The organisational laws were far predominant among the reform laws while those that regulated the rights of citizens were less present. It was partly a reflex of understanding of the rights of citizens as being derived from self-restriction of the state authority i.e. being of a secondary meaning. Such an attitude found its theoretical ground in the idea of the *Rechtstaat* to which the reformists occasionally referred. Apart from that, the German laws were occasionally mentioned among references for some of the reforms. When it regards legal education and legal doctrine then the French influence in public law and criminal law was also present even

¹⁴ Čepulo, *Building*, p. 78; *idem*, *Prava građana i moderne institucije: europska i hrvatska pravna tradicija*, Zagreb 2003, pp. 181–184.

¹⁵ *Idem*, pp. 71–76; Gross, Szabo, *op.cit.*, p. 373 ff.

though the German and Austrian influences by far predominated¹⁶. However, the reforms consisted not just in adaptation of the Austrian institutions to a different structural environment (i.e. organisation of power) but they also changed relations between the individual and state authorities. Thus, grants of the rights of citizens from the original models were usually reduced in the Croatian version while competences of the administration were usually extended. The degree of modifications varied between slight to considerable but basically not reaching a degree of essential revision. Such changes were partly motivated by a fear that the central government would have blocked particular reforms if they had appeared to be too liberal or democratic. But apart from that the Croatian liberals feared that Croatian society was not yet prepared for a more extended degree of liberal regulation. Very often such argumentation hid fear that more liberal or democratic changes would endanger the position of the political elite. For example, the proposal of rather moderate extension of voting rights that would include more peasants in the political system was refused on the ground that the Croatian society was not yet enough enlightened for such change¹⁷.

Generally speaking, the government's reform intentions were not fully effectuated mainly because of the obstacles coming from the central government, i.e. because the Croatian political system de facto was not emancipated enough from the Hungarian influence. Besides that, limitations of the Croatian society as well as that of the ideology and factual political behaviour of the Croatian liberals also determined the narrow profile of the reforms.

After resignation of Ivan Mazuranić one moderate unionist was appointed to the post of the ban. He resigned already in 1882 after being confronted with signs of the Hungarian unwillingness to tolerate further reforms and respect grants of Croatian autonomy defined in the Croatian-Hungarian Compromise. He was anyway trusted enough to be let end negotiations on unification of the Military Border with Croatia in 1882. However, a precondition for unification was revision of the principle of the Croatian-Hungarian Compromise on proportional Croatian representation in the common Diet. Inclusion of the Military Border in Croatia-Slavonia would have resulted in enlargement of the Croatian population due to which the number of Croatian-Slavonian deputies in the Hungarian Diet should be enlarged to 55. Such enlargement could have tipped the scale between the Hungarian parliamentary parties and the open realistic possibility of the Croatian influence. Thus, the Compromise was revised by fixing the number of the Croatian delegates to 40¹⁸.

¹⁶ Čepulo, *op.cit.*, pp. 79, 80; *idem*, *Prava građana*, pp. 185, 186.

¹⁷ *Ibidem*, pp. 100, 101, 181; D. Čepulo, *Izborna reforma u Hrvatskoj 1875 — liberalizam, antidemokratizam i hrvatska autonomija*, Zbornik Pravnog fakulteta u Zagrebu, 52, 2002, pp. 682–684, 688–690.

¹⁸ *Idem*, *Building*, p. 8; M. Valentić, *Vojna krajina i pitanje njena sjedinjenja s Hrvatskom 1849–1881*, Zagreb 1981, 331 ff.

The next ban Karoly Khuen-Héderváry, himself being a noble of Hungarian ethnic origin with Croatian-Slavonian domicile, was appointed in 1883. He was primarily a man of the king's confidence, deeply convinced in advantages of dualism, but he was also a member of the Hungarian Liberal Party and a cousin of the Hungarian Prime Minister. Khuen-Héderváry's appointment was an expression of the new Hungarian policy toward Croatia. He was appointed on a different political ground than the previous bans that were in this or that way rooted in the Croatian political life and relied upon support of the Croatian political parties. Khuen-Héderváry instead came with a task to impose his authority and neutralise Croatian autonomist tendencies with the support of the external factors and without dependence on some internal political party¹⁹.

The role of the ban was differently seen by different political sides. In the eyes of the Croatian political parties the ban was a Croatian political official that had to secure Croatian interest with a primary task to protect and promote Croatian autonomy. From the point of view of the Hungarian government, the ban's primary task was to promote and provide support for politics of the central government and to ensure that Croatian autonomy does not extend certain limits. Considering that the ban was appointed by the king, he primarily had to be a person that would take care of king's interests. The outcomes of the Croatian and Hungarian approaches in practice proved as confronted, especially after radicalization of the nationalist orientation of the Hungarian government from 1875 onwards. The king in a way played a balancing role even though he primarily took care of the Hungarian interests as of the stronger and far more important actor. However, the king was in a way a guaranty that Hungarian pretensions would not go over certain limits because Croatian autonomy was a card that he could play in the game with Hungary. Yet, importance of the Croatian position was further reduced after 1875 when both the king and the Hungarian Liberal Party definitely accepted dualism as the best cover for their interests.

Karoly Khuen-Héderváry ruled from 1883 to 1903 in an authoritarian yet skilled manner veiled in constitutional or semi-constitutional forms. In a few years he managed to turn the National Party into the governmental party and the instrument of his influence in the Sabor. Such National Party was granted the majority in the Sabor through revisions of prerequisites for voting rights in the Electoral Law that reduced the number of voters. Besides that, the parliamentary opposition was silenced through changes of the Sabor's Standing Orders that extended disciplinary authorities of the Sabor's president. Khuen-Héderváry's rule definitely resulted in the changed perception of the Croatian-Hungarian Compromise in Croatia-Slavonia. The Compromise was first seen as an obstacle to the actual autonomy that should be replaced by some more extensive framework. But by the end of the Khuen-Héderváry's period the Compromise was seen as a semi-efficient yet the only bulwark against

¹⁹ J. Šidak et al., *Povijest*, p. 120.

Hungarian breaches of the autonomy that was endangered by the Hungarian politics itself. Even though the Compromise was not seen as a sufficient ground for Croatian autonomy, the operative politics through the Khuen-Héderváry's time turned to its defence²⁰.

The period of administration of ban Khuen-Héderváry was characterised by regression in the development of public law institutions. This particularly refers to the restrictions of the rights of citizens and instruments of their protection. In fact, already in 1884 Khuen-Héderváry provided that the principles of separation of judiciary from administration and tenure of judges were suspended in the Sabor. The suspensions soon turned into permanent regulation that was not essentially changed until 1918. Besides, in 1884 trial by jury — which was in Croatia-Slavonia reduced only to the offences committed through the press — was suspended for five years and such suspensions occasionally happened later as well²¹. The periods of suspensions were used for pacification of critical journalism. However, it was different with the rights of minorities that were extended during the Khuen-Héderváry's period.

Khuen-Héderváry enjoyed support of the ethnic Serb's political parties and members of the ethnic Serbs' elite were appointed to various offices. It was a kind of colonial policy that encouraged confrontation of the minority with the majority by granting it protection in return for its support. The indirect effect was deepening a gap between Croats and Serbs. This politics reflected in legislature too. The Law on the Competences of the Greek-Orthodox Church and the Use of Cyrillic enacted in 1887 granted religious and school autonomy to orthodox Serbs as well as their right to use the Cyrillic alphabet in official proceedings. But, what was more important the law acknowledged the status of the Serbian Orthodox Church in Croatia, but delegated to central government the right to supervise it in Croatia even though religious matters were part of the Croatian autonomous jurisdiction. In fact the central government continuously executed such politics but it was only the mentioned law that legalize its practice, as seen from the Croatian point of view. The Protestant Church, whose centre was in Hungary, was granted organisational autonomy on a different way. The Law on the Status of the Evangelic Churches of Augsburg and Helvetian Confessions granted the Ban the right to supervision, but it also acknowledged the automatic application of church laws enacted by the central church authorities in Hungary²².

²⁰ Čepulo, *Prava građana*, pp. 102, 103; J. Šidak et al., *Povijest*, 124; D. Čepulo, *The press and jury trial legislation of the Croatian Diet 1875–1907: Liberalism, fear of democracy and Croatian autonomy*, *Parliaments, Estates and Representation*, 22, 2002, p. 29; H. Sirotković, *Organizacija Sabora Hrvatske i Slavonije u nagodbenom razdoblju (1868–1918)*, in N. Engelsfeld (ed.), *Hrestomatija povijesti hrvatskog prava i države*, I, Zagreb 1998, p. 288.

²¹ Čepulo, *Prava građana*, pp. 66, 67, 68, 186–189; *idem*, *The press*, pp. 187–189.

²² *Idem*, *Prava građana*, pp. 171, 172; M. Gross, *Zakon o osnovnim školama 1874. i srpsko pravoslavno školstvo*, in *Zbornik radova o povijesti i kulturi srpskog naroda u SR Hrvatskoj*, I, Zagreb 1988, pp. 110–114; N.J. Miller, *Between Nation and State. Serbian Politics in Croatia before the First World War*, Pittsburgh 1997, pp. 36–38, 42, 43.

Khuen-Héderváry left Croatia in 1903 when he was appointed as president of the Hungarian government with a task to suppress independent politics in the Hungarian Diet. The next elections for the Sabor were won by the Croatian-Serbian Coalition, a cluster of small democratic parties that dominated in the Sabor and shortly participated in the Croatian government in 1906–1907 and 1917–1918 after reaching compromise with the central government. The program of the Coalition primarily stressed resistance to centralist tendencies of the Court, demanded unification of Dalmatia with Croatia and liberalisation of the institutions. The Coalition initiated moderate re-liberalisation of the press and jury trial legislation and in 1910 elective franchise was rather considerably extended and indirect elections removed. However, it was only at the end of 1917 that general male franchise and secret ballots were introduced. Even though more extensive liberalization was announced in 1906, the respective reforms were not undertaken because of the internal political crisis and because of breaking up of the First World War²³.

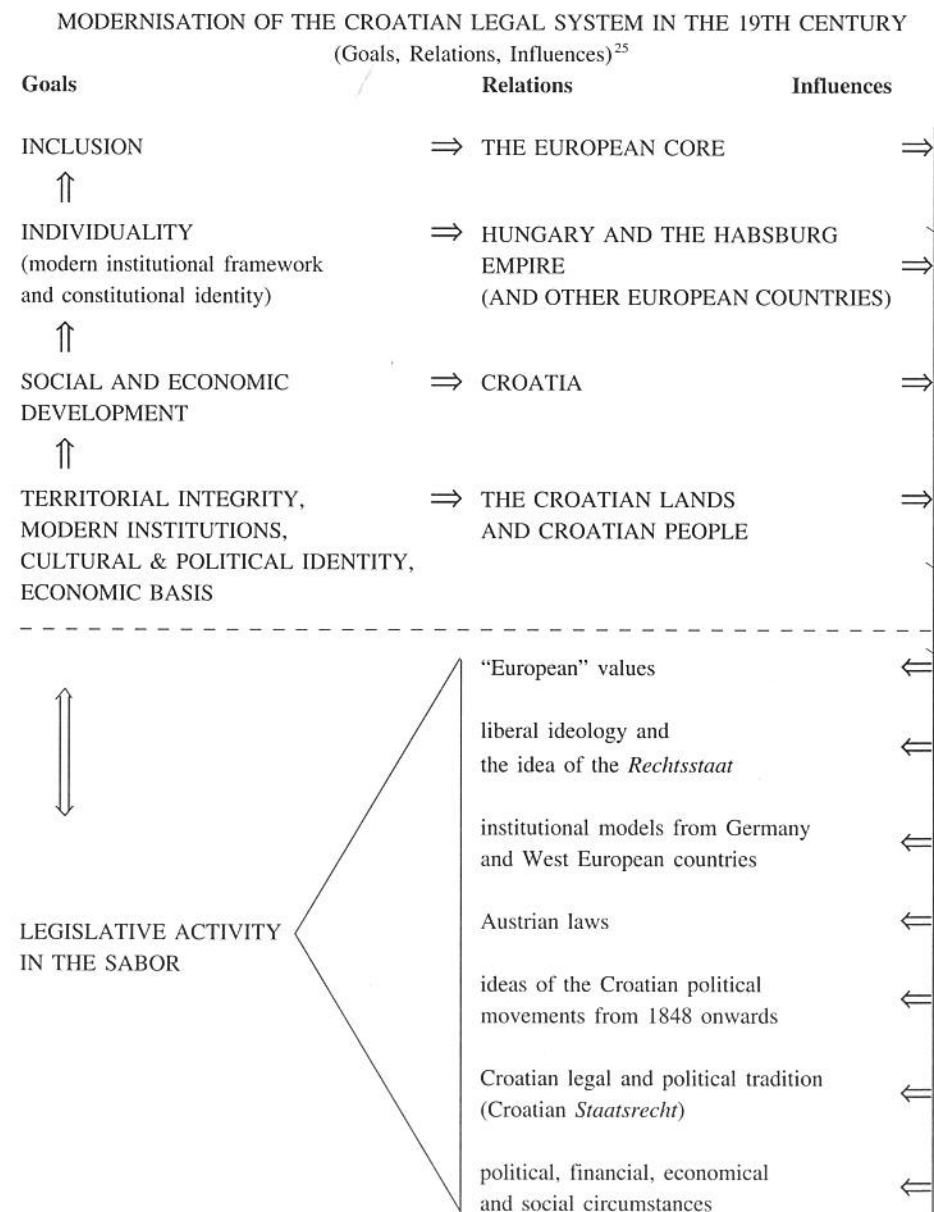
4. Modernisation in Croatia-Slavonia: goals, relations and influences

The process of modernisation in Croatia was not linear and its features depended upon the context in which it was executed, primarily regarding the political dimension. However, some kind of *Idealtyp* of modernisation in Croatia-Slavonia can be reconstructed. Its characteristics can be best derived from the reform period 1873–1880 that in reality came closest to such construction but its features can be found all the time up to 1918.

Thus, the process of modernisation of the Croatian legal system can be presented by using parameters of influences, goals and relations. In the legislative activity of the Sabor inputs from environment were processed, i.e. the legislative activity was influenced by objective circumstances, Croatian traditions, European values, liberal ideology and the idea of *Rechtsstaat*, German institutional models and Austrian laws, Croatian liberal political ideas, Croatian legal and political traditions as well as the political, financial, economic and social circumstances of environment. The goals of modernisation can be presented as a hierarchical four-level ladder in which the realization of higher levels presupposed that the lower-levelled goals had been achieved. The goals were 1) integration of the Croatian lands, creation of modern institutions and modern Croatian cultural and political identity; 2) raising development potentials in Croatia, especially its economy; 3) extension and consolidation of the Croatian constitutional particularity versus Hungary and the Habsburg Monarchy and, consequently, versus other European countries; 4) inclusion of Croatia among the “civilised European nations”

²³ J. Šidak et al., *Povijest hrvatskoga naroda g. 1860–1914*, Zagreb 1968, pp. 213 ff.

as a country with modern cultural and political subjectivity and developed economic basis. These goals interacted with the influences from their respective environment that depended upon their hierarchical position²⁴. Such description can be presented in the graphic form as well.



²⁴ Čepulo, *Building*, p. 90.

²⁵ *Idem*, *Prava građana*, p. 188.

5. Conclusion

Review of the process of modernisation and its structural description indicate that Croatia-Slavonia was in double dependency or, speaking in more structural terminology, in a peripheral position in regard to two different types of centres. It was on the periphery of the West European core that generated models of the modern public law institutions. These models spread through the “peripheral” European lands, Croatia-Slavonia being among them, where they were adopted in order to accelerate development. Regarding this dimension of legal-cultural dependency, Croatia-Slavonia was by and large oriented toward the Austrian legislation that served as a direct model-source for the Croatian reforms. The Austrian legislation itself was partly determined by German and French influences that were indirectly reflected in the Croatian legislation. Direct German and Austrian doctrinal influences with references to the *Rechtstaat* idea far prevailed in the Croatian reformism as well. The Austrian legal-cultural influence intertwined with the political dependency of Croatia-Slavonia upon Vienna as well. However, it should be mentioned that the Austrian legislation was rather close to the Croatian circumstances by the very logic of belonging to the same broader political system. Apart from that, the influence of Budapest as a political centre was a very important factor that affected the process of modernisation. Budapest’s influence was by and large restrictive as it tended to diminish the political subjectivity and level of development of Croatia-Slavonia whose autonomy was perceived as a potential threat to the integrity of the Hungarian state. Such Hungarian attitude determined the strategy and tactics of the Croatian reformists whose principal intention was to neutralise dependency in regard to Budapest. Only then — or together with that — the goal of neutralisation of the Croatian dependency upon the European centre through inclusion among developed countries could be realised step-by-step. However, the structure of power relations provided by the Croatian-Hungarian Compromise and the environment characterized by political domination of the Hungarian centre did not make a proper ground for such politics.

Reconstruction of the Croatian-Slavonian position regarding its relations to the West European core and the “internal” centres of the Monarchy (Vienna and Budapest) suggests that Croatia-Slavonia was in the position of double periphery. That position was the most important factor that determined the process of modernisation as well as the broader process of nation-building undergoing at the same time. A broader European perspective would probably indicate strong parallelism as well as indicative differences in regard to the processes of modernisation and nation building in other countries. Of particular interest should be a comparison with the lands in a similar position, i.e. with particular autonomy dependent upon centres. This opens up the question of possible wider comparisons in search for better understanding of the functioning of public law institutions and specificities of their development in the dependent lands.

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DIE ANFÄNGE DER LIBERALEN PARLAMENTARISCHEN POLITISCHEN KULTUR IN DEN BÖHMISCHEN LÄNDERN

Vor mehr als einhundertfünfzig Jahren trat in Wien und letztlich im mährischen Kremsier (tschechisch Kroměříž) der Reichstag zusammen. Dieses Parlament war in seiner Zusammensetzung erstmals in der Geschichte der Habsburgermonarchie nicht auf Standesprinzipien gegründet, sondern aus weit gefassten freien Wahlen hervorgegangen. Die Durchsetzung dieser grundlegenden liberalen Auffassung von der politischen Wahl und von der bislang unbeschränkten Herrschermacht in der politischen Praxis war zwar noch nicht von Dauer, bedeutete aber und bedeutet noch heute einen deutlichen Meilenstein in der Geschichte Mitteleuropas. Mit der Einberufung des Reichstags wurden gerade in dem stürmischen Jahr 1848 die Grundlagen für die hiesige Verfassungsmäßigkeit und den Parlamentarismus gelegt, denn diese erste verfassunggebende Versammlung ebnete den Weg auch für die anschließende Durchsetzung der Prinzipien der zunächst konstitutionellen Monarchie und schließlich der republikanischen Demokratie. Im Jahr 1848 wurden nämlich in praxi erstmals liberale Wahlordnungen einschließlich der Aufstellung von Wahlbezirken, Wahllisten und Wählerverzeichnissen erprobt, zum ersten Mal verspürte man die Notwendigkeit politischer Aufklärung unter den breiten (männlichen) Bevölkerungsschichten, erstmals wurde ein harter Wahlkampf geführt, zum ersten Mal wurden auf öffentlichen Versammlungen Wahlprogramme oder eher Absichtserklärungen für die Zeit nach der Wahl in Form von Flugblättern oder Zeitungsartikeln vorgestellt, erstmals auch stritten die gewählten Abgeordneten um die Geschäftsordnung des Parlaments einschließlich der Frage der Verhandlungssprache, der Protokollführung und der Abstimmungsweise, ehe man dann schließlich das Prinzip durchsetzte, Entscheidungen auf Grund des Mehrheitswillens zu treffen. Erstmals auch wurden Redeschlachten im Parlament geführt, in denen nicht nur rednerische Schlagfertigkeit und höherer Intellekt über den Sieg entscheiden sollten, sondern auch die Anpassungsfähigkeit an Mentalität, Gesinnung und nicht zuletzt an das Nationalgefühl und die nationale Parteinahme der Wählerschaft. Für das Jahr 1848 können wir erstmals auch das Phänomen der öffentlichen Meinung und sowie einen ersten Konflikt mit der “göttlichen” Autorität des Kaisers verzeichnen. Erstmals in unserer Geschichte konnten die Herren Abgeordneten nicht nur die Art und Weise der Gesetzgebung praktisch