

CATHOLIC THEOLOGY IN CROATIAN UNIVERSITIES:
BETWEEN THE CONSTITUTION AND THE TREATY
—A POLICY-ORIENTED INQUIRY

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The intellectual impetus that Božidar Bakotić gives to his students has been all too often in the shadow of his magisterial care. This paper is meant to be a tribute to both. First, it is a tribute to what may well be the tenet of his teaching. This is the idea that legal problems worthy of study—not merely of international law but of any legal system—are trans-systemic. They are regulated (in fact or potentially) by two or more legal systems, such as international law, national law or laws of federal units.¹ Analytical legal theory, which was taking shape at the time he introduced me to trans-systemic legal problems almost four decades ago,² takes as its privileged subject-matter the legal system,³ including its relations to other systems of prescription, be they legal or not (esp. moral). Hence I owe to Professor Bakotić my understanding as well as interest in the discipline that has become my primary academic concern.⁴ Secondly, this paper is both an outcome and recognition of the reassurance Božidar gave me at the critical point when I was treading on the virgin land of church and state scholarship in Croatia⁵ (as well as a small token of gratitude for my whole academic career).

To avoid pathos, which easily creeps into a tribute to a cherished teacher, this paper is not meant to be as solemn or as sober as its title may suggest. Rather than sincerely serving a higher end (such as the enlightenment of policymakers

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¹ See esp. Ivan Padjen and Božidar Bakotić, *Vanjski poslovi Jugoslavije: sa stajališta međunarodnog i poredbenog prava, s osobitim osvrtom na federalizam* [Yugoslav Foreign Affairs: An International and Comparative Legal Study with a Special Reference to Federalism] (Čakovec: Zrinski, 1972).

² E.g. G. Jahr und W. Maihofer (Hrsg.), *Rechtstheorie: Beiträge zur Grundlagendiskussion* (Frankfurt a.M.: Klostermann, 1971).

³ Joseph Raz, *The Concept of a Legal System* (Oxford: Oxford University Press, 1970), at 2, invoking Hans Kelsen, *General Theory of Law and State*, trans. (New York: Russel and Russel, 1961).

⁴ See e.g. Ivan Padjen, *(Ne)čudorednost (međunarodnog) prava: Pristup filozofiji prava* [The (Im)Morality of (International) Law: An Approach to Philosophy of Law] (Rijeka: ICR, 1988).

⁵ E.g. “Vjernici drugog reda” [“The Second Class Believers”], *Feral Tribune*, 15:685 (02.11.1998), 20.

in the trinity of Church, State and University), the paper is an end in itself. The model is violin four hands, with simultaneous *pizzicato* and bow movements, that is, a musically light but somewhat tricky piece composed *arte gratia artis* and played at the New Year parties of the Zagreb University Faculty Club. My piece is composed to entertain two groups of connoisseurs, including those among each group who find my main theme or topic unkindly parochial or plainly dull but might be interested in observing how one performs on all fours.

The first group are traditional European legal scholars, most notably internationalists like Professor Bakotić himself, who operate within the inherited (chiefly German 19th century) legal dogmatics, with—to put it mildly—a sanitary disregard for more recent theoretical frameworks (chiefly American) such as the—meanwhile well past its prime (in fact almost extinct)—Myres McDougal and Harold Lasswell policy-oriented jurisprudence [hereinafter: POJ]. The second group are still active students or at least admirers of the late Myres McDougal and Harold Lasswell.

My obvious intention is to entertain both groups with the same performance to the point of oblivion, but, just to be nasty, at the very end reveal unexpectedly why it appealed to them. Since the intention could hardly be realised even by a better mind, I may at least purvey a bit of slapstick when my long awaited principal point falls flat.

I. Problems, Standpoint and Focus of Inquiry

Major participants of church and state relations in Croatia entertain perspectives that are barely articulated, analysed even less in Croatian scholarship, and usually distorted in the Croatian media, but which are nonetheless often conflicting. As noted in an earlier study,

The Austrian Concordat of 1855, the *de facto* governing document between the state and the Catholic Church from the first Yugoslavian state through the Second World War, is most likely still the model of church-state relations that corresponds most closely to the tacit sense of what influential Catholic clergy today would regard as the soundest approach. On the other hand, the liberal end of the Croatian political spectrum would likely view the socialist ban of religion from the public sphere as the more appropriate model. While the Catholic Right abruptly gained the upper hand in the 1990's, the Liberal Left is slowly regaining it in this decade.⁶

⁶ I. Padjen, "Church and State in Croatia", in S. Ferrari and C.W. Durham Jr. (eds.), *Law and Religion in Post-Communist Europe* (Leuven: Peters, 2003), 57–80.

Given the conflicting perspectives, it is surprising that on the one hand no lawyer (other than the present writer)⁷ has questioned the legal appropriateness of the membership of Catholic theological schools of Croatian public universities, while on the other, quite unexpectedly, tremendous public pressure was mounted to force the rector-elect of Zagreb University to resign in 2001 solely for the reason that he was a priest and professor of a Catholic faculty of theology.⁸ These conflicting perspectives are the major practical problem of this inquiry. Jurisprudential silence on the problem is the theoretical one.

In view of the problems, enlightenment, that is, acquisition and dissemination of knowledge, may well be both the most pressing need of the church and state in Croatia today, and the highest attainable goal of this inquiry. This may be served best by a policy inquiry, which follows the policy-oriented jurisprudence of the late Harold D. Lasswell and Myres S. McDougal,⁹ adjusted to meet editorial constraints and methodological innovation. Thus in contrast to the standard POJ dichotomy,¹⁰ enlightenment is not considered here to be the goal which defines a scholarly observer, and differs in kind from power, that is, the making of authoritative decisions, which defines a decision-maker. Enlightenment is seen in this inquiry as an essential ingredient of a rational decision and as such a goal defining the standpoint of a decision-maker seeking authority as well as the standpoint of a scholar. Nonetheless, this inquiry is, as announced in the introductory remarks, interested primarily in scholarly pursuits. The substantive policy goals of this inquiry should be read in this light.

⁷ "Katolicizam i nacionalizam u Hrvata 1990.-ih: pravnoteorijski pogled" ["Catholicism and Nationalism among the Croats in the 1990s"], Grozdana Cvitan (ur.), *Liberalizam i katolicizam u Hrvatskoj: Split, Vila Dalmacija 2.-4.lipnja* (Zagreb: Friderich Naumann-Stiftung, 1998), 235–272; Hans-Georg Fleck (prir.), *Liberalizam i katolicizam u Hrvatskoj II.dio: Zagreb, 5.-6. ožujka* (Zagreb: Friderich Naumann-Stiftung, 1999), 139–242, esp. ch. 2.2.1. "Katolička visoka učilišta i hrvatska sveučilišta" ["Catholic Institutions of Higher Education and Croatian Universities"], at 151–194.

⁸ E.g. M. Lilek, "Trgovina rektorom svećenikom: komentar" ["Trade in the Rector Priest: A Comment"], *Vjesnik* (21.12.2001). (www.vjesnik.hr/html/2001/12/21/Clanak.asp?r=gle&c=1) (18.12.2008); *Id.* "Ostavkom preduhitrio 'minu' bivšeg ravnatelja obavještajne službe?" ["Resignation Prevented a 'Mine' Laid by the Former Intelligence Chief?"], *Vjesnik* (23.12.2001). (www.vjesnik.hr/html/2001/12/23/ClanakTx.asp?r=tem&c=2) (18.12.2008); V. Kljajić, "Tipične komunističke metode: umjesto uvodnika" ["Typically Communist Methods: In lieu of the Editorial"], *Dom i svijet: informativni tjedni prilog za iseljenike*, no. 368 (07.01.2002). (www.hic.hr/dom/368/domo1.htm); S. Bunjevac, "Crveni, ugledajte se na Srbe" ["Reds, follow the Serbs' Example!"], *Glas Koncila*, 43:4 /1544/ (25.01.2004) (www.glas-koncila.hr/rubrike_aktualno.html?news_ID=444) (18.12.2008).

⁹ Harold D. Lasswell and Myres S. McDougal, *Jurisprudence for a Free Society* (New Haven CT: New Haven Press, 1992), esp. ch. 1 "Criteria for a Theory About Law", at 3–139. See a list of POJ inquiries in *Myres Smith McDougal: Appreciations of an Extraordinary Man* (New Haven CT: Yale Law School, 1999), at 128–140.

¹⁰ Lasswell and McDougal, note 9, "The Establishment of the Observational Standpoint", at 22–24.

This inquiry is focused on the published legal acts, mostly of a general scope, which regulate the legal position of the Catholic Theological Faculty with regard to Zagreb University. The relationship between other Catholic theological schools and Croatian state universities is analysed only incidentally.¹¹

II. Basic Public Order Goals

POJ requires a policy analyst to postulate explicitly the basic public order goals of their inquiry.¹² The requirement was squarely at odds with both positivism and naturalism in legal thought at the time POJ was being formulated several decades ago. However, already at that time, the content of the requirement, though not the method, coincided with the idea that the very existence of international law implies certain basic rights of states.¹³ Today the requirement may be understood as a demand to explicate interpretive presumptions, which is a tenet of purposive interpretation in law.¹⁴

This inquiry postulates the basic public order goals recommended by Lasswell and McDougal, that is, the basic values of human dignity or a free society, which imply “demands for the greater production and wider sharing of all values and preference for persuasion over coercion”.¹⁵ These values are either identical to or compatible with the values of social democracy¹⁶ on the one hand, and contemporary Catholicism¹⁷ on the other.

Social democracy, as one variant of liberal democracy, differs from libertarian democracy, which is the other variant, by starting from

¹¹ This paper draws partly on Padjen, note 7, ch. 2.2.1.

¹² *Ibid.*, “The Explicit Postulation of Basic Public Order Goals”, at 34–35.

¹³ E.g. Juraj Andrassy, *Međunarodno pravo*, 5. izd. [*International Law*, 5th ed.] (Zagreb: Školska knjiga, 1971), par. 16, at 68–84.

¹⁴ See Aharon Barak, *Purposive Interpretation in Law*, trans. (Princeton NJ: Princeton University Press, 2005), at 145–147, 170–172 and *passim*.

¹⁵ Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, *Human Rights and World Public Order: The Basic Policy for an International Law of Human Dignity* (New Haven CT: Yale University Press, 1980), esp. at 377–378.

¹⁶ McDougal’s political (not to be confused with foreign-political) orientation may well be epitomised by the textbook Myers S. McDougal and David Huber, *Property, Wealth, Land: Allocation, Planning and Development—Selected Cases and Other Materials on the Law of Real Property* (Charlottesville VA: Michie Casebook Corp., 1948), which was alleged in two states, Texas and Washington, to violate the Constitution by advocating planning. *Appreciations*, note 9, at 67.

¹⁷ D.D. Granfield, “Towards a Goal Oriented Consensus”, *Journal of Legal Education*, 19:4 (1967), 379–302, esp. at 380–383.

the premise that freedom involves the opportunity to adopt a plan of life autonomously, which can only occur when the concrete circumstances of a person's life do not inherently rule out too many choices. For freedom in this sense to be meaningful, every person must have a right to the social goods that enable free action.¹⁸

Human dignity or a free society is a basic value also cherished by Catholic teaching as redefined by, or in the era of, Vatican Council II.¹⁹ Human dignity in Catholic teaching assumes, on the one hand freedom of belief,²⁰ and on the other the autonomy of human creations,²¹ most notably of the state and man-made law.²² In this regard, the teaching of Vatican Council II is compatible with many political values of liberal democracy. However, the principles of Catholic social teaching are obviously closer to its social than its libertarian variant. The principles include the common good and its common use, with a preference for the needy, subsidiarity, participation, solidarity and the basic values of truth, freedom and justice.²³

Both social democracy and Catholic social teaching require, or at least coincide with, social pluralism. As a presumption concerning Croatia, pluralism implies that the Croatian (or a similar) social system includes the following three layers of social interaction: the political state or, in short, the State; a market society or, in short, society; and civil society. The State, even when it is taken in its broadest sense, so that it includes not only political people (*demos, populus*) but also political parties and pressure groups, is a rather limited layer of interaction. Society includes all economic market institutions and relations, such as commercial societies and contractual exchanges. Civil society includes not-for-profit autonomous groups and their activities, groups ranging from ordinary families and local communities to religious communities, autonomous public institutions in education, culture, science, media, health

¹⁸ Thomas Meyer, *Theorie der Sozialen Demokratie* (Wiesbaden: Verlag für Sozialwissenschaften, 2005), "English Summary", at 592. See also Neil McCormick, *Legal Right and Social Democracy* (Oxford: Clarendon Press, 1982), at 1 ff.

¹⁹ Esp. Joannes XXIII, "Pacem in terris", AAS 55 (1963), 257–304.

²⁰ Esp. "De Libertate Religiosa: A Declaration of Religious Freedom", in W.M. Abbott, S.J. (ed.), *The Documents of Vatican II* (New York NY: Guild Press, 1963), 675–696.

²¹ Esp. Vatican Council II, "Gaudium et spes", AAS 58 (1966), 1054; as "Pastoral Constitution on the Church in the Modern World", in Abbott, note 20, 199–308.; also Papinsko vijeće "Justitia et pax", *Kompendij socijalnog nauka Crkve* [Papal Council "Justitia et pax", *Compendium of Church Social Teaching*], trans. (Zagreb: Kršćanska sadašnjost, 2005), Sect. 45, at 44–46.

²² See esp. Jacques Maritain, *Man and the State* (Chicago IL: University of Chicago Press, 1951).

²³ Justitia et pax, note 21, ch. IV, at 125–161.

and welfare, and civic associations, other NGOs and social movements. Groups and relations of one layer often overlap with the other three layers and sometimes fall outside the Croatian social system.²⁴

Liberal democracy coincides with the idea of the modern (originally Humboldt's) university, which requires that university introduces its students to knowledge for its own sake in the way knowledge is acquired by scientists or scholars, that is, by research.²⁵ The university is distinguished from the polytechnic (*Fachhochschule*) by scientific or other scholarly research being both the foundation and method of teaching. Hence, what distinguishes the university from the research institute (such as the Max Planck institute or, in Croatia, the Ruđer Bošković Institute) cannot be research or even academic excellence. It can only be the status of the university teacher and of the university itself, including the status of university departments or faculties. This status includes, on the one hand, the right to teach freely (which may be legitimately denied to a teacher at a polytechnic or to the polytechnic itself) and, on the other, the right to research freely plus the right to academic self-government (which are largely incompatible with the status of a research scholar in a research institute or of the institute itself). The academic status of a university teacher is guaranteed by tenure, that is, by legal protection from dismissal without just cause.

The basic values of POJ, which are also subscribed to by this inquiry, coincide with the principles of the UN Charter and of the Universal Declaration of Human Rights.²⁶ POJ principles also coincide with basic UN²⁷ and European²⁸ human rights instruments and the Constitution of the Republic of Croatia.

²⁴ I. Padjen, "The State's Authority in Religious Rights", *Politička misao/Croatian Political Science Review*, 38:1 (2001), 137–143.

²⁵ I. Padjen and Z. Pokrovac, "Akademska prava između humboldtovskog sveučilišta i bolonjskog procesa" ["Academic Rights between Humboldt's University and the Bologna Process"], 12. hrvatsko-njemački pravnički simpozij (Split, travnja 2008), in preparation; with a special reference to Helmuth Schelsky, *Einsamkeit und Freiheit: Idee und Gestalt der deutschen Universität und ihrer Reformen* (Reinbek bei Hamburg: Rowohlt, 1963), esp. at 70, 246.

²⁶ McDougal, note 15, at 34–35.

²⁷ The International Covenant on Civil and Political Rights, Art. 18. Croatia became a party of the Covenant with notification of its succession in 1993, in *Međunarodni pakt o građanskim i političkim pravima*, *Narodne novine: dodatak međunarodni ugovori* [hereinafter: *NN:DMU*] 12/93.

²⁸ Konvencija za zaštitu ljudskih prava i temeljnih sloboda [Convention for the Protection of Human Rights and Fundamental Freedoms], *NN:DMU* 18/97, 6/99.

III. Clarification of Public Policies

The participation of a theological school of a religious community in a Croatian state university should conform primarily to the following provisions of the Croatian Constitution of 1990:²⁹

III. Protection of Human Rights and Fundamental Freedoms:

2. Personal and Political Freedoms and Rights:

Art. 41

1. All religious communities shall be equal before the law and shall be separated from the State.
2. Religious communities shall be free, in conformity with law, publicly to perform religious services, to open schools, teaching establishments and other institutions, social and charitable institutions and to manage them, and shall in their activity enjoy the protection and assistance of the state.

3. Economic, Social and Cultural Rights:

Art. 67

1. The autonomy of universities shall be guaranteed.
2. Universities shall independently decide on their organization and work in conformity with law.

IV. Organisation of Government:

1. The Croatian *Sabor* (Parliament)

Art. 82

2. Laws (organic laws) which elaborate the constitutionally guaranteed fundamental freedoms and human rights ... shall be passed by the Croatian *Sabor* (Parliament) by a majority vote of all its deputies.

VII. International Relations:

1. International Agreements

Art. 134

International agreements concluded and approved in accordance with the Constitution and made public, and which are in force, shall be part of the domestic legal order of the Republic and shall have legal force superior to law. Their provisions may be changed or repealed only under conditions and in the way specified by themselves or in accordance with the general rules of international law.

Now, if the separation clause of Art. 41(1) of the Croatian Constitution is read in isolation, a theological school of a religious community cannot participate in

²⁹ Ustav Republike Hrvatske, *Narodne novine* [hereinafter: *NN*] 56/90, 135/97, 113/00, 28/01, 41/01. Other relevant constitutional provisions include guarantees of equality regardless of *inter alia* religion (Art. 14), prohibition of incitement to religious hatred (Art. 39), and freedom of religion (Art. 40).

a state university. However, in Croatia, as in some other countries, the adjective “state” as a qualifier of “university” is not decisive.³⁰ Croatian legislation does not use the adjective as such a qualifier at all.³¹ Nor is it necessarily a decisive circumstance that the State, that is, the Republic of Croatia, founds or funds a university. Thus far, the State has founded and funded all seven operative universities in Croatia,³² and is likely to fund even the Croatian Catholic University in Zagreb, which is currently under construction.

Croatian constitutional standards are more liberal than their German counterparts. Hence German analyses of the participation of theological schools in public universities,³³ although highly illuminating, can be of little direct assistance in interpreting the religious clauses of the Croatian Constitution.

More fruitful, primarily as an interpretive presumption, is the idea of pluralism, briefly outlined in Section 2. Seen in this light, a Croatian university counts as an institution of Croatian civil society even if it is founded and funded by the Republic of Croatia, provided the university is autonomous. It follows that a theological school of a religious community may participate in a Croatian state university provided the following requirements are met:³⁴

A. The state university enjoys the autonomy guaranteed by Art. 67 of the Constitution. The Constitutional Court of the Republic of Croatia, in its decision of 2000 which annulled several provisions of a law on higher education, specified that university autonomy consists of the following: the freedom of scientific, artistic and technological research and creation; the adoption of educational, scientific, artistic and professional programmes; the election of teachers and heads; decisions on criteria of enrolment; and decisions on internal organisation.³⁵

³⁰ Comp. D.C. Levy, “‘Private’ and ‘Public’: Analysis amid Ambiguity in Higher Education”, in J.L. Bess (ed.), *Foundations of American Higher Education* (Needham Heights MA: Simon and Schuster, 1991), 130–146.

³¹ Zakon o visokim učilištima [The Law on Institutions of Higher Education], NN 96/1993, 34/94 etc., Arts. 9–10, came closest to such use by providing that a university is a public institution of higher learning that can be founded only by the Republic of Croatia. Zakon o znanstvenoj djelatnosti i visokom obrazovanju [The Law on Scientific Activities and Higher Education], NN 123/03 etc., which is now in force, Arts. 48–49, provides that a university can be either public or private, empowering not only the Republic of Croatia but also counties and towns, that is, units of regional and local self-government, to found public universities.

³² The Universities of Zagreb, Split, Osijek, Rijeka, Zadar, Dubrovnik and Pula.

³³ See esp. Martin Heckel, *Die theologischen Fakultäten im weltlichen Verfassungsstaat* (Tübingen: Mohr-Siebeck, 1986).

³⁴ Comp. Padjen, note 7, sect. 2.2.1.a), at 152–156.

³⁵ Ustavni sud RH, Rješenje i odluka U-I-999 26.01.2000), NN 14/00. Analysis and history of the decision in I. Padjen, “Ustav i sveučilište: prijedlozi Hrvatskoga pravnog centra u svjetlu Odluke Ustavnog suda od 26.1.2000.” [“The Constitution and University: Proposals of the Croatian Law Centre in the Light of the Constitutional Court Decision of 26 January 2000”], *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 21:1 (2000), 445–500.

B. The State may—but need not—pass a law ensuring that theological schools of all the religious communities within the Croatian legal order are equal before the law concerning participation in state universities pursuant to Art. 41(1) of the Constitution. If the Croatian *Sabor* (Parliament) passes a law on the matter, the law should be organic, pursuant to Art. 82(2) of the Constitution.

C. Conditions of participation should be laid down by the university's autonomous general legal act, pursuant to Arts. 67 and 41(1) of the Constitution. Such an act should provide for a mode of participation of a theological school in a university that ranges from full membership equal to the status of other university schools (faculties, departments, etc.), to the awarding of university degrees for the completion of theological studies, and to access for theology teachers and students to non-academic university services (e.g. university restaurants).

D. A theological school that is a candidate for participation in an autonomous state university:

DA. belongs to a religious community that counts as a religious community within the Croatian legal order;

DB. meets the scholarly (research, educational, information, etc.) criteria expected by the scholarly community from a university school (faculty, department, etc.). This may be the most controversial of all the constitutional requirements since it implies that a theological school may, but need not, comply with scholarly requirements for reasons that are closer to what is conventionally termed culture than to science in the sense that the term is understood by natural scientists;

DC. enjoys status compatible with the status of a university department or faculty, while the teachers of a religious school enjoy status compatible with the status of university teachers, both explicated in Section 2. The Constitutional Court of the Republic of Croatia determined that the autonomy of universities guaranteed by Art. 67 of the Croatian Constitution includes, *inter alia*, the rights stated in Art. 3 of the Law on Institutions of Higher Education of 1993 (hereinafter: the LIHE),³⁶ finding that several other provisions of the LIHE itself had violated those rights.³⁷ Art. 3 of the LIHE reads as follows:

1. Institutions of higher education are established on the principle of academic autonomy and freedom in accordance with the Constitution of the Republic of Croatia and the Law.

³⁶ Zakon o visokim učilištima, NN 96/93, 34/4, 48/95, 29/96, 54/96.

³⁷ Ustavni sud, note 35, obrazloženje II.

2. The autonomy of an institution of higher education shall be particularly expressed in: freedom of scientific, artistic, and technological research and creation; establishment of educational, scientific, artistic, and professional programmes; appointment of teaching staff and heads; decisions on student enrolment criteria; establishment of study regulations; and determination of internal organisation.

E. the mode of participation of a school in a state university (stated *ad C*) corresponds to the degree in which the school fulfils the requirements stated *ad D*).

F. The university alone determines, on the basis of its general legal act stated *ad C* and within the limits of the organic law stated *ad B*, whether the theological school meets the requirements stated *ad D*, and if so, what mode of participation is open to it.

IV. *Tendencies in Past Decisions*

This section outlines tendencies in past decisions towards or against the basic public order goals postulated in Section 2 and public policies clarified in Section 3.³⁸

1. *Expulsion and Reinstatement by Decree (1952–1990)*

The Catholic Theological Faculty in Zagreb³⁹ [hereinafter: the CTFZ], which was started in the 13th and established in the 18th century, became one of the first three faculties making up the University of Zagreb [hereinafter: UZ], as (re)structured in 1874.⁴⁰ The communist-run Government of the People's Republic of Croatia abolished the CTFZ as a UZ faculty on 29 January 1952.⁴¹ The fact that UZ authorities never expelled the CTFZ from UZ is today recognised by Croatian deans of theology as a sign of the degree of autonomy of

³⁸ For a more detailed, but partly outdated account, see I. Padjen, note 7, ch. 2.2.1.b–g), at 154–186.

³⁹ Katolički bogoslovni fakultet u Zagrebu.

⁴⁰ (www.unizg.hr/170.0.html) (23.12.2008) and (www.kbf.hr/stranica.aspx?pageID=5) (23.12.2008) provide a brief official history of the University of Zagreb and of the Catholic Theological Faculty in Zagreb respectively.

⁴¹ Sveučilište u Zagrebu, *Sveučilišni vjesnik*, 41 (1995) posebni broj, at 73. Ugovor između Sveučilišta u Zagrebu i Katoličkoga bogoslovnog fakulteta u Zagrebu [The Contract between the University of Zagreb and the Catholic Theological Faculty in Zagreb], *Bogoslovska smotra*, 66:2–3 (1996), at 537–540, esp. the Preamble.

UZ⁴² even during the time of the most rigid communist rule. The first post-communist Government of the Republic of Croatia declared on 23 July 1990 its own act of expelling the CTFZ from UZ null and void *ab initio*. The Assembly of UZ declared on 26 February of 1991 that the CTFZ had continuously been a UZ faculty, recognising all its acts in the period of its expulsion as being valid *pro foro civili*.⁴³

Although outside a university, the CTFZ continued its operations as an independent faculty of the Catholic Church in Croatia, its degrees being recognised outside though not in Croatia, that is, in Yugoslavia.⁴⁴ The Catholic colleges of theology⁴⁵ in Makarska in 1971,⁴⁶ Split in 1972,⁴⁷ Đakovo in 1987⁴⁸ and Rijeka in 1988 were affiliated to the CTFZ.⁴⁹ When the CTFZ was reinstated as part of UZ in the 1990s, the colleges became part of UZ. The CTFZ also established four institutes offering minor professional programmes as parts of the Faculty, most notably the Catechetical Institute for educating teachers of religion.⁵⁰ The only Catholic institution of higher education in Croatia that is not affiliated to the CTFZ is the Faculty of Philosophy of the Society of Jesus in Zagreb.⁵¹

⁴² J. Baloban and P. Aračić, "Teologija u javnom sveučilištu" ["Theology in a Public University"], *Glas koncila*, 45:47 /1691/ (16.11.2006). (www.glas-koncila.hr/rubrike_teoloski.html?news_ID=9480&PHPSESSID=c7f) (23.12.2008).

⁴³ Sveučilište u Zagrebu, note 41. Ugovor, note 41, in its Preamble notes that it was the Croatian *Sabor* (Parliament) that declared the Decision of the Croatian Government of 29 January 1952 null and void. There is no record of such a decision of the Croatian *Sabor* on the webpages of the Croatian official gazette (www.nn.hr) (23.12.2008).

⁴⁴ (www.kbf.hr/stranica.aspx?pageID=5) (23.12.2008).

⁴⁵ The Croatian name of the colleges at the time of their affiliation was 'Visoka bogoslovna škola' [Higher Theological School], which was changed into 'Teologija' [Theology] after the CTFZ was reinstated as part of UZ in the 1990s.

⁴⁶ The Franciscan school started at the latest in 1708 and merged with the theology institute founded in Šibenik in 1699. (<http://public.carnet.hr/ofm/st/sam/makarska/theol.html>) (23.12.2008).

⁴⁷ Started in the late Middle Ages, and has continuously operated since 1970. (www.kbf-st.hr/Povijest_2.htm) (23.12.2008), at 2.

⁴⁸ Founded in 1806. (www.dj.kbf.hr/povijest.html+teologija+u+%C4%91akovu&hl=hr&ct=clnk&cd=1&gl=hr) (23.12.2008).

⁴⁹ Started in the 17th century, and founded in 1947. (www.rijeka.kbf.hr/izbornik.php?stranica=povijest) (23.12.2008).

⁵⁰ (www.kbf.hr/stranica.aspx?pageID=5) (23.12.2008). Similar institutes exist in other parts of Croatia, e.g. the Katehetsko-teološki institut in the Catholic Theological Faculty in Split. (www.kbf-st.hr/Povijest_2.htm) (23.12.2008). An independent institution of the sort is Visoka teološko-katehetska škola in Zadar. (http://zadar.hbk.hr/index.php?option=com_content&task=view&id=41&Itemid=71) (23.12.2008).

⁵¹ Founded in 1662, abolished in 1773. Founded again as Filozofski institut in 1937, renamed Filozofsko-teološki institut Družbe Isusove in 1990 and as Filozofski fakultet Družbe Isusove in 1994; while not affiliated with the CTFZ, it offers programmes of study in philosophy and religious culture within the UZ Centre of Croatian Studies. (www.ffdi.hr/?do=ustroj) (23.12.2008).

In lieu of an appraisal of developments in the 1952–1993 period in the light of Sections 2 and 3, suffice it to note that with the Croatian Law on Professional Education of 1982 (Art. 203),⁵² still in force in the initial post-communist years, a university was a loose association of university faculties. Hence the re-instatement of the CTFZ as part of UZ had primarily a symbolic value. Virtually all the relevant legal effects of re-instatement could have been achieved by con-validation of the academic grades and degrees awarded by the CTFZ after 1952.

2. Reintegration by Legislation and Contract (1993–1996)

The requirements in Section 4 (A–F) were carried out by means of the LIHE as follows:

A. As pointed out at the time the draft LIHE was being debated in public⁵³ (and as found by the Croatian Constitutional Court in 2000),⁵⁴ the LIHE violated university autonomy, as guaranteed by Art. 67 of the Constitution, in several ways. For this reason alone, the participation of a theological school of a religious community in a Croatian state university under the LIHE would violate, and in fact did violate, the separation clause of Art. 41(1) of the Constitution.

B. Art. 18 of the LIHE laid down the conditions of participation as follows (abbreviations added):

The Status of Institutions of Religious Education:

1. Institutions of higher education established by religious communities shall be entitled to the same rights as schools of higher education and faculties if they fulfil the conditions of this law.
2. The position of institutions, as defined by section 1 of this article, operating as faculties within a public university shall be determined by a contract between the university and the founder of the institution.

A minor defect of Art. 18 was that the LIHE was not adopted by the majority required for an organic law. A major defect was that the LIHE Transitional

⁵² Zakon o usmjerenom obrazovanju, NN 20/82 etc.

⁵³ I. Padjen, "Prinos strategiji znanosti i visokog obrazovanja; s osvrtom na Nacrt prijedloga zakona o visokim učilištima Ministarstva kulture i prosvjete Republike Hrvatske, I. 1993." ["A Contribution to the Strategy of Science and Higher Education, with a Reference to the Draft Proposal of the Law on Institutions of Higher Education of the Ministry of Culture and Education of the Republic of Croatia, January 1993"], *Zbornik Pravnog fakulteta u Zagrebu*, 43:1 (1993), at 124, par. 11.

⁵⁴ Ustavni sud, note 35.

and Concluding Regulations, Art. 150, ensured a privileged position for the CTFZ. Art. 150 read as follows:

1. The position and activities of the CTFZ as a constituent of UZ shall be determined by an agreement between the founder of the CTFZ and UZ with the approval of the Croatian Bishop's Conference and the Parliament of the Republic of Croatia.
2. The CTFZ shall continue operating within UZ until the agreement as defined by Paragraph 1 of this Article is concluded.

Thus the State, by means of a special law, granted the CTFZ the status of a UZ faculty, leaving it to UZ, and not even to UZ acting alone, merely to determine the mode of the CTFZ's participation in UZ.

C. Since Croatian universities under the LIHE did not enjoy the autonomy guaranteed by the Constitution (not even the autonomy proclaimed by Art. 3 of the LIHE itself), no university could autonomously determine the conditions under which a theological school of a religious community could participate in a state university. Thus the Statute of UZ [hereinafter: the UZ Statute of 1996 or the Statute],⁵⁵ which was supposed to be the highest autonomous act of the University,⁵⁶ did not even mention the possibility of a theological school other than the CTFZ participating in UZ. The Statute, by means of Art. 193, merely implemented and elaborated upon Art. 150 of the LIHE by providing that the position of the CTFZ as a member of UZ would be regulated by a contract between the CTFZ and UZ, and be confirmed by both the Croatian *Sabor* (Parliament) and the Croatian Bishops' Conference.

DA. Needless to say, the CTFZ was (and still is) a theological school of a religious community recognised in Croatia (as a matter of fact it was the Catholic Church, that is, the Holy See, which recognised the Republic of Croatia⁵⁷ rather than the other way around).

⁵⁵ Statut Sveučilišta u Zagrebu (Zagreb, 13.07.1994).

⁵⁶ The statute was not an autonomous act for two reasons. According to Art. 105(2.2) of the LIHE, the statute was adopted by the University Governing Council, which was, according to Art. 106(3)(4) of the LIHE, appointed by the Croatian *Sabor* (Parliament). According to Art. 5(3), the statute was confirmed by the Founder, that is, the Republic of Croatia via its Government. Hence the Constitutional Court declared, *inter alia*, Arts. 5(3), 105(2.2), 106(3)(4) of the LIHE as violating Art. 67 of the Constitution and for that reason void. Ustavni sud, note 35, obrazloženje III.III.5, III.II.3.1–3.2. See comment Padjen, note 35, at 492–493.

⁵⁷ The Holy See recognised Croatia on 13 January 1991, after Slovenia, Lithuania, Ukraine, Latvia, Iceland and Germany, and two days before the EU countries. A. Milardović (ur.), *Dokumenti o državnosti Republike Hrvatske* [Documents on the Statehood of the Republic of Croatia] (Zagreb: Alinea, 1992), at 153–154. The special relationship of Croatia to the Holy See is discussed by Daniel Miščin, *Temelji diplomacije Svete Stolice* [Foundations of the Holy See's Diplomacy], published jointly by the Ministry of Foreign Affairs and European Integration of the Republic of Croatia and the Faculty of Philosophy of the Society of Jesus in Zagreb 2006.

DB. Neither the LIHE nor the Government of Croatia decision on the reinstatement of the CTFZ as part of UZ left any room for UZ to appraise whether the CTFZ was meeting the scholarly (research, educational, information, etc.) criteria expected by the academic community from a university school (faculty, department, etc.) The omission was perhaps to be expected in a country that had switched in 1990 in an instant from communism to nationalism.

DC. The LIHE guaranteed the CTFZ and its teachers the status of a UZ faculty and UZ teachers respectively, despite the fact that CTFZ teachers lacked academic freedoms and other academic rights recognised, in principle, even by Art. 3 of the LIHE. Moreover, the State secured for CTFZ teachers and members of the Faculty of Philosophy of the Society of Jesus the position to control appointments and advancements in philosophy in Croatian universities⁵⁸ and the Institute of Philosophy in Zagreb.⁵⁹

That CTFZ teachers were not entitled to the status enjoyed by other UZ teachers became obvious, if not earlier, with the Contract on the Position and Activity of the Catholic Theological Faculty concluded on 11 March 1996 by UZ and the CTFZ pursuant to Art. 150 of the LIHE and Art. 193 of the UZ Statute of 1996, and confirmed by the Croatian *Sabor* and Croatian Bishops' Conference of the Catholic Church [hereinafter: the UZ-CTFZ Contract of 1996 or the Contract].⁶⁰ Art V. of the Contract provides for the following:

1. The Great Chancellor of the CTFZ shall require, pursuant to church laws, from the Congregation of Catholic Education the "*nihil obstat*" of the Holy See before nominations of full professors, approval of the statute and curriculum, and confirmation of the election of a dean.
2. Every teacher of the CTFZ shall have approval of his or her ordinary.
3. Teachers of subjects that concern the faith and morality shall receive from the Grand Chancellor "canonic mandate" or "*venia docendi*", pursuant to church laws.
4. If the Great Chancellor denies or revokes to a teacher the "canonic mandate" or "*venia docendi*" for reasons that concern the faith and morality or church discipline, the teacher shall not belong to the Faculty.
5. The University shall pass decisions that concern the CTFZ respecting the rights of the Great Chancellor.

The State secured gradually to CTFZ teachers and members of Faculty of Philosophy of the Society of Jesus the position to control appointments in phi-

⁵⁸ Departments of philosophy in the faculties of philosophy of UZ and the University of Split (the latter department is now part of the University of Zadar).

⁵⁹ Institut za filozofiju u Zagrebu, a public research institute.

⁶⁰ Ugovor, note 41.

losophy through a series of interconnected acts. Art. 74 of the LIHE following the pattern set up in the last decade of communist rule in Croatia, made the appointment to a university scientific/teaching grade dependent on appointment to a scientific grade (e.g. a candidate could be appointed to the scientific/teaching grade of full professor of philosophy if they had been appointed to the scientific grade of senior fellow in philosophy). However, Arts. 160–161 of the Law on Professional Education of 1982⁶¹ and Art. 57 of the Law on Scientific Research Activity of 1986⁶² made the appointment to a scientific grade dependent on the opinion rendered by a self-governing body, namely, an expert committee for a scholarly field (e.g. for law or the philosophy of physics, etc.) appointed by the Assembly of the self-governing Union of Croatian Universities. In sharp contrast, post-communist legislation substituted self-governing university organs with state appointed organs. The substitution was conducted in two steps.

In the first step, Art. 99(3) of the LIHE made the appointment to a scientific grade dependent on the opinion of a field council, while Art. 60 of the Law on Scientific Research Activities of 1993⁶³ provided that the Minister should appoint members of field councils. On the basis of these provisions, the Minister appointed on 25 April 1994⁶⁴ a ten-member field council for social sciences, including a teacher of the Faculty of Philosophy of the Society of Jesus,⁶⁵ and a ten-member field council for humanities, including a teacher of the CTFZ.⁶⁶

In the second step, Art. 99 of the LIHE, as amended in 1996, made the appointment to a scientific grade dependent on the opinion of an expert committee,⁶⁷ authorising on the one hand, the Rectors' Conference to appoint one half of the members of an expert committee and, on the other, the Minister to appoint the other half of the members, including the chair. Since the Rectors' Conference consisted of rectors elected by university governing councils (Art. 108 of the LIHE), which were appointed by the Croatian Parliament (Art. 106 of the LIHE), expert committees instituted by Art. 99 of the LIHE, as amended in 1996, were in origin wholly government organs in violation of Art. 67 of the Constitution (as found by the Constitutional Court, which annulled them).⁶⁸ On the basis of Art. 99, the Rectors' Conference and the

⁶¹ Zakon o usmjerenom obrazovanju, NN 20/82.

⁶² Zakon o znanstvenoistraživačkoj djelatnosti, NN 14/86.

⁶³ Zakon o znanstvenoistraživačkoj djelatnosti, NN 96/1993.

⁶⁴ Republika Hrvatska–Republic of Croatia/Ministarstvo znanosti i tehnologije—Ministry of Science and Technology, *Most*, god. 2., br. 9 (Zagreb: travanj 1994), at 1. "Imenovanja: Članovi područnih vijeća".

⁶⁵ Dr. Ivan Koprek of the Faculty of Philosophy of the Society of Jesus.

⁶⁶ Dr. Franjo Šanjek of the CTFZ.

⁶⁷ Zakon o izmjenama i dopunama Zakona o visokim učilištima, NN 54/1996, pročišćeni tekst 59/1996.

⁶⁸ Ustavni sud, note 35, obrazloženje III.II.1.3. See comment Padjen, note 35, at 492–493.

Minister of Science on 27 April 1999 appointed twenty-two expert committees, including a six-member expert committee for both philosophy and theology, which included two CTFZ teachers, one member of the Faculty of Philosophy of the Society of Jesus and only one teacher of the Department of Philosophy of the UZ Faculty of Philosophy.⁶⁹

Thus in the two steps outlined above, the Republic of Croatia reinstated philosophy as a subject with the status of *ancillae theologiae*.

E. The mode of participation of the CTFZ in UZ corresponded partly to the status of the CTFZ and its teachers in the Catholic Church, but did not correspond to the degree in which the CTFZ fulfilled the requirements stated in Section 4 *ad* D. Special status is accorded to the CTFZ by Art. III and Art. VIII of the Contract. Thus while Arts. 147–149 of the LIHE transferred founding and property rights over university faculties (which previously were claimed by the State) to universities,⁷⁰ and Art. 150 of the LIHE recognised the Catholic Church's rights over the CTFZ, Art. III of the Contract divided founding and property rights over the CTFZ between the Church, UZ and the CTFZ itself in the following way:

2. UZ and the Zagreb Archdiocese with the Croatian Bishops' Conference represented by the Grand Chancellor of the CTFZ assume in equal proportion founding and property rights over the CTFZ, and transfer to the CTFZ property rights over movables used for its activities.
4. In the case of the termination of this Contract or of an attempt at abolishing the CTFZ as part of UZ, the Archdiocese with the Croatian Bishops' Conference is entitled to resume all property and founding rights over the CTFZ.⁷¹

Art. VIII (2) of the Contract provided, in a manner characteristic of concordats,⁷² for negotiations between the parties of the Contract as the only means

⁶⁹ Odluka o ustroju matičnih povjerenstava i o imenovanju članova, predsjednika, i zamjenika predsjednika matičnih povjerenstava [Decision on the Structure of Expert Committees and on the Appointment of Members, Chairs and Deputy Chairs of Expert Committees], NN, 43/99, lists the following members of the Expert Committee for the fields of Philosophy and Theology (including the institutional affiliation of the members): Franjo Šanjek, CTFZ, chair; Ivan Golub, CTFZ; Branko Despot, UZ Faculty of Philosophy; Srđan Lelas, UZ Faculty of Science and Mathematics; Ivan Macan, Faculty of Philosophy of the Society of Jesus; Boris Kalin, full professor.

⁷⁰ The transfer of property rights over faculties was very probably without legal effect even at the time the LIHE came into force. Property rights over an object other than a thing, such as a university or a university faculty, were perhaps conceivable under the Austrian General Civil Code par. 353, which was applicable to property relations in Croatia till the Yugoslav Osnovni zakon o vlasničkim odnosima [Fundamental Law on Property Relations], *Službeni list SFRJ* 6/80, 36/90. According to Art. 2 of Zakon o vlasništvu i drugim stvarnim pravima [Law on Property and Other Rights over Things] NN 91/96, a right of property is possible in principle only over a thing.

⁷¹ Ugovor, note 41.

⁷² See H.F. Köck, "Concordats", in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Instalment 7 (Amsterdam: North Holland, 1981), at 44.

of resolving disputes that may arise out of its interpretation and application. Hence the position of the CTFZ in UZ was exempted not only from the UZ autonomous legal order but also from the State legal order.

Despite the fact that teachers of the CTFZ, as demonstrated by Art. 5 of the UZ-CTFZ Contract of 1996, did not enjoy the academic rights proclaimed by Art. 3 of the LIHE, other provisions of the LIHE, the UZ Statute of 1996 and the UZ-CTFZ Contract of 1996 recognised, at least implicitly, that in university decision-making, the CTFZ had the rights of any other UZ faculty and a CTFZ teacher had the rights of any other UZ teacher.

F. As noted more than once, UZ did not have the competence under the LIHE to determine autonomously whether the CTFZ was meeting the requirements for participating in UZ. However, UZ did have the competence—but did not use it—to propose autonomously to the CTFZ the mode of its participation in UZ, and to determine the mode jointly with the CTFZ.

3. *Perpetuation by Concordat (1998)*

The Treaty between the Holy See and the Republic of Croatia on Co-operation in Matters of Education and Culture⁷³ has several provisions relevant to the participation of theological schools of the Catholic Church in Croatian state universities. The provisions add little or nothing to the provisions of Croatian legislation, the UZ Statute of 1996 and the UZ-CTFZ Contract of 1996 outlined and analysed in section 4.2. However, the Treaty provisions demonstrate clearly the main concerns of the Catholic Church with regard to the participation of Catholic schools in Croatian state universities.

The concerns are briefly as follows: the Church should be free to found Catholic institutions of higher education, including institutions for the education of teachers of religion, and to provide academic ministry in universities (Art. 10.1, 10.3, 11.1); Catholic institutions of higher education should have “publicly recognised rights”, that is, the power to award academic and professional grades and degrees recognised under Croatian law (Art. 10.1, 11.1); the Republic of Croatia should provide adequate funding for the CTFZ, its affiliated institutions and Catholic schools for teachers of religion (Art. 10.2, 11.2); students of Catholic schools for teachers of religion should have the status of

⁷³ Signed on 19 December 1996 and entered into force on 30 January 1998 with Odluka o proglašenju Zakona o povrđivanju Ugovora između Svete Stolicy i Republike Hrvatske o suradnji na području odgoja i kulture [Decision on promulgating the Law on Approval of the Treaty between the Holy See and the Republic of Croatia on Co-operation in Matters of Education and Culture], NN:DMU 2/1997.

students in institutions of higher education that have publicly recognised rights (Art. 11.3); all relations, including the application of Croatian law and disputes, between the Catholic Church and the Republic of Croatia in matters of higher education should be regulated by agreement (Art. 10.1., 10.3, 14, 15.2).

It should be pointed out that the Treaty has no provision requiring the Republic of Croatia to secure the participation of the CTFZ in UZ.

Pursuant to the Treaty, the Catholic theology colleges in Split and Makarska merged into the Catholic Theological Faculty in Split in 1999 and joined, by means of a contract, the University of Split in 1999.⁷⁴ The theology college in Đakovo, transformed into a Catholic theological faculty, also joined by contract the Josip Juraj Strossmayer University in Osijek in 2006.⁷⁵ The inclusion of Croatian Catholic theological schools in Croatian state universities has thus been completed or nearly completed.⁷⁶ Only a small theology college in Rijeka has remained thus far affiliated with the CTFZ rather than included in its nearest state university (which is the University of Rijeka).⁷⁷

There is no indication in the Treaty that the Church is intent on positioning itself as a religious authority above Croatian state universities. Nonetheless, the Church policy of regulating all relations with Croatia, as well as with other states, only by agreement can hardly be realised together with the equality of all religious communities, which in Croatia is guaranteed by Art. 41(1) of the Croatian Constitution. The reason is twofold.

First, equality before a law on the distribution of public goods (burdens and/or benefits), such as participation in state universities, can be achieved only by legal acts, procedures and systems that provide for equal treatment of all legitimate candidates for the public goods. A paradigmatic example is a public procurement procedure.⁷⁸ Croatia had entered into four treaties with the Holy See (these include, in addition to the Treaty on Co-operation in Matters of Education and Culture of 1997,⁷⁹ the Treaty on the Spiritual Charge of Catholic Believers Who Are Members of the Armed Forces and Police Services of the

⁷⁴ Ugovor o radu Katoličkoga bogoslovnog fakulteta u sastavu Sveučilišta u Splitu (09.07.1999) (www.kbf-st.hr/Povijest_2.htm) (23.12.2008).

⁷⁵ Ugovor o položaju i djelovanju Katoličkoga bogoslovnog fakulteta u Đakovu u sastavu Sveučilišta Josipa Jurja Strossmayera u Osijeku (17. 06.2005). N. Dogan, "Katolički bogoslovni fakultet u Đakovu: povijest nastanka Fakulteta" ["Catholic Theological Faculty in Đakovo: History of the Faculty's Origin"], *Bogoslovska smotra*, 76:4 (2006), 1029–1057, at 1047.

⁷⁶ Baloban and Aračić, note 42.

⁷⁷ (www.rijeka.kbf.hr/izbornik.php?stranica=povijest) (23.12.2008).

⁷⁸ See e.g. Peter Trepte, *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation* (Oxford: Oxford University Press, 2004), esp. equality of treatment at 3, 274, 391–392 and non-discrimination at 136, 172. See also the Croatian Zakon o javnoj nabavi [The Law on Public Procurement], NN 110/07.

⁷⁹ Ugovor o suradnji u području odgoja i kulture, NN:DMU 2/97.

Republic of Croatia of 1997,⁸⁰ the Treaty on Legal Issues of 1997⁸¹ and the Treaty on Economic Issues of 1998)⁸² before adopting the Law on the Legal Position of Religious Communities in 2002,⁸³ which authorises the Croatian Government in Art. 9 to regulate relations between the State and a religious community by a contract. The government has made such contracts with a dozen smaller religious communities, starting in 2002 with the two most numerous ones, namely the Serbian Orthodox Church in Croatia⁸⁴ and the Islamic Community in Croatia.⁸⁵ However, neither the purpose nor the function of the Law is to provide equal treatment to all religious communities present in Croatia; rather it is to confer a unique status on every single community selected by the Government as its partner.⁸⁶

The second and more important reason is that the Catholic Church is the only religious community in the world that has the capacity under international law to enter into international agreements.⁸⁷ Hence, even if the Republic of Croatia distributed public benefits to religious communities through agreements reached on the basis of a procedure providing equal treatment to every single one, the Catholic Church would come out privileged by the very fact that its agreement with the State belongs to a superior legal system, namely international law.

For these reasons both the UZ-CTFZ Contract of 1996 and the Treaty on Co-operation in Matters of Education and Culture are incompatible with the equality clause of Art. 41(1). However, they do not necessarily—at least not any more—violate the clause. Although Art. 134 of the Croatian Constitution suggests that a treaty, that is, an international agreement, which is a part of the Croatian legal order has a legal force inferior to that of the Constitution, the force of an international agreement is for some practical purposes superior to the Constitution.

⁸⁰ Ugovor o dušorižništvu katoličkih vjernika, pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske, NN:DMU 2/97.

⁸¹ Ugovor o pravnim pitanjima, NN:DMU 3/97.

⁸² Ugovor o gospodarskim pitanjima, NN:DMU 18/98.

⁸³ Zakon o pravnom položaju vjerskih zajednica, NN 83/02.

⁸⁴ Ugovor o pitanjima od zajedničkog interesa, NN 196/03, no. 3109.

⁸⁵ Ugovor između Vlade Republike Hrvatske i Islamske zajednice u Hrvatskoj o pitanjima od zajedničkog interesa, NN 196/03, no. 3110.

⁸⁶ Most notably with the Serbian Orthodox Church in Croatia and the Islamic Community in Croatia. I. Padjen, "The Status of Minor Religious Communities in Croatia: A Revival of Legal Pluralism", in S. Devetak, L. Kalčina and M.F. Polzer (eds.), *Legal Position of Churches and Religious Communities in South-Eastern Europe* (Ljubljana-Maribor-Vienna: ISCOMET—Institute for Ethnic and Regional Studies, 2004), 93–106.

⁸⁷ On the special status of the Holy See in international law, see in Croatian literature Davorin Lapaš, *Međunarodne nevladine organizacije kao subjekti međunarodnog prava* [International

To begin by paraphrasing Blackstone, if without a remedy there is no right, there is no wrong either. By the same token, in the Croatian legal order there is no room for violation of the Croatian Constitution by an international agreement because there is no remedy for such a violation.⁸⁸ The Constitution of the Republic of Croatia, which in judicial review of constitutionality follows the German Basic Law,⁸⁹ has no provision that would give the Croatian Constitutional Court competence to review the validity of either treaties/international agreements or contracts/agreements under domestic law.⁹⁰ Hence the Court has declared itself incompetent to review a decision of the United Nations⁹¹ and even a contract between the Croatian Government and the Croatian Bishops' Conference executing the Treaty on Co-operation in Matters of Education and Culture between the Holy See and the Republic of Croatia.⁹² A regular Croatian court is even less likely to review an international agreement, since the Court refrains even from applying such instruments.⁹³

Furthermore, there is no room for violation of the substantive provisions of the Croatian Constitution by a treaty, since there is no international judicial remedy for violation of such a provision. Art. 46 of the Vienna Convention on the Law of Treaties does recognise that a treaty violating a rule of internal law of fundamental importance may be invalid under international law. However, the rule violated must regulate the "competence to conclude treaties".⁹⁴ In addition, there is no international judicial remedy for any treaty between the Holy See and the Republic of Croatia, since such a treaty provides that all disputes arising from it shall be settled by an agreement of its parties.⁹⁵

Non-Governmental Organisations as Subjects of International Law] (Zagreb: Sveučilište u Zagrebu, Pravni fakultet, 1999), at 43–44.

⁸⁸ Cf. Padjen, notes 5–7.

⁸⁹ Art. 93 des Grundgesetzes für die Bundesrepublik Deutschland, *BGBL.*, S.1 (1949).

⁹⁰ Čl. 128. Ustav Republike Hrvatske [Art. 128 Constitution of the Republic of Croatia], *NN* 56/90, 135/97, 113/00, 28/01, 41/01.

⁹¹ Ustavni sud Republike Hrvatske, Izvješće broj: U-X-2271/2002 (12.11.2002) (<http://sljeme.usud.hr/usud/praksaw.nsf/Pojmovi/C1256A25004A262AC1256C6F00513276?OpenDocument>) (23.12.2008).

⁹² Ustavni sud Republike Hrvatske, Rješenje broj: U-II-2885/2003 (11.02.2004).

⁹³ A vivid illustration is the finding that the Županijski sud u Zagrebu [the County Court in Zagreb] has not applied even once the 1st Protocol (on property rights) of the European Convention for Human Rights in ten years of its validity in Croatia. Marko Bonifačić, *Pravo vlasništva u Europskoj konvenciji za zaštitu ljudskih prava i temeljnih sloboda* [The Right to Property in the European Convention for the Protection of Human Rights and Fundamental Freedoms] (Faculty of Political Science, Zagreb University: Master of Science Thesis, 2006), at 176, footnote 475.

⁹⁴ UN Document A/CONF. 39/27; Bečka konvencija o pravu ugovora [Vienna Convention on the Law of Treaties], *Službeni list SFRJ: Dodatak međunarodni ugovori* 30/72.

⁹⁵ Čl. 14. Ugovora o suradnji u području odgoja i kulture [note 79], *NN:DMU* 2/97; Ugovor o dušobrižništvu katoličkih vjernika, pripadnika oružanih snaga i redarstvenih službi Republike

A further consideration is that international agreements and other public contracts between the Catholic Church (that is, its units or organs) and the Republic of Croatia are legally protected from criticism of unconstitutionality.⁹⁶ The leading Church paper has labelled such criticism a slander,⁹⁷ that is, a criminal offence punishable under Art. 200 of the Croatian Criminal Law.⁹⁸ The label itself would be a slander if there was a judicial venue wherein one could prove that the Treaties do violate the Constitution. Since the venue is not available, it is wise not to analyse the Treaties in public.

Finally, the Catholic Church claims that its diplomacy, and by implication its international agreements, serve higher ends.⁹⁹ In a multicultural world, where “anything goes”, such a claim is, paradoxically, stronger than in a Christian country that practises the separation of church and state.

A *lex inferior* invalidating *legi superiori* is not a Croatian peculiarity.¹⁰⁰ In the relationship between a treaty and a constitution, the superiority of the former over the latter merely reflects the dynamics of international law and domestic law in the past fifty years.¹⁰¹ In the relationship between church and state in Croatia, the dynamics have been fairly stable for more than a century, despite the apparent intermission of the forty-five years of communist rule, and may be encapsulated by the following paraphrase of the famous Otto Myer’s dictum: “*Die Verfassung vergehet, die Verwaltung bestehet, das Konkordat in die Ewigkeit geht*”.¹⁰²

While the Croatian Constitutional Court is legally incompetent to review the Treaty on Co-operation in Matters of Education and Culture, the Court has found itself competent to declare several provisions of the LIHE null and void on the grounds that they violated the Constitution, esp. Art. 67 on university autonomy.¹⁰³ However, the new law on the matter, adopted in 2003 under

Hrvatske [note 80], NN:DMU 2/97; čl.11. Ugovora o pravnim pitanjima [note 81], NN:DMU 3/97; čl. 14. Ugovora o gospodarskim pitanjima [note 82], NN:DMU 18/98.

⁹⁶ As in Padjen, notes 5–7.

⁹⁷ “Što zapravo hoće profesor?” [“What does the Professor Really Want?”], *Glas Koncila*, 40:36 /1420/ (09.09.2001), 21.

⁹⁸ Čl. 200 Kaznenog zakona, NN 110/97 etc.

⁹⁹ See Mišćin, note 57.

¹⁰⁰ Comp. abrogation in H. Schaeffer und E. Melchiar, “Sources of Law in the Republic of Austria”, in C. Kourilsky, A. Racz and H. Schaeffer (eds.), *The Sources of Law: A Comparative Empirical Study—National Systems of Sources of Law* (Budapest: Akademiai Kiado, 1982), 17–60, esp. at 17–18.

¹⁰¹ E.g. E. Denza, “The Relationship between International and National Law”, in M.D. Evans (ed.), *International Law* (Oxford: Oxford University Press, 2003), 416–442.

¹⁰² The Austrian Concordat of 1855 remained in force long after the disappearance of the Austro-Hungarian Empire, not only in the Kingdom of Yugoslavia but in part, probably, also in the socialist Yugoslavia after 1945. See Padjen, note 6, at 58–60.

¹⁰³ Ustavni sud, note 35.

the title the Law on Scientific Activity and Higher Education [hereinafter: the LSAHE],¹⁰⁴ blatantly violates the Constitution again in some of the ways declared unconstitutional by the Court in 2000.¹⁰⁵ It is worthy of attention in this context that the LSAHE confers the competence to appoint members of expert committees on the National Council for Science (Art. 19(2)), which is appointed by the Croatian *Sabor* (Parliament) (Art. 11(1)). For this reason, the National Council for Science is a state organ. Interestingly enough, the expert committee for philosophy and theology was retained even under the coalition government led by the Social Democrats from 2000–2003.¹⁰⁶ However, teachers of Catholic religious institutions now make up only five out of eleven committee members.¹⁰⁷

Neither the LSAHE nor the new statute of the University of Zagreb adopted in 2005¹⁰⁸ mention Catholic theological faculties. They do not have to, since contracts between Croatian Catholic theological faculties and Croatian state universities are likely to outlive both the LSAHE and university statutes, just as the Austrian Concordat has outlived the states wherein Croatia has happened to exist in the past hundred years.

V. Conditions of Decision

As noted, “the relation between Church and State is the greatest subject in the history of the West.”¹⁰⁹ But even if the subject was considerably less complex, it is unlikely—*pace* Lasswell and McDougal¹¹⁰—that any study, let alone an essay of this format, could identify all the conditions of past and future decisions.

¹⁰⁴ Zakon o znanstvenoj djelatnosti i visokom obrazovanju, NN 123/03, 105/04 etc.

¹⁰⁵ I. Padjen, “Mrak u novom pakovanju” [“Darkness in a New Wrapping”], *Feral Tribune*, 19:911 (01.03.2003), at 56.

¹⁰⁶ Pravilnik o ustroju i načinu rada područnih vijeća i matičnih odbora [Regulation on the Structure and Procedures of Field Councils and Expert Committees], NN 76/05.

¹⁰⁷ Pero Aračić, CTF Đakovo; Stjepan Balaban, CTFZ, chair; Branko Despot, Faculty of Philosophy UZ, deputy chair; Tomislav Ivančić, CTFZ; Ivan Koprek, Faculty of Philosophy of the Society of Jesus; Milan Polić, Teachers’ College UZ; Zdravko Radman, Institute of Philosophy, Zagreb; Nenad Smokrović, Faculty of Philosophy U Rijeka; Franjo Šanjek, CTFZ; Lino Veljak, Faculty of Philosophy UZ; Boran Berčić, Faculty of Philosophy U Rijeka. <www.nvz.hr/index.php?option=com_content&task=view&id=21&Itemid=46> (28.12.2008).

¹⁰⁸ Statut Sveučilišta u Zagrebu. <www.unizg.hr/fileadmin/rektorat/dokumenti/statut/statut_050225.pdf> (28.12.2008).

¹⁰⁹ Emil Brunner, quoted in the opening sentence of “Editorial”, *A Journal of Church and State*, vol. 1, no. 1 (1959), at 2.

¹¹⁰ Lasswell and McDougal, note 9, at 37 “In policy-relevant performance of the scientific task, inquiry will be made for the interplay of the multiple factors affecting decision In such inquiry, Bentham is supplemented by Freud”.

All that can be done, in this as in most other policy-oriented legal inquiries, is the following: first, to imagine probable inconvenient but avoidable future decisions; secondly, to project preferable future decisions which would, to a greater extent than inconvenient decisions, realise basic public order goals (as postulated *supra* in Section 2) and public policies (as clarified *supra* in Section 3); thirdly, to identify—by a thought experiment (which could be upgraded partly in a broader study by empirical research)—the conditions that are common to both past and future decisions. The experiment would above all reduce the complexity of potential conditions by counterfactually identifying the conditions that are common to major past, inconvenient and preferable decisions.¹¹¹

The complexity of potential conditions in this inquiry can be reduced by asking whether past decisions (in Section 4) and future—inconvenient and preferable—decisions (in Section 6) on the participation of a theological school of a religious community would have happened had a certain *prima facie* condition not taken place, or is likely to happen if that condition does not obtain. A counterfactual identification easily eliminates a number of events as probable future conditions although they have been *prima facie* conditions of past decisions. Thus, the experiment easily eliminates illiteracy, peasantry, communism, Yugoslavia, urbanisation, industrialism, etc. as conditions of future decisions.

There are at least two series of events that cannot be eliminated. On the one hand, there is the strong allegiance of the Croatian population to Catholicism.¹¹² On the other, there is a long-lasting tension between clericalism and anticlericalism. Contrary to the dominant clerical lore, Croatian anticlericalism was cultivated not only by the communists, who ruled the country from 1945 till 1990, but also by the Croatian peasant movement, which was the dominant political force in the country between the two world wars.¹¹³ Brief periods of clericalism, at the climax of the Habsburg Empire at the turn of the 20th century¹¹⁴ and after the collapse of Yugoslavia in the 1990s,¹¹⁵ were exceptions

¹¹¹ Briefly on counterfactual thinking, B. Danermark et al., *Explaining Society: Critical Realism in the Social Sciences* (London: Routledge, 1997), at 100–103.

¹¹² E.g. a comparative survey M. Tomka, "Religion in Europe. Sociological Considerations with Special References to Central and Eastern Europe", in M. Polzer et al. (eds.), *Religion and European Integration: Religion as a Factor of Stability and Development in South Eastern Europe* (Weimar: European Academy of Sciences and Arts, 2007), 17–37.

¹¹³ See a tentative appraisal in T. Radja, "Katolicizam i liberalizam u politici Stjepana Radića" ["Catholicism and Liberalism in Stjepan Radić's Politics"], in Cvitan, note 7, 99–105.

¹¹⁴ Mario Streha, *Katoličko hrvatstvo; počeci političkog katolicizma u banskoj Hrvatskoj (1897–1904.)* [Catholic Croatianness: the Beginnings of Political Catholicism in the Ban's Croatia, 1897–1904] (Zagreb: Barbat, 1997).

¹¹⁵ See D. Sekulić and Ž. Šporer, "Regime Support in Croatia: Determinants of Regime Support in the Past, Present and Future", *Revija za sociologiju*, 28:1–2 (1997), at 56–59 and Padjen, note 7.

rather than the rule. If there is anything like a standard of church and state relations in Croatia, it is the Venetian legacy. Venice, which ruled and/or in other ways profoundly influenced the coastal areas of Croatia throughout the first thousand years of Croatian history, had its cake and ate it: Catholicism was the official Venetian religion, while the Pope and the papists were Venetia's major political adversaries.¹¹⁶ The Croatian city state of Dubrovnik, which also defended its independence successfully against Venice,¹¹⁷ adopted much of Venetian constitutionalism, including a healthy disregard for clerical meddling in politics.¹¹⁸ The integration of present-day Croatia into Europe is likely to adversely affect Croatian clericalism, though not in a politically correct way but rather a Venetian one.

All this said, the identification of counterfactuals does not mean a blind eye can be turned to the fact that Croatia has been swept up in the past hundred years alone by three major wars and several major crises, most of which originated from outside Croatia. A severe crisis may provoke unavoidable decisions, which cannot even be envisioned. A less severe crisis, such as the economic depression that may break out in Croatia in mid-2009, may provoke avoidable decisions within a rather wide range, from a new rise of clericalism to, though less probably, a new containment of the Catholic Church to a degree like that in the second half of communist rule.¹¹⁹

VI. Avoidable and Preferable Decisions

The probable but avoidable future decisions on the participation of Catholic theological faculties in Croatian state universities will primarily affect the cultural component of Croatian universities. This is now pluralistic and tolerant. However, ethical codes adopted by the University of Rijeka in 2004¹²⁰ and the

¹¹⁶ See briefly, Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today* (Cambridge MA: Harvard University Press, 1999), ch. 5 "Republic of Venice: Church and State", at 149–155.

¹¹⁷ See e.g. Ilija Mitić, *Dubrovačka država u međunarodnoj zajednici* [*The State of Dubrovnik in the International Community*] (Zagreb: JAZU i NZMH, 1988).

¹¹⁸ K. Vojnović, "Crkva i država u Dubrovačkoj Republici" ["Church and State in the Republic of Dubrovnik"], *Rad Jugoslavenske akademije znanosti i umjetnosti*, 119:1 (1894), 32–142; *ibid.*, 119:2 (1894), 1–91.

¹¹⁹ The dividing line *de jure* and *de facto* was the Protocol of 25.06.1966 o razgovorima koji su vođeni između predstavnika Svete Stolice i vlade SFR Jugoslavije [The Protocol of Talks Conducted between Representatives of the Holy See and the Government of the SFR Yugoslavia], *Službeni list SFRJ: Dodatak međunarodni ugovori* 11/66.

¹²⁰ Etički kodeks Sveučilišta u Rijeci (12.09.2004). (http://www.uniri.hr/component/option.com_wrapper/Itemid,150/) (28.12.2008).

University of Zagreb in 2007¹²¹ promulgate political correctness, which is inimical to belief in absolute values and by implication to Christianity.¹²² Moreover, the allegedly non-legal Ethical Codex of the University of Zagreb is designed to create an autonomous legal order as if the university was a medieval but secular church. Thus the Codex denies fundamental rights and freedoms guaranteed by the Croatian Constitution, most notably the freedom of expression, which is a constituent of the modern (Humboldt's) university.¹²³ While the Codices are now largely laws on the books, the further integration of Croatia into Europe will probably turn them into law in action. Their implementation may not directly affect the participation of Catholic theological faculties in Croatian state universities. However, the implementation of political correctness will insulate theological faculties as reserves of religious aboriginals.

Croatian Catholic theological faculties and their teachers may wish to be concerned more with the environment they now serve than with the status they were deprived of under communist rule. To that end, they may start teaching by example and advise their superiors to recognise that by the Church's own standards, on the one hand, a modern university is entitled to academic rights not only in relation to the state and business but also to the Church; and on the other, Catholic faculties of theology and their teachers are not entitled to such rights towards the Church and consequently cannot be entitled to full membership of autonomous state universities.

The recognition may result in minimal institutional change. If a Croatian state university which is now autonomous decides to elect again a priest as its rector, the university should be as legally free to do so as it has been in the past fifteen years. The same should be the case if the Croatian Rectors' Conference, which is now also autonomous, decides with the consent of both university philosophers and university theologians to elect a joint expert committee on academic appointments in theology as well as philosophy. All that may be required is that the vote of a Catholic theological faculty in the senate of a state university (usually one of twenty-five or even seventy votes) counts in decisions on scholarly matters (appointments and advancements to scientific grades, approval of curricula and research projects, etc.) as an advisory opinion.

¹²¹ Etički kodeks Sveučilišta u Zagrebu (15.05.2007) (www.unizg.hr).

¹²² I. Padjen, "The Cretin People: sveučilišna amerikanizacija Hrvatske" ["The Cretin People: the University Americanisation of Croatia"], *Feral Tribune*, 24:1147 (28.09.2007), 34–35; 24:1148 (05.10.2007), 36–37.

¹²³ I. Padjen, "Akademska prava u Hrvatskoj: problemi i izgledi" ["Academic Rights in Croatia: Problems and Prospects"], 12. hrvatsko-njemački pravnički simpozij (Split, travnja 2008), in preparation.

VII. *From Four Hands to a Full Trio*

Let me now reveal, as announced in my introductory remarks, why this study is a policy-oriented inquiry and nonetheless easily accessible even to traditional European legal scholars who operate within the inherited—chiefly German 19th century—legal dogmatics¹²⁴ and have a disregard for more recent theoretical frameworks, most notably for Lasswell and McDougal's POJ.¹²⁵ The reason, which has not been noticed in the arduous European literature on POJ,¹²⁶ is at least threefold. First, the POJ system of values is a fairly obvious, though expanded, adaptation of Eduard Spranger's typology of personality.¹²⁷ Secondly, POJ relies explicitly on Max Weber's theory,¹²⁸ whose key concepts have been adopted from German legal scholarship.¹²⁹ Thirdly, Lasswell's conceptual framework of political science, which is well known as the 4Ws (*Who, What, When, How*),¹³⁰ is too similar to the mainstream European, that is, German and Roman legal tradition to be an original New World idea. To put it more precisely, Lasswell's 4Ws are in all probability an adaptation of the 4Ws (*Wer,*

¹²⁴ On the development of the concept of dogmatics, see Maximilian Herberger, *Dogmatik: Zur Geschichte von Begriff und Methode in Medizin und Jurisprudenz* (Frankfurt a.M.: Klostermann, 1971).

¹²⁵ See e.g. Sandra Voos, *Die Schule von New Haven. Darstellung und Kritik einer amerikanischen Völkerrechtslehre* (Berlin: Duncker und Humblot, 2000).

¹²⁶ Esp. *ibid.* and Gerhard Casper, *Juristischer Realismus und politische Theorie im amerikanischen Rechtsdenken* (Freiburg i.B.: Dissertation, 1967); Knud Krakau, *Missionsbewußtsein und Völkerrechtsdoktrin in den Vereinigten Staaten von Amerika* (Berlin: Frankfurt a.M.: Metzner, 1967), 459–518; Bent Rosenthal, *Etude de l'oeuvre de Myres Smith McDougal en matière de droit international public* (Paris: Pichon et Durand-Auzias, 1970); P. Allott, "Language, Method and the Nature of International Law", *British Year Book of International Law* 1971, vol. 45 (1973), 79–135. Many sources that educated and inspired Harold D. Lasswell, who in his younger years studied in Germany and researched in China, cannot be learned by the usual method, namely, by analysing references in his footnotes. Neither Lasswell and McDougal, note 9, nor other Lasswell and McDougal inquiries into law reveal the sources of their theoretical framework, perhaps due to the fact that Lasswell's research documents were completely destroyed when they were being moved from Chicago to Washington and New Haven in 1938. See R. Mutt, "Harold Dwight Lasswell: A Biographical Profile", in R. Mutt, M.M. Finley and M.F. Muth, *Harold Lasswell: An Annotated Bibliography* (New York: Springer, 1990), at 7.

¹²⁷ Eduard Spranger, *Lebensformen: Geisteswissenschaftliche Psychologie und Ethik der Persönlichkeit* (Halle, 1921), trans. into Croatian by V. Filipović as *Oblici života: duhovnoznastvena psihologija i etika ličnosti* (Zagreb: Matica Hrvatska, 1942).

¹²⁸ William L. Morrison, "Weber in Law, Science and Policy Terms (Unrevised Manuscript. Not to be regarded as published)" (1962), 48 p. I owe a copy of the manuscript to Myres S. McDougal.

¹²⁹ Stephen P. Turner and Regis A. Factor, *Max Weber: The Lawyer as a Social Thinker* (London: Routledge, 1994).

¹³⁰ Harold D. Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw Hill, 1936). Reviewers have noted that Lasswell's definition of politics as 4Ws can function equally well as a definition of economy.

Wem, Was, Woraus) of the German framework of the *Fallanalyse*,¹³¹ which is in turn an adaptation of the 5Qs “*Quis, quod, coram quo, quo iure petatur a quo, quisquis libellus recte compositus habet*” of the cognition civil procedure formulated in the post-classical period of Roman law.¹³²

But there may be additional reasons why a policy-oriented inquiry is easily accessible to legal scholars educated on German literature. First of all, POJ may be traced back to the characteristically German idea that law is a means to balance conflicting interests.¹³³ The idea lends itself to the view that if there is no conflict of interest, a conflict of legal rules is not practically relevant. Thus if there is no conflict of interest (between, say, agnostics and Catholics or scientists and theologians) over the participation of the Catholic Theological Faculty in Zagreb in the University of Zagreb, there is no relevant conflict between the constitutional rule requiring the equality of all religious communities before the law and the treaty rules giving the Catholic Church a status above ordinary laws or even the Constitution. Furthermore, even if there is such a conflict, it is not resolved by legal rules but by a decision (policy) which may take the form of an individual (concrete) legal norm but does not logically follow from (abstract) legal rules (norms). It does not follow because, as taught by Kant, the application of a rule is not an inference but an artistic creation that presupposes talent and practice rather than knowledge or logic.¹³⁴ Finally, since a (concrete) decision cannot logically follow from (abstract) rules, it is superfluous to engage in a search for basic goals of a public order by derivation, as Lasswell and McDougal liked to put it.¹³⁵ It suffices that the goals are postulated.¹³⁶

The line of reasoning I have just described and ascribed to both POJ and mainstream German legal thought defies the expectations of ordinary people to be treated equally under the law, in the ordinary, that is, logical sense of “equally”. If so, the search for a just law should be resumed within POJ, integrating the social scientific study of policy recommended by Lasswell and

¹³¹ I. Glaser, “Pristup obradi slučaja u okviru studija prava u Njemačkoj: njegov kontekst i njegovo porijeklo” [“An Approach to Case Analysis within German Legal Education”], *Zbornik radova Pravnog fakulteta u Splitu*, 44:3–4 (2007), 501–520, esp. at 505.

¹³² *Ibid.*, at 505, referring to V. Radović, “Građanski proces u režimu općeg (recipiranog rimskog) prava” [“Civil Procedure in the Regime of General (Received Roman) Law”], *Zbornik Pravnog fakulteta u Zagrebu*, 37:5–6 (1987), repr. in *Id.*, *Pravni aspekti u učenjima antičke retorike* [Legal Aspects in Teachings of Ancient Rhetorics] (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2004), at 273.

¹³³ See briefly Karl Engisch, *Einführung in das juristische Denken*, 5. Aufl. (Stuttgart: Kohlhammer, 1971) at 144 ff., 180 ff.

¹³⁴ Immanuel Kant’s *Critique of Pure Reason*, trans. N. Kemp Smith (New York: St Martin’s Press, 1965), at 177–178, A 133–134.

¹³⁵ Lasswell and McDougal, note 9, at 34.

¹³⁶ *Ibid.*

McDougal with two more conventional lines of inquiry. The first is legal dogmatics, that is, interpretation of positive law with a view of application (performed in this study). The second is legal philosophy, that is, a search for basic public order goals beyond positive law, personal preferences and public sentiments (avoided in this study). Since the integration of science, dogmatics and philosophy can hardly be accomplished by a single individual, POJ should be practised by inter-disciplinary ensembles to avoid lapsing into a performance on all fours (which I have taken the risk of committing, as noted in my introductory remarks). Myres S. McDougal's lifelong collaboration with Harold Lasswell, precisely because they did not belong to the same discipline,¹³⁷ is again a model to be followed.

I was fortunate enough to have been introduced by Professor Božidar Bakotić to both legal and collaborative scholarship at the same time.¹³⁸ The experience gave me a start that still keeps me going.

¹³⁷ E.g. *Appreciations*, note 9, at 66.

¹³⁸ Padjen and Bakotić, note 1.