

Marko Paradžik

Conversation with prof. dr. sc. Zrinka Erent-Sunko



Biography of prof. dr. sc. Zrinke Erent-Sunko:

Prof.dr.sc. Zrinka Erent-Sunko was born in 1965 in Zagreb, a city she loves immensely. She finished elementary school and the same high school education, which allowed her to learn antiquity early by reading and translating original texts. She graduated from the Faculty of Law, the University of Zagreb, in 1990. defending a diploma thesis in International Law entitled “International Legal Protection of the Mediterranean Sea.” Because of her love for books, she enrolled in Librarianship at the Faculty of Philosophy in Zagreb, attending all courses. After graduating, she worked in the Professional Service of the then Executive Council of the City of Zagreb as an expert associate in legal matters related to real estate ownership and lease. She passed the professional exam at the Ministry of Administration and Justice.

She is an employee at the Faculty of Law, the University of Zagreb, since 1997, at the Department of General History of Law and State. After her Postgraduate Studies in Civil Law at the Faculty of Law in Zagreb, she obtained a master’s degree in 2003, defend-

ing her work in Family Law “The Legal Status of Women through History and Contemporary European Family Law.” She obtained the academic title of Doctor of Science in 2007. when she defended a doctoral dissertation in legal history entitled “Athens Democratic Institutions and Their Reflection on Social Phenomena.” In addition to the course General History of Law and the State, she teaches History of Modern Political Theories and Development of European Integration and Institutions in the fifth year of study. She deals with historical and legal systems in her scientific research, questioning the foundations they have laid for building positive law. The central themes of her research are topics related to European legal systems, especially research related to the importance of old codifications, organization of government, and administration. Through the history, emergence, and development of certain institutes of civil law, the conditionality of the development of legal systems by economic development, the consequences that economic achievements have on the construction and development of legal systems, the emergence and development of European integration and institutions and especially the legal position of women in history. She was a member of the editorial board of the Proceedings of the Faculty of Law in Zagreb and is currently a member of the editorial board of the Proceedings of the Polytechnic of Šibenik and the Croatian Society for International Law and the Croatian-Canadian Academic Society. She is married and the mother of a student who, unlike her, is more inclined to the natural and technical sciences. In her spare time, she is involved in promoting women’s rights and protecting children. She emphasizes no particular expectations other than that her students value the profession and repair and advance all that she and her generation have failed to do.

How important is it to know the history of law and the state, or how far into history we need to research to gain insight into contemporary events, the current state, and law?

I am not one of those who think that one cannot live without history and that nothing is known without history. However, without knowing the circumstances in which a state was formed and developed, the factors that influenced it, human reactions, causes and consequences, relations between social groups and individuals, the regulation of these relations, the state and law remain only social phenomena described by concise definitions. The state is not only made up of people and space, and law is not just the totality of rules. The state and law are complex, sensitive, and I would say organisms rather than mechanisms. They are alive and changeable. Dependent on many factors, many of which are involuntary. History essentially reveals the present to us, and to some extent, scientific predictability can partly reveal the future. Knowledge of the state, state institutions, customs, and rights in some states of the old and even the Middle Ages changes prejudices. Some social relations and some legal institutes from history show that we have not come far if anywhere at all.

What do you mean when you mention the dependence of the state and the legal system on involuntary factors?

I mean the situations when the state, the functioning of government, and the legal system are affected, for example, by a pandemic like the Plague in the Middle Ages, which killed almost half the population, or today COVID-19, which brought us a “new normal.” It could also be a weather disaster, a tsunami, or rising sea levels due to climate change and the sinking of territories, which is mentioned as a possibility in the Maldives nowadays.

Are the republic and the monarchy two different and mutually opposed types of state in history?

They are different, but they do not have to be opposed. The monarchy developed from unlimited to constitutional and parliamentary, and different republics depend on the function of the head of state. After all, only what Aristotle said about the purpose of the polis, good living, matters. England was a monarchy and remained a monarchy. France was a monarchy that was a model for many, but due to certain factors, it ceased to be at the end of the 18th century, becoming a reason for overthrowing the monarchy.

When and why do nation-states first appear in history?

The idea of the nation-state was in development since the 18th century, and it emerged when the preconditions for emphasizing the historically shaped sense of community were met, and nation-states emerged in the 19th century. Germany was formed by unification in 1871. This answer is only an indication of what is needed to answer the question "Why?". We should start with the notion of the nation, the national movement that went before the nation-state.

What are the first states known to us, and in short, how do they differ significantly in terms of the structure of government from today's modern states?

These are the first states in the Euphrates and Tigris area and later city-states in the Mediterranean area. They were slave-owning states. Life was simple, and the population was mainly engaged in agriculture, less in trade and crafts. Society was divided into free, unfree, and free again according to wealth, occupations, etc. Specific state legal systems should be viewed through the determinants of the time to which they belong. We can only speak con-

ditionally about the similarities and differences with modern states. Today there are no free and unfree, no slavery, although terrible numbers are mentioned when it comes to trafficking, that is, people in some slavery and slavery-like position. Some systems are similar to modern ones, but some differ from each other as if they were centuries between them. Nevertheless, what the state, society, then and today, have in common is that all negative phenomena still exist: wars, murders, rapes, robberies, incest. All these phenomena still exist despite all signed conventions, bilateral and multilateral agreements, international humanitarian organizations, development awareness, technological progress, and “humanization.”

It is often said that democracy as a governing system has its origins in Antiquity, that is, in Greece. Is today’s democracy different from the democracy of that time?

I was fascinated by Athenian democracy, so I got my doctorate on that topic. Many sources resent the exclusion of slaves, women, and foreigners from democratic decision-making in the Athens polis. However, I think that Athenian democracy, like all historical phenomena, must be judged in the corresponding time and all the characteristics. Athens lived a democracy while there was enthusiasm, but when salary replaced that enthusiasm and general interest to participate in decision-making and when personal interests grew to such an extent that they outgrew Athens’ interests as a polis democracy lost its luster. The issue of participation in government was still closely linked to responsibility, and at some point, the issue of responsibility was lost. Does this have anything to do with modern democracy? The answer is self-evident. However, it is an exaggeration to compare democracy then and today unconditionally. The Athenian polis had a voting body of 20,000

to 40,000, and the entire polis averaged about 90,000 to 120,000 inhabitants. In the electorate, the struggle for survival and spatial distance did not allow everyone to participate in the Assembly, the Council, and the courts. We cannot compare this with modern democracies, which are incomparably larger in size and population. Direct democracy has been replaced by indirect democracy. However, trust in indirect democracy seems to be declining lately, so citizens are increasingly turning to referendums. The difference between enthusiastic Athenians and us is that we seem to be a little tired of democracy, or maybe we take it for granted.

In which countries the three divisions of power did it appear for the first time in history?

The idea of the division of power appeared as a need and expression of the struggle of the citizens to limit the ruler's absolute power. The most famous proponent of the principle of separation of powers was Montesquieu, who, as a good connoisseur of Roman history, emphasized the importance of rights for citizens' freedom and therefore placed him above the current government. In Germany, based on 19th and 20th centuries reflections on the obligation of legal regulations and the bodies that enacted them, the doctrine of law developed as a consequence. In contrast, in England, the doctrine of the rule of law developed. The idea of the School of Natural Law, of which Montesquieu was a representative, was embodied in the Declaration of the Rights of Man and of the Citizen, which the King had to sign in 1789. However, the power of the English King was limited much earlier. Namely, in 1100, Henry I in the Coronation Charter had to confirm (!) The rights that belonged to the nobility according to custom. This charter has already shown that the nobility really decides the crown and that the crown is acquired under conditions and not by birth itself. The

question of the nature of the King's power, the relationship between the King and the power, and that power and law will be concretized in 1215 in a document without which one cannot speak of English constitutionality - the Magna Carta.

Can you explain the significance of the Magna Carta Libertatum in the development of the state and law in general?

It is a document of constitutional significance which stipulates that every free man is tried by a court equal to him, i.e., a jury, and that no one can be convicted without a lawful judgment, but, more importantly, the Magna Carta affirms the right to rebellion, resistance to oppression, *ius resistendi*, in case the King does not obey the law. The law, on the other hand, is not the work of a king but was created as an expression of custom and court practice. Thus, the law is above the King because he makes him King, as stated in an English treatise from the 13th century. In the Magna Carta, it is mentioned that the barons choose from among themselves twenty-five to represent them. That introduces a representative body. Each provision of the Magna Carta can be discussed separately. However, it is vital to know the circumstances in which the Magna Carta was adopted and the events that followed 150 years after its adoption, and the fact that it was confirmed several times in a hundred years. The reference to Magna Carta and common law by Coke in the conflict with James I was not accidental, nor was its impact on the Law Petition and the atmosphere of the Puritan Revolution. It is the forerunner of modern English constitutionalism and the French Constitutional Charter of Louis XVIII, passed in 1814. Stubbs in the 19th century considered that all the constitutional history of England was, in fact, a commentary on the Magna Carta. Its significance in the American Revolution should also be mentioned. For the

development of rights and freedoms, i.e., the state and rights in general, this document is of great importance.

How is the United States state-specific in history concerning other federations?

The colonial historical development determined this federation that became states and their struggle for independence and the motto “E Pluribus Unum.” They are specific primarily to how they settled, i.e., immigrated people of different nationalities and religions who had confidence in their abilities regardless of origin. Then, by the speed of opposition to the English Parliament and the Crown. Different and distant from the queens from which they came, they grew into one nation, grateful for the opportunity given to them by American soil. It did not take them long to realize that confederation was not the solution to their needs, even though it was good preparation for stronger ties between the constituents. In the end, the USA is specific in that the constitution from 1789 is still in force. Obviously, the fathers of the constitution and the creators of such a federation were so far-sighted that the same constitution provides the framework for the federation even after more than 220 years. When they passed the federal constitution, the United States had a population of 3.9 million and now has over 320 million. That foresight is hard to explain. From then until today, a particular path had to be crossed. In addition, the United States, like England and unlike France, is an example of a specific state-legal sequence from the Middle Ages and an example of the emergence of a new one. When the United States was in creation, not all states were created; they were created in an area where there was no statehood so that they were transformed from “territories” into states under certain conditions. The new states took over the organization of

the old ones, and thus, which may not have been to be expected, continuity was ensured. The division of competencies, both horizontal and vertical, was at the core of constitutional thought, I repeat, far-reaching. This does not mean that it is an ideal system nor that some other federations could function in the same way. Historical development with many factors, I will only mention position and size, has done its thing. Many people from Croatia went to America. I do not know anyone who has not rooted their roots in that federal system. At ellisland.com, you can find out when from where, and by which ship an immigrant arrived in the United States.

What was the historical development of Switzerland as a state?

The historical development of a state is difficult to summarize in a few sentences, and this historical development is traced back to the peace of Verdun in 843. However, it should begin at the end of the 13th century when the Uri, Unterwalden Schwyz, formed a defensive alliance against the Habsburgs. Many tumultuous events followed this: the expansion of the alliance (e.g., Zurich, Basel, etc.), the recognition of the confederation, the acquisition of independence, religious conflicts in the 16th century, the transmission of the French revolutionary spirit, the proclamation of the Helvetic Republic. France, the fall of Napoleon and the declaration of neutrality, the Congress of Vienna in 1815, the conflict between the cantonal alliances, the constitutions of 1848 and 1874, neutrality in the First and Second World Wars... and several other events, each with its causes and consequences. I cannot fail to mention that it was not until 1971 that women received the right to vote in most Swiss cantons. The last "hard" canton gave women the right to vote only 30 years ago. There have been struggles for women's suffrage and demands before, but referendums have voted against it.

Did the French Revolution contribute to a better position for women and opportunities to participate in governing the country?

Women (but not all in that case) counted on equality but failed to achieve it with the French Revolution. Although they took part in the Revolution and stormed with the men on the Bastille, they were eventually deceived and did not become citizens. Olympe De Gouges, the author of the Declaration of the Rights of Woman and Citizen, modeled on the Declaration of the Rights of Man and Citizen, was executed by guillotine. The conditions for equality were simply not ripe. European countries at that time were 90% agricultural, and women were not educated; hard work exhausted them, they looked after children and did household chores without the help of appliances. The male population was spared the care of children and household chores, but living conditions were difficult for men as well. In France, the political climate frequently changed from the Revolution to the Third Republic; for the Third Republics, there was a war with Prussia, and then the First and Second World Wars.

Laws enacted immediately after the Revolution had somewhat improved the position of women, but revolutionary enthusiasm quickly waned, as did the will to allow women to participate in public life and equalize in private. The Civil Code assigns a secondary role to the wife; she is under the husband's custody, without the husband's consent, she cannot alienate property, conclude a contract, testify in court. It was not until 1897 that women were able to testify in concluding legal cases. Although unfulfilled, the idea of equality, women's clubs, and the support of some philosophers and educators empowered women and gave them a new wind in their backs. Therefore, it cannot be said that the French Revolution did not contribute to or at least encourage a further struggle for a better position for women. However, there was a

long way to go from that place to women's suffrage and constitutional equality. An even further path is the possibility of running a company or participating in the management of the state. However, that is another topic.

Can the position of women in history be compared today, especially given the recent articles on sexual harassment and violence? What is the role of the state?

The comparison is, unfortunately, in favor of history. People have prejudices about it. In the Middle Ages, there were no state institutions that cared about women's rights, nor mechanisms that, as today, should control the observance of legal regulations and the actions of state bodies. Therefore, the state's role cannot be assessed according to the criteria according to which we do it today. The position of a woman was determined by a custom that was respected. Not all customs were terrible, e.g., rights and obligations were in the Middle Ages with the Germans regulated by *leges*, collections of customs in which there was more or less the influence of Roman law. Some of the collections prescribe punishing rapists through flogging, confiscation of property, and the perpetrator had to serve the slave for the rest of his life. Compared to the two or three years that a rapist can get today, this punishment certainly seems fairer to a raped woman, which does not diminish the possibility that such a punishment was actually aimed at securing the position of the father of the family, guardian, or master. The Greeks did not choose men who treated women dishonestly as strategists, and the testimonies confirm that there was a certain humanization of warfare, i.e., that the rules of sparing women and children were respected. Today, the international community has the opportunity to witness the deaths of women and children in refugees, the abduction of girls from

some African schools, and the sex slave trade in some areas. In the last few years, over 100 women have been killed in Croatia. Concerning what has happened in history, I do not know how to explain it.

Communist China, the former Soviet Union, and even the former Yugoslavia had a one-party system and an extreme executive power in their countries. How good is this for the efficiency of state government in achieving the well-being of citizens and ultimately for the development of the economy within the state?

These are, however, three different systems and quite different in their historical development, but none is known for the well-being of its citizens. Not to be dry and too burdened with historical facts, I can say that I do not know those who would return to this “prosperity” no matter how many flaws they notice in Western democracies. In the end, I was born and spent my youth in that system, so I had the opportunity to witness the economic development in the 70s and the last phase before the democratic changes when life was already better.

The communists saw through communist eschatology the cessation of the existence of states in the future of humanity. However, in practice, through socialism as a transitional period, they powerfully used the state as a form of organization. How realistic is the future of the extinction of the state given that the state is a constant in history just like some other social phenomena (e.g., stratification, religion, social divisions, etc.)?

We had the opportunity to see the state’s demise due to the pandemic when everyone has closed in on their borders despite globalization and integration. The Communists also envisioned

a world where everything would be shared, and everyone would take it as needed. However, it is not in human nature. From past historical experience, the demise of the state seems neither probable nor necessary. However, that question would undoubtedly answer someone who deals with the theory of state and law much better. I prefer to talk about what was or what is. Knowledge of history in this matter of prediction cannot give the property of the real.

I believe that today in the world, we have two tendencies regarding the future of states. One tendency goes in the direction of increasing integration of states into international organizations (e.g., UN) and different types of alliances (e.g., NATO) with the possibility of a world government and a planetary state (G7, G20). In contrast, the other tendency goes in the direction of potential separatism; in other words, some states' fragmentation as some of them have more different peoples (e.g., China, Russian Federation, etc.). Can we apply an analogy from history to predict the possibility of the emergence of new states in the future, either those global superpowers or the creation of new states by the disintegration of existing states?

In the 1990s, Czechoslovakia, the USSR, and the SFRY disintegrated. The creation of new states by the disintegration of existing ones is possible. At this moment, the aspirations of Catalonia come to my mind. It is also possible to create new states by merging existing ones. Germany and Italy emerged in the 19th century with the unification of small states. By analogy from history, we can make certain conclusions. But a planetary state and a world government? Do you see that possibility? The future is in ten years and in five hundred. Sometimes it is hard to say what it will be in a year or two, and no one can know what it will be in some distant future.

Historically, is the European Union a state or a state-in-making?

The European Union has historically been neither a state nor a state-in-making. For understanding the origin or the development of the European Union, it is necessary to know the historical circumstances in Europe in the 20th century. I am thinking here primarily of the interwar or post-war period. Integrations, or alliances, existed on European soil in ancient times. One example is the Attic-Del Alliance. In the area of Europe in the Middle Ages, there was one large state, France. Many philosophers, lawyers, politicians, historians have emphasized the idea of peace and the need for cooperation between European Christian countries. Due to the consequences of the First World War, the idea of cooperation grew into the issue of ensuring peace and stability, and as a consequence, an initiative for some unification emerged as a guarantor of political security and economic progress. Instead of the previous war, and for preserving sovereignty and the realization of some national interests, the idea of protecting national interests more permanently and with better quality through the cooperation of European states was strengthened. This cooperation, on the other hand, implied a specific limitation of sovereignty.

After the Second World War, the idea of unification strengthened, and two models of a possible community of European states emerged: the “unionists” advocated the idea of unification modeled on the United States, and the “federalists” saw it as a community of states cooperating on the principles of intergovernmentalism and supranationalism. There were also differences between the “federalists.” Some were in favor of a rapid transformation into a European federation. In contrast, others, including Jean Monnet and Robert Schumann, favored gradual integration in individual sectors to create the European Union. Every alli-

ance, even this one, arose out of particular interest. It may be awkward, but it is pictorial to compare a union to a marriage. It arises out of interest and ceases when it is no more. It also ceases when it becomes a purpose in itself. It seems that we can say that, as in marriage, it is essential to have common goals, but also to preserve one's integrity and personality.

I teach the course Development of European Integration and Institutions. The intention for introducing this elective course was to explain to students and bring closer the path and reasons for the emergence of the EU, from the European idea, through the Paris and Rome Treaties to the Maastricht Treaty. Colleague, Ph.D. Ivan Obadić is the holder of the Jean Monnet Module Development of European Integration and Institutions. We are working on this project, in which the associate and dr. sc. Miran Marelja contributes to strengthening the course so that students can better know the institutional and normative development of European integration and its cultural, economic, political-diplomatic, and international aspects.

When and where in history do parties appear as organizations competing to seize power in the state?

The struggle for power in the state dates back to before forming parties, i.e., organizations. Namely, before political parties, various political groups clearly emphasized their common interests and goals, although they did not have official political programs and hierarchy, i.e., leadership. E.g., in Athens, after Solon's changes, aristocratic and democratic currents operated on political soil. There has been a division into Tories and Whigs since the Knights' Parliament in the second half of the 17th century in the English parliamentary system. In the 19th century, parties were formed in England, and the Conservative and Liberal

parties were formed first. It is similar in the United States. First, there were various political groups; for example, in the American colonies, the royalists differed from those who were not, and later the federalists and anti-federalists. Later, the Democratic and Republican parties are formed, which we know as such today. In the USA, it is also interesting from the Socialist Workers' Party (formed in 1875), in 1901 the Socialist Party, and then by separating from it in 1919, the Communist Party was formed. Political groups in France can be talked about since the first Assembly in 1791. There are legitimists, Orleansists, Bonapartists, and Republicans in the House of Representatives in 1830. Parties were formed in the 19th century. Political groups, or rather movements and parties in Russia, also emerged in the 19th century. Thus, the Russian Social Democratic Workers' Party was formed in 1898, and in 1912 split into two parts. In short, parties as modern organizations fighting for the realization of their programs, in fact, the government, have existed since the 19th century. However, they are equally important and much earlier formed groups of politically like-minded people connected by the same interest.

What facts are most important for knowing a country in history and even today? How do you view these facts, and is there anything you would particularly emphasize?

As a lawyer, I start from the Constitution and legal provisions, but that is not enough. The constitution guarantees to work rights, but that does not mean that all citizens are employed. The Road Traffic Safety Act sets the maximum speed limit, but the number of people who die every day due to speeding shows that these provisions are often a dead letter on paper. You need to know both customs and culture. You need to know the legal/historical reality. We can get to know the states in the old and middle ages

only through other people's views and records, so we should be careful here. The authors are subjective, and the views are under different "loads." I often tell students phrases like "it looks like," "it is assumed," "that source states." We will never be able to know specific segments of social life reliably. E.g., how many people died in gulags or died in prisons in the USSR. In addition, the further away the time, the more blurred each image is, with some blurred on purpose.

On the other hand, we often act as if we know everything reliably and pass it on. In everyday life, relations between people are an important indicator of social life and the state's functioning. We get to know the state and law in history through sources and scientific literature, but we can gain insight about the state, although with much caution, through historical novels. It would be better to say that literature can "capture" the atmosphere in which it can place scientific facts. First of all, I mean "classics," but I personally also like historical crime stories. Ariana Franklin well described England in the 12th century. Sansom, in turn, portrayed England well for the Church Reformation, and Nicholas Remin wrote about the events of the mid-19th century in Venice in a way that must interest even those who do not like history. Social relations, the functioning of government, and the state in history are brought closer to us by cinema. For Italy in the 1930s, Fellini's *Amarcord* was indispensable, and J. Renoire portrayed France in *La Marseillaise* at the time of the Revolution. Further enumeration of books and films would have no end.

However, knowledge of the state and law in history does not make sense if it is not used to advance modern living. Suppose I say that there is no evidence that in ancient times in Greece (which includes the Tayget Mountains), children were more exposed and left than they do in the world today. In that case, it

should be a strong impetus to act towards better legal regulation and enforcement and the functioning of control mechanisms of state institutions today. The facts about the state and law in history mean nothing in themselves. Lawyers need to know the history, but they need live in the present.

