



ORIGINAL PAPER

**Is the Constitution Unbounded? Overlapping Adoption and
Amendment Assessments**

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Abstract

The present article presents the contemporary constitutional theory as a commonplace understanding that the procedures for the adoption and revision of the Constitution concern a certain type of society and political thought, properly described by the trend of constitutionalism aiming at the limitation and organization of the political power in order to protect freedom and human rights (Dănișor, 2014: 30). Viewed within this relation, the procedures for the adoption and revision of the Constitution must contribute to the organization of a society of *freedom* (Alexandru, 2013: 61). The methods of achieving this objective vary according to the country where they are applicable, therefore one can talk about a British, French, American, German constitutionalism and so on, with the possibility of checking whether a constitution or another falls within the paradigm described by constitutionalism, whether there is a real protection of personal freedom by specific political mechanisms for the adoption and revision of fundamental laws or interaction of state powers.

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Constitutionalism, synonymous with the emergence of written constitutions, dictates certain rules for their adoption and revision: to have a constitution adopted under the umbrella of constitutionalism, it needs to be the work of a *free constituent power*, that is capable of self-organization, and of a *constituent assembly* or constitutional convention that comes to close the circle by the adoption of a constitution as a document connecting and ordering the entire society within a certain pattern of political interaction. For the Romanians, similarly to the Americans, the Constitution is the symbol of the national state; Romania was built as an independent political entity around the debate and evolution of its Constitution, i.e. the constituent power and authority, as elements accompanying any constitution of constitutionalism.

The procedures for the adoption and revision of the Constitution are but mere manifestations of the constituent power, of its will, and in the case of Romania, measures for its independence and freedom (Andreescu, 2013: 50). The article includes the analysis of the procedures for the adoption and revision of the Constitution in Romania, in the trend of constitutionalism and highlights the connection between the adoption and revision procedures and the independence and freedom of the constituent power in Romania. This was an evolutionary path to independence and political unity for the study of the procedures for adopting and revising Constitutions in Romania, and one has to distinguish between the analysis of the procedures for constitutional acts and the analysis of the procedures for the adoption and revision of the Constitution in its generally accepted meaning of work of a free constituent power. It is therefore a process of developing and expressing the constituent power in Romania as reflected in the procedure for the adoption of constitutional acts prior to the existence of a Constitution as such.

The constituent power and the legitimacy of constitutional acts

After the political unification of states at the end of the 18th century, fulfilled by regaining the royal prerogatives from the papacy and the local lords, there emerges the issue of the legitimacy of this unification that is the issue of sovereignty and its source or the issue of the origin of political power. Democratic theories are those which “put the origin of political power in the collective will of society, subject to this power and showing that *political power is legitimate only because it is established by the community it leads*” (Alexianu, 1930: 83); this is the view of constitutionalism for which a Constitution comes to materialize the collective will of society, expressed in rules of political and legal organization. Constitutionalism is therefore always concerned with the issue of the legitimacy of constitutions and the political structure of the state which they maintain, those expressing this free collective will being considered Constitutions in the proper sense of the term. Without this manifestation of the constituent power, that conveys general rules of organization through the adoption, by a constituent assembly, of a draft constitution which will then be subjected to popular approval, we cannot talk about freedom or legitimacy of the political order and therefore about constitutionalism (Vedinaş, 2013: 19).

In Romania, like any other state, the Constitution thus depends on the existence of a free constituent power to support and form a state order based on a specific social and political vision. However, a distinction is necessary. We can note that in the Principalities there was a constituent power before international relations were mature enough to allow its legally sanctioned manifestation, i.e. before gaining independence. The constituent power is not an abstraction, it can be seen in the demands of social classes, the principles pursued by them or the form of political organization whose development they pursue,

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depending on the context in which these demands appear. We therefore had a constituent power in the Principalities without having a Constitution or before we had a Constitution.

The ability to freely change constitutional rules, upon the internal initiative of the authorities, is fundamental for defining independence and the constituent power, a mark of this independence, of the freedom and sovereignty of a state. But relating only to the constitution of a sovereign state, one cannot do justice to constitutionalism in Romania, considering the fact that its establishment is the result of a whole history of constitutional acts. Thus, if for the other countries, the political unification process under a state sovereignty is based on a mutation of the source of legitimacy of the state from the divine right of the sovereign to the nation, in the Principalities, the constitutional and revolutionary movements rely on internal autonomy and national independence. These are the aims of all actions by which, in the Principalities the constituent power is expressed, through constitutional acts discussed throughout its history in the Ottoman Empire, in Sankt Petersburg, Russia, through international treaties signed by the great powers, in Paris, France, or in England. All these define the historical course of constitutional development of the Romanian state and, at the same time, of its constituent power manifested in the procedures for the adoption and revision of the constitutional act, continued today by the 1991 Constitution.

The term Constitution, “first pronounced in Romanian in 1829, would be dramatically spread between 1834 and 1848, to become a vital presence in the economy of the national regeneration project” (Stanomir, 2004: 56). It is therefore about the development of the constituent power in Romania and the Principalities, i.e. its continuity, an idea that is found in the context of the two Romanian democratic revolutions: “To achieve this change, imposed by the laws of social development, it took a series of battles at the socio-political and ideological level, culminating in the Principalities by two major historic events: the 1821 revolution led by Tudor Vladimirescu - which, due to its objectives and consequences can be considered a true national and social revolution, and the 1848 revolution, which was the continuation and development of the first at a higher level. Consequently, the whole period can be considered as a time of preparation, in various fields, of the 1848 revolution” (Șotropa, 1976: 17).

For the Principalities, the legitimacy of the political organization and the constituent power as such represent an evolutionary process coagulated around the process of gaining independence and self-determination. Seen in relation to the current constants of political and legal modernity, in the Principalities, the will of the constituent power aimed at limiting the ruler’s absolutism and the rationalization of the political power phenomenon along with self-determination or, in other words, at escaping feudal exploitation and foreign domination. Thus, in the Principalities, the work of the constituent power long precedes the time of adoption of the 1866 Constitution; it is a gradual development of the legal force of the constituent power which begins with the Organic Regulations and ends, in an acceptable form or not, with the adoption of the 1866 Constitution (Duțu, 2014: 37).

The adoption procedure and the legitimacy of the Organic Regulations

At the time of adopting the Organic Regulations, the Principalities were under Russian protectorate and under the suzerainty of the Ottoman Empire, suzerainty whose effects in terms of autonomy or internal sovereignty were aggravated by the end of the 17th century and reached the peak in the 18th century. It was mainly about the Sultan’s intervention in choosing the rulers of the Principalities, on which his influence had

gradually increased by their revocation and appointment in accordance with the interests of the Ottoman Empire. The climax of this intervention in the internal sovereignty of the Principalities is reached by the establishment of the Phanariote reigns and Phanariote regime, a form of domination of the Ottoman Empire in the Principalities in the 18th century. This is why the re-establishment of the reigns of the land, becomes a constant demand until the final victory of this idea formulated during the war of 1716-1718, i.e. from the beginning of the series of claims and programmes in the Phanariote century (Şotropa, 1976: 36).

The issue of the Principalities' autonomy raised internationally by Russia, too, gets a real impetus within the two countries by the creation of a reforming group from among the boyars who, along with the rebellion of Tudor Vladimirescu, make possible a new discussion on the internal organization and outline the intention to adopt some fundamental laws closer to the self-determination right which embodied the general wish of liberation from Turkish and Phanariote domination. The political reform activity of the constituent power in the Principalities thus seeks, before the adoption of the Organic Regulations, the restructuring of the political organization by introducing the principle of the separation of powers in the state together with other political mechanisms and the regaining of the self-determination right and liberation from Ottoman suzerainty in order to pass under the protectorate of a Christian power.

The Organic Regulations are thus the result of the demands of the constituent power in the Principalities for a serious reform of the political order; they had to be seen at that time as a moment of separation from the old order of Phanariote reigns and it supported a new air of patriotism; internationally, these demands find a means of expression by the signing of the Adrianople Treaty as a result of the agreement between Russia and the Ottoman Empire.

The procedure for the adoption of the Regulations reflects the principle of a certain collaboration between the Romanian party represented only by the high-ranking Romanian boyars and the representatives of the Russians. Therefore the subordinate position of the Principalities, is suggested by the fact that they had only gained the right *to participate* in an *improvement* of their political fate. The Regulations finally become the result of an *agreement* between the high-ranking boyars and the Russian authorities: the discussions on the principles of the Regulations are conducted in Sankt Petersburg, and the latter are adopted by the Tsar in May 1829. The text is drafted by a Commission consisting of 8 boyars, 4 for each Principality; half of them are elected by the Divans and the other half by their president, Paul Kiseleff. The project is completed in March 1830, when it is sent to Sankt Petersburg, where another Commission consisting of three Russians and two Romanians examined them and operated minor changes. The Regulations are then submitted for debate in the Extraordinary Public Assembly in Bucharest and Iasi.

In the course of adopting the Regulations it is obvious that "most boyars fight for maintaining and including in the Regulations various rights and privileges which ensured their domination" (Şotropa, 1976: 87); although they met the demands submitted in different petitions and memoranda, the Regulations preserve strong features of the old feudal order. The Regulations were therefore "only half a measure; they were not a reversal, but simply an improvement of an existing system" (Şotropa, 1976: 91).

The procedure for adopting the Regulations as constitutional acts highlights the Principalities' position at international level and the freedom of expression of the constituent power within, the participation of authorities in the Principalities being limited

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to *consultation* by the two international powers. But the constituent power is coagulated and strengthened around this subordinate position of the authorities in the Principalities with regard to the adoption of rules of political organization, because the procedure for adopting the Regulations is the main argument used to contest the legitimacy of these acts, especially when they are required to ratify a secret additional Article.

The additional article of the Regulations is added later, in 1833, while negotiating with the Ottoman Empire for the approval of these documents. The article is adopted by the representatives of Russia and stipulates the impossibility of princes and Assemblies to modify the Regulations without the express approval of the Russian government and the Ottoman one, of the protecting power and suzerain power. The article is brought before the Assemblies for ratification, being rejected by the boyars after the debates of June-July 1837. The Assembly delegates a Commission with the task to compare the original version of the Regulation with the present one: “The stakes were infinitely more important than the acceptance or rejection of the Article, the very status of the Principalities lying at the core of the debates, just like the relationship that they were to maintain with the protecting power” (Stanomir, 2004: 142). Pressure was needed from Russia and the Empire in the form of a written firman drafted in Petersburg which ordered the authorities to ratify the additional Article. The Additional Act was passed on 21 May 1838, this opposition proving the national thinking, the conscience of independence; the event hardens the boyars’ attitude towards Russia and strengthens the attitude of liberal boyars who would form the nucleus of the 1848 generation.

In order to understand the reasons behind the wave of discontent against these Regulations, it is extremely important to see the discrepancy between them and those wishes which supported the 1821 Revolution and all the demands in the memoranda preceding the adoption of the Regulations, which did not cease to be formulated after their application. The authors of the petitions and memoranda understood the reform in the Principalities in the form of an administrative autonomy accepted by the foreign powers. Thus, there are two constants of these demands from the perspective of the topic we are concerned with: acceptance of the legal acts of political organization by the Powers which, following the international game, earn the right from the other Powers to obtain the satisfaction of certain interests in the Principalities and an autonomous internal administrative system. It should be noted that all these movements take place against the background of internal class and social dissensions between the low and high nobility, later followed, through the group around Cîmpineanu and the 1848 group, by representative democratic demands for the benefit of all social categories.

We have to note in this sense that: “A criticism that can be made to all claiming acts until the revolution is that formulated by N. Bălcescu in the biography of Ion Cantacuzino (...) in the sense that he, like the other members of the nobility of his time, called external political forces, or, as the author says, sought the support of foreign kingdoms to raise his homeland, he never asked for the people’s help for this purpose and never thought to grant the people rights that might make them defend their homeland, that our patriots, forgetting the experience of centuries which clearly proves that a nation can only be saved by itself, losing confidence in its powers, began to beg for foreign help. To a lesser and lesser extent, we will find this negative aspect in the next period (1821-1848), when ideologists turn into revolutionaries who seek to gain freedom for our society and to bring necessary innovations, relying primarily on the country’s own forces, the power of the people, which they would aim to set free and bring to a higher position than that during feudalism” (Șotropa, 1976: 48).

By the movement he generates and the acts he adopts, Cîmpineanu somehow responds to the critics formulated by Bălcescu and proposes for the first time in the Principalities the variant of an autonomous organization of the Principalities. One has to note in the programme of this movement the importance attributed to the sovereign, the application of the constitution being mandatory after the election of the sovereign, and therefore, after the achievement of unity and independence. Cîmpineanu thus imagines the establishment of an independent state, organized on true constitutional rules adopted by internal forces of the Principalities: "It is the only Romanian constitutional draft which provided the establishment of a democratic state by a battle aiming at freedom and independence, a fight which could only begin as a consequence of a revolutionary movement carried out in order to gain power (...) the Constitutional draft of Cîmpineanu distinguishes itself from all projects of that time (Șotropa, 1976: 106).

The Organic Regulations pave the reign of privilege and inequality in the Principalities; they strengthen the Russian protectorate: "The Romanian people, relying on the old treaties rejects a Regulation which is against its legislative rights, and against the treaties recognizing its autonomy" (Stanomir, 2004: 213). Those contesting the order of the Regulations consider that all these evils are caused by the method of adopting these Regulations, so that the adoption procedure is one of the main reasons of contestation by reformist groups in the Principalities, whose work culminates with the movement of Ion Cîmpineanu and the National Party: "without getting in the details of a debate relating to the adoption technique, the common denominator of their assessment is offered by the acknowledgement of their non-constitutional nature, given the absence of a free debate and the gaps in the regulated object" (Stanomir, 2004: 97). The Regulations are thus assigned a transitory nature by the protestors, being adopted "during a military occupation and only by part of those who should have been called to their drafting" (Șotropa, 1976: 99).

Hence, the constituent power in our country develops around the ideas embraced by several generations of Romanians; the ideas of the 1821 revolution, strengthened and complemented by the 1848 revolution. These ideas are protected against the Organic Regulations, between these two revolutions, that everybody expected to be the legal embodiment of the ideas of the 1821 revolution. The 1848 revolution, as well as all the movements that precede it and made possible its manifestation, come and let speak those who protested against the Regulations and their fidelity to the requirements of the constituent power from the time of their adoption.

The constituent power and constituent authority of 1848

The distinction between the imposition of some fundamental laws by the authorities outside the Principalities and the free adoption of such documents, a distinction that marks any debate on the existence of genuine constitutional forms is highlighted in the Principalities as never before the events around 1848. Ioan Stanomir noted that "the argument underpinning the wish of change is the conscience of its usefulness, for the Romanians, as for the Porte alike. Recurrent in the anti-Russian pleadings, the verdict regarding the Organic Regulation is predictable, evoking that advanced in 1838 by Ion Cîmpineanu. The *Constitution* is imposed, it is far from reflecting the *genuine* will of the nation" (Stanomir, 2004: 194). Therefore it is always, under the influence of the developments of Western society, about seeking domestic legitimacy of constitutional acts, and once again the issue of legitimacy is connected in Romanian constitutional history with the constituent power and constitutional procedures.

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The discussion about a state order which is not sanctioned by the will of those to which it is applicable is not mere rhetoric; the effects generated by such an order are real and justify the action of those who contest it: “The constitution imposed by the Russian authorities is stigmatized as one that has led to the distortion of the old national institutions at the expense of most of the inhabitants of the country, with the effect that the entire tax burden lies on the poorest classes of society, and political power is confined to the circle of a privileged aristocracy” (Stanomir, 2004: 194). Under the influence of young boyars in Paris, an Article appears in the French press criticizing, among others, the Organic Regulation on the ground that it was “proposed by Russia and voted by the Assembly, and it had created a privileged aristocracy, where public dignities had never intended any legacy titles. The Russian law is then criticized in terms of its false constitutionalism, thus preparing European minds for the understanding of the Romanian people’s thoughts, that the revolution of 1848 would bring to light” (Xenopol, 1920: 238).

Along the same line, the Proclamation of Islaz is in itself a criticism of the authority and legitimacy of the Regulation: “The Romanian people strongly wants to maintain the independence of its administration, the freedom of its laws, its sovereign right in internal affairs (...) The Romanian people reject a Regulation that is against its legislative rights and against the treaties recognizing its autonomy” (Proclamation of Islaz). Moreover, to note another option: “The Proclamation of Islaz lies at the origin of a lexical and conceptual development at the end of which lie many of the gains of the 1866 constitution” (Stanomir, 2004: 201). The Metropolitan Bishop of the country blesses the symbolic burning of the Regulations, which “exorcises the demons of the feudal past” (Stanomir, 2004: 220).

That in 1848 there was a genuine constituent power, which included and met the requirements of all social classes, can be seen in “the fact that the peasants enjoyed the happiness that arose for them from the Constitution and showed that they were looking forward to the opening of the Constituent Assembly so that their wounds might be healed for good” (Xenopol, 1920: 259). We can see here for the first time the attempt to include all social classes in the adoption of the Constitution, the constituent power is a revolutionary one and this is manifest in the fact that the 1848 Revolution is primarily a social revolution. This is the sense in which the propaganda commissioners are established, the constituent power cannot exist without confidence in the people and without the confidence of the people: “what was originally intended for a less large audience gets down in the streets and is translated and transmitted through propaganda commissioners to those who are regarded as potential citizens” (Stanomir, 2004: 229).

On June 28th, the provisional government sets the rules for the election of a Constituent Assembly with the task of adopting a constitution that reflects the principles of the Revolution (this process was interrupted on August 16th): “This Assembly will bequeath this constitution to future generations and will still owe to finish it by a law under which the people will have the right to elect, every 15 years, extraordinary deputies who, coming to the extraordinary Assembly, will introduce the reforms required by the spirit of the epoch. This prevents the deplorable need to require reform by way of arms and our children and grandchildren will be spared of the need in which the Romanian people stays today” (Badea, 1982: 538). The Constituent Assembly was imagined as a permanent institution that should intervene every 15 years to introduce “improvements required by the advance of the century”. Limiting in time the revision of the Constitution, not earlier than 15 years, had the purpose to strengthen stability within the state.

The Constituent Assembly has clearly defined roles based on the representative mandate received “it shall represent the whole country, its general interests and principles, it shall take an oath on the constitution, it shall give the country the constitutional charter based on the 21 Articles that the true patriots swore on; it shall provide the fundamental laws for the organization of the country and shall eventually close the session by electing the ruling prince” (Badea, 1982: 770). The role of the Assembly was to “regulate the reform of the country after the 21 above-mentioned articles that the Romanian people decreed”.

The Constitution gains at the time the place required by constitutionalism, following the same pattern of the French Revolution in which the declaration is followed by the adoption of the Constitution which has the purpose of implementing the revolutionary principles. The proclamation and the movement around it bring forward specific elements of constitutionalism, of a constituent assembly in that language of a constituent extraordinary general assembly. The Revolution of 1848 contributes to the development of the constituent power in that it emphasizes in the public conscience the fundamental difference that exists between the right to be consulted and the freedom to organize an autonomous and independent constituent authority. However, the 1848 Revolution and the experiment of liberalism in Romania ended in September 1848 when Tsar Nicholas sent his troops to Wallachia. They occupied Bucharest and dissolved the interim government. The next chance of Romania is created by international conflicts that give rise to the Crimean War.

The adoption procedure and the legitimacy of the Statute expanding the Paris Convention

After the Crimean War, the Peace Treaty of Paris (1856) leaves the Principalities under the suzerainty of the Ottoman Empire and, as a result of Russia’s defeat, places them under the collective protection of the Powers: no guarantor power was allowed to intervene alone in the affairs of the Principalities. The signatories of the 1858 Convention of Paris recognize to the Principalities two important rights that had been granted to them under the rule of the Organic Regulations, too, the right to choose their own rulers and to express their views on the future form of government, the right to maintain an army, to trade with other states and to pass laws, are also recognized (the administrative independence of the Principalities). The favorable international context makes it possible to approach the topic of the union of the Principalities under this Convention, a topic which had already been included in the Organic Regulation.

The decision to consult the Romanians with regard to their own organization is taken by the Great Powers at the Congress of Paris, at the meeting of March 8th 1856 when Count Walewsky notes “that before reaching the issue of the new organization of the Principalities, one must examine whether they should live on under a separate organization, and whether it would be in the interest of both these countries and Europe that they be reunited in a single state. The ambassador of Austria shows that such measures could not be taken without consulting the will of the people, supported by the British ambassador with the mention that in such cases it is always appropriate to consider the will of the people” (Xenopol, 1920: 311). The foreign countries, while analyzing the protocols of the Paris Convention, observe “the significant role assigned by the Congress to the Romanian people which will have to decide its own fate, since the union will take place or not, as the wishes of the Moldavian and Wallachian populations will be pronounced for it or against it” (Xenopol, 1920: 324).

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A consultative assembly, called ad-hoc Assembly, had the role to make known to the great powers the public opinion in the Principalities. The Sultan issued a Firman on January 26th, 1856 to convene ad-hoc Assemblies and to present the procedures for their election; the Paris Commission restrains the right to vote only to owners of large fortunes; the Divans adopt the four points: the union, the foreign ruling prince, the autonomy and the representative principle or constitutionalism.

The information obtained by repeating the method of consultation of the Principalities, also used for the adoption of the Regulations was to be processed by the Powers that would establish, based on it, the form of organization for the Principalities. For the second time the Great Powers set for the Principalities a Commission whose task is to gather information about the future form of government, commission which reaches the country in March 1857. The investigation commission makes a report on the situation of the Principalities and the wishes of the Romanians as expressed in the ad-hoc assemblies, a report discussed by the Powers in Paris on May 22nd 1858; based on these discussions, the Paris Convention is adopted and signed on August 19th 1858. The Central Commission in Focsani is established under the Paris Convention for the purpose of ensuring the application of the provisions of the Convention in the two Principalities. It was the guarantor of conventional order.

This international and political climate witnesses the first manifestations of the internal autonomy in the Romanian Principalities, and the first sign of this internal autonomy is the resistance of the Divans against the failure of the signatories to the Convention to observe the demand for a foreign prince. This resistance takes the form of the double election of Cuza in the two Principalities: “On the election day in Moldavia, M. Kogălniceanu before voting, proposes that, although the Convention has not accepted the election of a foreign Prince, the Moldavian assembly continues to wish it, and the Ruling Prince who will be elected should remember that his highest mission is to get off the throne and to bring a foreign dynasty in his place” (Xenopol, 1920: 392). This is the context in which the two political parties came into being: the liberal party, which supported Cuza and the union, and the conservative party, which elected Cuza under the social pressure, and feared the loss of class privileges in case the peasants were put in possession of land. Cuza is thus elected as a connection point between the situation created by the rejection of the foreign prince by the powers and the near future in which this demand of ad-hoc Divans could be achieved.

But precisely in this period of transition there occurs one of the most important achievements for the autonomy of Romania in the game with the great powers. Cuza convenes the first joint session of the legislative bodies on January 24th, 1862 in Bucharest, by the Law of February 21th, 1862 he abolishes the Central Commission in Focsani and on January 22nd, 1862 under the leadership of Barbu Catargiu, he forms the first government common to both countries. But the prominent element of the development of the constituent power and authority that we describe is the adoption by Cuza of the Statute expanding the Paris Convention after the coup of May 2nd, 1864. Considering the two political factions already polarized before Cuza’s election, the Statute is adopted as a result of the disagreements with the Assembly on the issue of electoral and agrarian reforms. Kogălniceanu, when forming the government believes that only an authoritarian government may allow agrarian and electoral reforms, considered indispensable for the entire economic and social progress.

The social and economic reforms could only be achieved if the power of the Conservatives in the Assembly was reduced by enlarging the electoral right. On April 15th

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1864, Kogălniceanu brings in the Assembly a bill that increased the size of the electorate by reducing the amount of annual taxes for direct and indirect voters. Both the conservatives and the moderate liberals opposed this bill; they contested the capacity of non-educated people to participate in governing. They brought amendments limiting the right to a direct vote and the right to be elected, to educated people. The adoption of such a bill would have made possible the fulfilment of the agrarian reform by mitigating the position of the conservatives in the Assembly. The motion of censure is moved on April 25th 1864 against the government of Kogălniceanu on the issue of this electoral reform, and Cuza rejects his resignation.

On May 14th, Cuza convenes an extraordinary session to analyze the project of the electoral reform, a session in which Kogălniceanu presents Cuza's decree for dissolving the Assembly; the deputies of the opposition leave the room with the help of armed forces. Following these events Cuza announces by a proclamation to the country the reasons for such action, criminalizing the opposition of a turbulent oligarchy which opposed the efforts of social and economic reform. Cuza submits an electoral law to the vote of the people and the draft of a new Constitution, the Statute expanding the Paris Convention.

This is how the internal dissensions that had always been present in Romanian politics, even during the period of affirming the independent character of the state, connected the internal autonomy with an authoritarian government. In terms of its constitutional nature, the Statute can be considered a Constitutional Charter, adopted by the Monarch. This type of Constitution may be amended by the Monarch, without the consent of the people. Cuza's Statute contains no provision referring to its amendment. If the legislative initiative belonged to the Prince, then "the Statute could be altered by any ordinary law following the agreement between the Ruling Prince, Chamber and the Moderating body (...). The Statute was a flexible constitution; there was no subsequent control of the constitutionality of laws" (Alexianu, 1930: 346). The Statute expanding the Paris Convention is a constitutional act emanating from the executive and is based on the authoritarian will of Prince Ioan Alexandru. The submission for approval by a plebiscite is not likely to change its legitimacy, "the terms of the pact were not established by the nation, but imposed by the power" (Focșeneanu, 1992: 11). The constitutional framework established by the Statute is thus one in which the executive has most powers to the detriment of the legislative power.

The Electoral Law and the Statute are inconsistent with the Convention. Cuza goes to Constantinople where he obtains the consent for the operated amendments, and on June 28th an agreement is signed by the great powers, recognizing the need for changes in the Paris Convention. Cuza obtained to this point, "in exchange for accepting minor changes in his reforms, a significant reward, namely the recognition, by the powers, of the United Principalities' right to amend all laws relating to their internal administration without any foreign approval, except issues that would affect their relations with the suzerain" (Hitchins, 2013: 376). The Statute thus becomes "the first national Constitution given by the Prince of the Country out of his own authority and approved by the people through the plebiscite. The Statute is the first work in constitutional history, in which the people were called to participate directly in order to accomplish the fundamental law of its organization" (Văleanu, 1936: 261).

The right to amend the fundamental acts of the state and an elected ruling prince are the constitutional elements established in this period, elements that would profoundly mark Romanian constitutional history. The Statute is sanctioned by the plebiscite

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(concluded with 682, 621 votes for the reform and 1,307 votes against it), contested by those who would later be part of the revolutionary government. However, ad interim rulers preserve the institutions arising out of the Statute, Assembly, Senate and State Council (Xenopol, 1920: 472). The maintenance of the order of the Statute is profitable to the new political leadership of the Principalities, which uses the internal autonomy principle, gained by Cuza and enshrined by the Statute. Therefore the assemblies of the Statute are initially extended by the Decree of March 5th, 1866 on the ground that in hard times we have to meet permanently (Xenopol, 1920: 474).

The five fundamental points made by the Ad-hoc Divans in Iasi and Bucharest on 7th and 9th October 1857: the observance of the capitulations, the union, a hereditary dynasty from a sovereign family of Europe, neutrality guaranteed by the Powers and the constitutional system or constitutionalism. "Here was the real expression of the country's demands, in conformity with the early stage of its historical evolution, a programme arising from the experience of the past, which had to be preserved like something sacred until its full achievement, followed by a new decision and formulation" (Maiorescu, 1987 : 47). If the first two demands of the Ad-hoc Divan, the Union and the Autonomy, had been met, the other two, a foreign Prince and a constitutional regime, became possible after February 1866. The constitutional regime and the adoption of the 1866 Constitution were part of the principles required by the ad-hoc divans of 1857. The 1866 Constitution was the bridge between the past of the Principalities and the future of Romania.

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