

# *Introduction and Historical Overview*



## **Constitutional Culture – Constitutional Transplant – Authoritarianism – Democratic Traditions – Communism – Post-Communism**

### I. INTRODUCTORY REMARKS

**R**OMANIA HAS AN intricate and troubled political and constitutional history, which it is essential to depict in order to understand what the country and its Constitution have become today. This introductory chapter attempts to explain, on the one hand, why the Romanian constitutional system is worth reading about and, on the other hand, how this system reached its present stage. Because of its greater influence on the present constitutional development, only the modern part of Romanian history will be explored in this chapter. It will be shown that the current Romanian system was not the result of an organic and constant evolution, as in other contemporary democracies, but a process with many ups and downs, contradictions of all kinds, with a high degree of instability, partly dominated by the lack of legal and constitutional self-esteem.

The development of the Romanian system is outlined over three main periods: the building and the decay of liberal constitutionalism, the communist period and the post-communist period. This evolution reveals several particular aspects of the Romanian constitutional culture, as well as the various internal and external contexts that influenced it. Most of these particularities were perpetuated by and can be traced in the present constitutional system, the last section of the chapter emphasizing this process: the role of constitutional transplant, the external influence and pressures, the recourse to history.

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Within this framework, the development of Romanian constitutionalism has been primarily influenced by the following cultural and constitutional factors: an appetite for legal and constitutional transplant, especially from French law and legal culture; a characteristic tendency towards ethnocentrism; the focus on the creation of institutions rather than on their actual functioning; a partial incapacity to apply the principles of democratic constitutionalism in practice. To what extent have these factors evolved and changed over the last 25 years? How can they be traced within the current constitutional system created after 1989? The attempt to answer this question was one of the reasons this book was written.

### II. BRIEF OVERVIEW OF ROMANIAN MODERN CONSTITUTIONAL HISTORY

Romanian modern constitutional history can be roughly divided into three periods: the rise and fall of liberal constitutionalism (from the beginning of the nineteenth century until 1945), the communist period (1945–89) and the post-communist period (1990–present).

#### **A. The Rise and Fall of Romanian Liberal Constitutionalism**

##### *i. The Dawn of Romanian Constitutionalism*

The ‘constitutional imperialism’ of the great European powers in the nineteenth century, as well as the Romanian political elite’s appeal for massive constitutional transplant, determined all major changes in Romania’s modern constitutional history. Hence, this period saw a remarkable break with almost any previous constitutional tradition.

At the beginning of the nineteenth century, Romanians were politically organised into two separate autonomous entities: Wallachia (*Țara Românească*) and Moldavia (*Moldova*), both having been, for centuries, under Ottoman suzerainty. However, the two Principalities did not account for all the Romanians living in the area to the north and the west of the Carpathians, in Transylvania and Banat—two provinces that were successively under Hungarian, Ottoman and Austrian rule—Romanians of the Orthodox Christian religion formed the majority

population. Northern Moldavia, known as Bukovina, occupied in 1774 by Austria, and the territory between the Rivers Prut and Dniester, known as Bessarabia (obtained by the Russians following the Bucharest peace of 1812), were also inhabited by Romanians.<sup>1</sup> However, being the only Romanian *political* entities, the two small Principalities played a catalysing role in the process of future consolidation of an independent nation state. They became the core of the modern Romanian nation and, from a political point of view, the central and stable element in the unification and building of the future state. This role was somehow natural, given that the overwhelming majority of the Romanian population lived in that territory (over 85 per cent).

The beginning of the nineteenth century also meant the end of 110 years of Phanariot rule in the Romanian Principalities (1711–1821). Despite the fact that the Ottoman Empire had recognised the region's political, administrative, fiscal and judicial autonomy since the fifteenth century, from 1711 the Sublime Porte started to directly appoint princes (*domni*) to the thrones of the two small Romanian states. This was justified by the increasing threat from the annexing offensive of the Russian and Austrian Empires, which were both keen to expand in south-eastern Europe. This appointment process meant, on the one hand, reducing each state's internal autonomy, by preventing the Romanian nobility from acceding to the throne, and, on the other, the enthroning of princes of Greek origin, recruited by the Turks from the rich inhabitants of the Phanar/Fener district of Constantinople.

The Phanariotes' rule and the increased political and economic control of the Ottomans represented a 'dark age' of pre-modern Romania, which lasted for more than a century. From a constitutional point of view, the old medieval customs, which relatively limited the powers of the prince, continued to exist formally, but actual political power was gradually taken over by the Phanariot princes. Consequently, the princes' power went from an arbitrary authoritarianism to absolutism, with accents of oriental despotism.

<sup>1</sup> It is important to mention here that by 'Romanians' we mean a population speaking the Romanian language despite territorial separation. The Romanian language has no dialects: all Romanians speak the same language with slightly different accents. The language developed homogeneously across these territories, despite the fact that they were politically separated from each other and subjected to other, different linguistic influences.

The whole period was dominated by extreme instability and a complete lack of interest in the public well-being. The thrones were actually bought from the Ottoman sultan, therefore the princes were at first changed every three years and then yearly: in order to raise more money themselves, the princes sold high nobility titles; and members of the great nobility sold inferior nobility titles. The result was a general lack of concern for the actual administration of the public interest, instability in public positions and an endemic lack of professionalism in the public administration. Paradoxically, although taking place in an absolute monarchy, Phanariot despotism and corruption prevented the formation of a professional and loyal public service. Corruption and nepotism, as well as the typical Turco-Phanariot superficiality, extended throughout the state apparatus. This was the age in which the Romanian 'modern' civil service was born, inheriting two flaws that continued to affect its evolution: on the one hand, the public service was seen as a means of social climbing, and on the other hand, it was exploited as a means of illegal enrichment.

Economically, the Romanian states were suffocated by the taxes imposed by the Ottomans. The requests increased exponentially over the years and were amplified by the already endemic corruption, with catastrophic results for the Romanian economy and society. Although enormous amounts of money were raised by the states, nothing was invested in their development. The lion's share of these amounts went to Constantinople, or fed the treasuries of the princes or of the great nobility. The economy was largely based on a medieval agriculture model, and external trade was restricted. At the end of the eighteenth century and beginning of the nineteenth century, the despotic Phanariot absolutism became too oppressive for the local political class, and the nobility started to address letters and requests to the Ottoman, Russian and French powers. They proposed a diverse range of political and state formulae, from the 'aristocratic republic' to the constitutional monarchy. These projects had a common goal: to counteract authoritarianism, either by eliminating the institution of the princes, or by subordinating it to the interests of the aristocracy.

An important part of the struggle for constitutional reforms was using ideas, principles and concepts based on French constitutionalism, and proposing institutions borrowed from the different French constitutions of the time (especially the 1791 Constitution). This demonstrated the influence that European liberal constitutionalism was starting to have on the new Romanian political elite, and saw the

first signs of constitutional import from the French model. However, this did not mean that the values, ideals, principles and institutions of liberal constitutionalism entered the Romanian Principalities via a political class converted to liberalism. Although liberal concepts were used (human rights, representative government, separation of powers, etc), they were merely instruments to maintain, paradoxically, a feudal basis for the political power. Sovereignty was not transferred to the nation and the 'representative government' was based on the medieval structures of the Estate assemblies. In the end, the only concrete result of all these reformation efforts was the end of Phanariot rule in 1821 and the return of the local aristocratic families, with constitutional structures that preserved the medieval coordinates of political power.

*ii. The Organic Regulations (1831–58)*

The Russian occupation, which started in 1828 after the Turco-Russian War, accelerated the pace of constitutional reform. As a Protecting Power, Russia assumed the role of moderniser, which obscured its true intention of annexing the Romanian Principalities. However, the effects of Russian domination, in the sense of modernising Romanian society, were remarkable. Beyond the changes relating to the everyday life of the upper classes (fashion, cuisine, manners), due to the Russian military elite, the French language became the language of the privileged and French culture a landmark of modernisation. Thus, an overwhelming trend representing direct contact with French civilisation had started. By the Treaty of Adrianopolis (1829), Russia obtained freedom of trade for the Romanian Principalities and a more consolidated autonomy, which led to a more open Romanian economy, and to a civilisation and culture leaning towards Western Europe. The growth of a national consciousness, and the wish to remove the huge gulf between the Romanians and Western civilisation, transformed the contact with France into an almost mythical relationship with 'the Latin older sister'. This cultural context had an immense influence on the region's constitutional evolution, French liberal constitutionalism becoming, due to the numerous members of the Romanian aristocratic elite being educated in French universities, the main model to be transplanted. Starting in 1820, French liberal constitutionalism gradually became a serious alternative to the political attempts of the conservative aristocracy to limit the princes' authoritarianism by an oligarchy.