

A Failed Constitutional Experiment: The Monarchical Constitutionalism and the Organic Regulations of 1831-1832

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1. Introduction

Starting with the fall of Napoleon I, the entire Europe entered the era of the 'constitutional experiments'¹. However, the following decades, until 1850, did not know a triumph of the revolutionary (liberal) constitutionalism but a spectacular development of the counter-revolutionary one. In the words of J. J. Gomes Canotilho, it was an era of '*restoration constitutionalism*'² launched by the Congress of Vienna (1814-1815) and the proponents of the monarchical principle. Having the French *Charte constitutionnelle* of 1814 as a constitutional model³, different waves of octroy constitutions have established all around Europe the so called 'limited monarchy', 'tempered monarchy', 'auto-limited monarchy', 'constitutional monarchy' or 'monarchical constitutionalism'. Poland (1815), the German principalities of Nassau (1814), Württemberg (1815), Sachsen-Weimar-Eisenach (1816), Bayern (1818), Baden (1818), later

Portugal (1828), Luxembourg (1841 and 1856), Italy (mainly *Statuto Albertino* of 1848), Prussia (1848/1850) and Austria (1849) have successively joined this process of constitutionalization.

A very fruitful and enlightening literature on monarchical constitutionalism has been pioneered in the last years mainly by French, German and Italian scholars. To my purpose it is relevant not only their interest in cornering the specific constitutional mechanisms and political dynamic of this 'constitutional cycle' but also their scientific efforts to explain its causes and aims. Thus, besides a thorough taxonomic endeavour, trying to strategically position the limited monarchy on the map of monarchical government typology, the scholars undertook a process of contextual refinement in order to address it as a particular historical phenomenon. Ideologically, the limited monarchy was the product of a strong conservative discourse dominating the diplomatic debates at the Congress of Vienna. Diachronically, it was a consti-

tutional-political development following the French Revolution and the Bonapartist political turmoil and military adventures at the end of the 18th century and the beginning of the 19th century. Geographically, this 'restoration cycle' (Gerkrath) was born in France and spread all over Western and Central Europe. Allegedly, it was aimed either to tame the liberal heritage of the French revolutionary moment or to prevent its further spreading, responding to specific socio-economic contexts and political necessities across the European kingdoms. Above all, they were meant to consolidate the monarchical unique, although not absolute, power through modern constitutional institutions and mechanisms.

However, beyond these taxonomic efforts, there is room for more diversity. Despite its scientific relevance, every taxonomic endeavour is inherently reductionist. It tends to get rid of local peculiarities and favour sameness. The purpose of this paper is not necessarily to challenge the established taxonomy but to enrich the scholarly analysis of monarchical constitutionalism by emphasizing local political and constitutional developments occurring on the edge of this typology. Factually, at 1831, in Wallachia, and 1832, in Moldova, the Russian Empire, the military occupant, have imposed the Organic Regulations (*Règlements Organiques*) [hereinafter ORs] as basic law of the future internal organization of the two Romanian Principalities situated, formally, under Ottoman suzerainty. These constitutional statutes have enshrined the specific mechanism of the limited monarchy in particular military, geopolitical, political, social and economic contexts. If the technique of octroy is crucial for the existence of the limited monarchy, we should, prob-

ably, look for a different analytical concept. If the concrete constitutional mechanisms limiting the power of the monarch are making the difference, we should discuss in the margins of monarchical constitutionalism. In this paper I intend to give a brief account of the context, causes, structure, aims and dynamic of what I decided to label the Romanian '*monarchical constitutionalism without octroy*', as a subspecies of the monarchical constitutionalism. After a short account of the geopolitical, political, legal and social contexts specific to the Romanian Principalities at 1830, I shall address the provisions of the ORs against the accepted standards of the monarchical constitutionalism and follow their subsequent developments in the Romanian constitutional and political praxis. My core idea is that the Russians have borrowed from France and imposed the specific constitutional mechanisms of limited monarchy for geostrategic purposes, in a Romanian society organically incapable and, above all, having a political class manifesting very little interest in effectively applying them. At the end, the monarchical constitutionalism was a failed Russian experiment. At 1849, after the Wallachian Revolution of 1848, the Convention of Balta-Liman, concluded between the Ottoman and Russian Empires, to be eliminated amended the ORs replacing the limited monarchy with a full-fledged monarchical absolutism.

2. *The making of ORs*

In the 1820s, the Romanian Principalities, Wallachia and Moldova (covering the southern and eastern parts of the contemporary

Romania), were two autonomous political entities situated, since the 16th century, under the Ottoman suzerainty. In contrast to their neighbouring medieval countries like Bulgaria, Serbia and Hungary, which entered under the direct Ottoman ruling, the Romanian states have had the chance to perpetuate their legal traditions, and their internal political, administrative, judicial and religious organization. The traditional Romanian monarchs – *domnii* – constantly ruled under the close Ottoman supervision, and the Romanian aristocratic class (*boierii*) never ceased to be an active actor of the Romanian political scene. At 1821, the Principalities had just ended a dark period of 110 years along which the Ottomans, for political reasons, preferred to directly nominate princes (*domni*) of Greek origin (phanariots, from the Phanar/Fener neighbourhood of Istanbul) on the Romanian thrones, replacing the traditional ones, elected by the Romanian boyars according to the local constitutional customs. As a result, not only the internal autonomy of the Principalities has drastically reduced but also the Phanariots ruled despotically, with poor tendencies of enlightened absolutism. The despotic power of the prince, the endemic corruption amidst the administrative apparatus, the huge tribute due to the Ottomans and the extreme poverty of the peasantry were sided by the negative effect of the multiple foreign military campaigns occurring on the Romanian soil. Situated as a buffer-zone between three empires, Ottoman, Russian and Austrian, the Romanian Principalities witnessed all their expansionist ambitions and suffered important territorial losses (northern Bucovina captured by Austria, in 1774, and Bessarabia taken by Russia in 1812). Gradually, the

Russian Empire became a key geopolitical player in the region. Being self-proclaimed as 'protecting power' of the Principalities, it barely made a secret from its intention to conquer the Balkan peninsula under the flag of Orthodox Christianity.

In this context, the Romanian boyars started to develop strategies meant to change the internal political climate. On a short term, all Romanian aristocrats were united by their interest in convincing the Ottomans to give up on phanariot princes and to restore the Romanian reigns. Besides, the autochthonous boyar layers (upper, middle and lower aristocracy) developed different post-phanariot scenarios ranging from an oligarchic republic to an estate monarchy. Consequently, dozens of political *mémoires*, reform programs, and even constitutional projects have been sent and proposed to the Ottoman, Russian and Austrian chancelleries. By reacting to phanariot despotism, their core idea was either to completely get rid of the monarchy or to drastically limit the monarchical power. While the interest in the republic has dramatically diminished after 1821, the 'limited monarchy' (*monarhia mărginită*) was constantly at stake. As a constitutional goal, 'monarhia mărginită' was envisaging not only to reduce the powers of the Prince, especially in legislative, financial and administrative matters, but also to have his power limited by law (constitution). Interestingly, this aim was pursued, sometime, with the help of concepts, institutions and constitutional mechanisms borrowed from the French revolutionary and Napoleonic constitutional models. Especially, the so-called Carbonari⁴ (*cărvunari*) constitutional project of 1822 offers a surprising example of constitutional borrowing and

adaptation by dressing the balance of power between the monarch and the estates in the liberal clothes of the 1791 French revolutionary Constitution. However, nobody should read this through the lens of liberal constitutionalism: streaming from the middle and lower aristocracy, this constitutional text was aiming to gain the privileges of the upper aristocracy for its proponents. Above all, no one was interested in the popular / national sovereignty and no prospect of democratic representation was envisaged. Considering the absence of the middle-class (even the few bourgeois elements of the Romanian society were eager to become members of the aristocracy) this would be of no surprise. At the end of the 1820s, the idea of the estate monarchy, positioning the boyars (especially the upper aristocracy) as co-rulers (co-legislators) besides the Prince was the main political desire of the Romanian political elites. Before the Russian occupation, the Wallachian grand boyars had already prepared a first draft of the OR (1827) where the supreme power in the state was entrusted to a supreme collective organ – The Enlightened Divan –, including the Prince, the heads of the Orthodox Church, the old boyars, the members of the administrative and justice divans, that would have had the power to decide in the internal matters of the country⁵.

At 1828, the Russian armies invaded, for the second time in the 19th century, the Romanian Principalities. The occupation lasted until 1834 and was the perfect occasion for the Russian bureaucracy to fulfil its plans to practically integrate them into the Russian empire, preparing their future formal annexation. Above all, this plan was supposed to be materialized with the help of

above mentioned ORs. Although a Russian initiative, their enactment was not a unilateral decision of the Russian Empire. Their existence was negotiated by the Ottomans and Russians, agreed and finally stipulated in the provisions of the Akkerman (1826) and Adrianopol (1829) treaties. The texts of ORs were written, between 1829 and 1830, by two committees of Wallachian and Moldavian boyars under the supervision of the Russian governor – Pavel Kiseleff –, revised by a Russian ministerial committee in St. Petersburg, mostly formally approved by Wallachian and Moldavian Extraordinary Assemblies and finally entered into force in 1831-1832.

It is very difficult to approach, at least formally, the ORs as constitutions. Their name actually recalled the Russian-style legislation and the concepts of 'constitution' and 'charter' were carefully avoided. In substance, they were a collection of provisions covering a wide range of issues starting with the election of the Prince and ending with the quarantines and burial of the dead. Not accidentally, the Romanian doctrine labelled them 'constitutional and administrative codes'⁶. Of high interest for my demonstration are the provisions of the first and the second chapters of the ORs, regulating the organization and exercise of political power, especially those establishing the role played by the Prince and the Ordinary Assembly (the unicameral parliament) in the legislative process. A lot has been written in the Romanian (constitutional) historiography about the origin and originality of these provisions. These ones intrigued not only because the ORs were the first written legal norms addressing modern constitutional matters in the Romanian Principalities but also because they did it by

using institutions and mechanisms foreign to the Romanian medieval constitutional traditions. To many, their sources were the political demands and projects forwarded by the Romanian aristocracy at the end of the 18th century and the beginning of the 19th century⁷. But, as I shall emphasize later, the ORs were pretty far from capturing the constitutional design envisaged by the Romanian boyars. Only few scholars have correctly established the necessary link between the ORs' provisions and the French *Charte constitutionnelle* of 1814⁸ but all of them fell short of drawing the right conclusions from this assumption. To them, the ORs were introducing, for the first time, the modern (and liberal) separation of power in Romania⁹. Nevertheless, this idea made the ORs constitutional provisions very difficult to read and interpret.

I have no doubt that the core provisions of the ORs were introduced by the Russian bureaucrats under the supervision of the Russian Imperial Chancellery. This is proven, above any suspicions, by the *Instructions*¹⁰ written (presumably) by the Russian state-councillor Dimitri V. Daskov¹¹ on demand of the state-chancellor K. Nesselrode and sent, at 1829, to the governor P.F. Jeltuhin (the predecessor of Kiseleff) as guidelines of the future Regulations. Comparing the first two chapters of the ORs with these *Instructions* one can easily notice the high percentage of sameness: the Romanian boyar committees almost identically copy-pasted the provisions regulating the organization and exercise of political power. At the same time, I have no doubt that both the *Instructions* and the ORs had enshrined constitutional institutions and mechanisms closely borrowed from the French *Charte Constitutionnelle* of 1814.

A thorough comparison reveals that the material content and, sometime, the form of the Articles 18, 19, 22, 37, 45, 46, 47, 48, 49, 50, 57 of the *Charte* have been fully or partially transferred in the Articles 46-60 and 214 of the Wallachian Organic Regulation (WOR) and Articles 49-63 and 281 of the Moldavian Organic Regulation (MOR). The Russian interest in the French *Charte* is not a surprise, at all. The Russians were an active part of the Vienna Congress (1814-1815) and joined the European diplomatic efforts to rebuild Europe in the spirit of Restoration. Moreover, the Russians had already borrowed from the French *Charte* in 1815 when the *Charte constitutionnelle du Royaume de Pologne* has been octroyed by the Tsar Alexander I¹². However, the Romanian case has its own particularities that make a striking difference.

3. *The monarchical constitutionalism without octroy*

(i) First of all, ORs were not octroyed constitutions but, rather, imposed ones, under the transient Russian military occupation. There was no Romanian monarch self-restraining, willingly or obliged by certain circumstances, the exercise of his executive and, especially, his legislative powers by using a modern constitutional framework and adequate constitutional mechanisms. In contrast to the Polish case, the Tsar did not have in his portfolio the Romanian crowns. Accordingly, whether the Polish *Charte* of 1815 may be considered a granted constitution¹³, the ORs certainly were not. Instead, the Russians took full advantage of their intrusion to control the

process of 'the constitution making' in the Romanian Principalities. Following, the ORs were limiting the powers of a future-to-be-elected prince. Effectively, the 'constituent power' was exercised by the suzerain and protecting powers and any future amendment of the ORs had been reserved to these ones.

Nevertheless, the concept of 'imposed constitution' is problematic¹⁴, although unavoidable. Thus, it is true that the ORs were enacted under Russian supervision but the Russians were actually applying the provisions of the treaties concluded with the Ottomans. Formally, it was not the Russians who had the last word but the Romanian Extraordinary Assemblies that approved them. At the same time, the ORs were written by two boyar commissions and some provisions (mainly of its administrative part) reflected their opinions. Finally, in the first three decades of the 19th century, a significant part of the Romanian aristocracy approached the Russian Empire as a source of liberty and as a guarantee of the Romanian Principalities' autonomy against the abuses of their suzerain power. This is why a constitutional reform undertaken by the Russians, reflecting the hopes and political interests of the Romanian boyars, had been positively expected in the Principalities. But the Russians did not fully meet the boyars' expectations with regard to the organization and exercise of the political power, especially with regard to the powers of the Prince. This part of the ORs was written by Russian bureaucrats, sent in the Principalities and faithfully enshrined in their provisions, reviewed by Imperial officers and accepted with no amendments by the Romanian Extraordinary Assemblies. In this sense we are in the presence

of a constitutional imposition. This concept helps us also to emphasize a narrative of Romantic origin¹⁵ gradually developed by the Romanian political elites after 1830, encapsulating a domestic perspective upon constitution and constitutionalism. Blaming the ORs as foreign, imposed, 'constitutions', both the Romanian liberals and conservatives were expecting the proper moment to make a modern constitution expressing the will of the sovereign Romanian nation and effectively limiting the monarchical powers.

(ii) They were legal instruments of 'monarchical restoration' in the Romanian Principalities but not in the sense of the French post-Napoleonic political and constitutional events. There was no (liberal) revolutionary movement in the Romanian Principalities before 1830 and no dynasty to be restored. However, we could speak about the restoration of the Romanian reigns. After 110 years of Phanariot ruling, the ORs were regulating, in a rational and modern legal framework, an elective and lifelong monarchy with a Prince recruited exclusively from the Romanian upper aristocracy. Above all, this was the most important constitutional change, considering the Romanian expectations.

(iii) They intended to block the spread of principles and values of liberal constitutionalism in South-Eastern Europe. This happened in the context of a considerable change in the Russian foreign policy at the beginning of 1830s. A few years before, under the reign of Alexander I, the Imperial administration had no problem to borrow the French *Charte Constitutionnelle* of 1814, with its whole liberal garnish, especially the human rights, and enshrine its provisions

in the Constitution of the Polish Kingdom (1815)¹⁶.

(iv) Back then, the Tsar was intending to reconcile the Polish people with their Russian ruler by opening the window to revolutionary constitutional solutions¹⁷. His successor, Nikolai I, faced different times and different political and social challenges. The Decembrist Russian pro-liberal revolt of 1825¹⁸, the egalitarian tendencies of the Russian border nobility, especially in the neighbouring Bessarabia, the European liberal movement of 1830, ending with the Polish uprising of November, have marked a gradual shift towards a more centralized-authoritarian ruling¹⁹. Not accidentally, the ORs were 'constitutions of estates' completely silent about the human rights. The Romanian parliaments were opened exclusively to the top clergymen and the most privileged layer of aristocracy. Significantly, the state-chancellor Nesselrode denied the successive requests of the governor Kisselev to make the Wallachian and Moldavian Assemblies more representative. He argued that

Russia is not willing to replace the arbitrary and abuse of the former [Phanariot] regime with the anarchy or the complicated representative system practiced in other countries, incomparable with the Romanian Principalities²⁰.

The phanariot despotism had to be eradicated, but not by favouring a liberal-democratic-like regime. Accordingly, the modern representative system was replaced by an organic medieval representation where the grand boyars were representing the whole aristocracy. Against this background, we could align this Russian interest in monarchical constitutionalism with the pattern of European strategies try-

ing to prevent the spreading of the French revolutionary ideas²¹ but on medieval-origin socio-political grounds²².

The strong conservative character of the ORs may be noticed not only with regard to the lack of any revolutionary (liberal) trace but also with regard to their technical design. They dealt with the organization and exercise of political power in the first two chapters (a chapter IV was reserved to the Administrative council and a chapter VII/VIII was dedicated to the judiciary) but they were far from formally resembling the French Charter of 1814 or the Polish one of 1815. The first chapter was regulating the election of the prince by an Extraordinary Assembly and the second one the election, powers and function of the Ordinary Assembly. No special chapter was dedicated to the role and powers of the prince. His personal inviolability was not expressly enshrined and important prerogatives, usually belonging to a chief of state, were missing (however, not surprisingly considering the Principalities' international status). The executive, legislative and judicial powers of the prince were regulated in the special chapters dedicated to the Ordinary Assembly, Administrative Council and the system of courts. Besides this quasi-modern constitutional format, the discourse of the 'historical constitution'²³, i.e. the preservation of the Romanian old constitutional customs, not only secured the Romanian internal autonomy but also avoided any interference with the French revolutionary heritage.

Beyond this mix between the modern constitutional format of the French *Charte constitutionnelle* and the Russian-style legislation, between the Russian constitutional paternalism and Romanian constitutional

tradition, it is still remarkable the Russian strategical sensitive approach of the Romanian society and politics. Like in the Polish case, the Russian empire carefully managed to accommodate the Romanian political elite with their possible future master by trying to meet, as long as possible, its expectations. This is why the Russians not only avoided the revolutionary-liberal constitutionalism but, at the same time, avoided to impose the Russian imperial model of 'the autocratic and unlimited monarchy' as it was enshrined in the 'Fundamental Laws of the State' (*Svod osnovnykh gosudarstvennykh zakonov*) of 1832²⁴.

(v) They intended to reinforce the monarchical principle but, at the same time, to limit the monarchical power. The Russians had neither the intention to build a weak monarch nor to make the estates co-legislators, as they expected. The Russian Empire needed, for its geostrategic purposes, a constitutional system with a strong but not abusive monarch and a legal framework capable to involve the estates-based parliaments in the state policy. This is why the monarchical constitutionalism was a perfect solution.

Here, again, we should notice a distinctive particularity of the Romanian case. While the (self) limitation of the monarchical power is the hard core of the monarchical constitutionalism, the Russians were closely interested to limit also the political disorder constantly fuelled by the Romanian aristocracy. Russia was completely aware of the extreme despotic behaviour developed by the Phanariots in the recent past but, at the same time, fully acknowledged the destructive potential of the competing boyar factions (*tarafuri*) fighting for political supremacy and economic privileges. The

political intrigues, the clan solidarity and obedience, the refuse to comply with the monarchical ruling, the endless complains against the princes constantly addressed to the Ottomans, all these were strong factors of political destabilization that the Russians were not ready to encourage. As Councillor M. L. Minciaki, the future Russian president of the ORs commissions, was advocating in 1827,

The desire of the protecting power is to let the prince enjoy the greatness of his power, ruling by the law, with no abuse of power and respect for the rights of his subjects; at their turn, the boyars are obliged to cooperate [...] working for the public good. Thus, neither the prince to oppress the boyars with his unchained power, nor the boyars to disobey the prince²⁵.

This explains the pretty strange provisions of the Article 58 WOR and Article 61 MOR stating that «the powers of the Ordinary Assembly [...] cannot, in any circumstances, block the ruling power of the prince [...] aiming at keeping the public order and safety». It was an appeal to some sort of loyal cooperation between institutions for the sake of the public good.

Ideologically, the ORs have entrenched the divine origin of the monarchical power and, consequently, built the whole constitutional architecture on the logic of monarchical principle. Theoretically, the legitimacy of the monarchical power was lasting outside the constitution. In terms of L. Laccache²⁶, the true essence of monarchy came before the ORs but the concrete exercise of the monarchical power (implementation) was regulated by the Russians within the ORs. The unity of the political power was at stake and any reference to the modern principle of separation of powers is futile²⁷. The express mention of the separation be-

tween the executive and judiciary (Article 212 WOR and Article 279 MOR), on the one hand, and the legislative and judiciary (Article 59 WOR and Article 62 MOR), on the other hand, should be read from a different perspective, i.e. it was meant to improve the justice by forbidding the bureaucracy and the parliament to interfere. Basically, the members of the state administrative apparatus and the parliament should have had no judicial powers. There were no formal or informal, open or implicit discussions about the important distinction between *the possession of power* (*ius / substantia*) and *exercise of power* (*exercitium / usus*) but it was reflected by the constitutional design of French origin. The Prince was entrusted with the exercise of the executive function, with the help of his ministers and the Administrative Council, and the judicial function, with the help of the courts. The legislative function was entrusted to the Prince and a unicameral parliament – the Ordinary Assembly – gathering, in each Principality, the estates' representatives. Naturally, the Prince had the power to summon, prorogue and end the session of the parliament and even to dissolve it in the conditions established by the law.

As in France and other countries of the monarchical constitutionalism, the legislative process was the framework of the monarchical limited power. Although the collaboration of the prince and the Assembly in the exercise of the legislative power was rather implicit, the parliament had not been endowed with a simple 'approval' of the monarchical legislative proposals. In every Romanian Principality, the Prince had the initiative, the sanction and an absolute veto, the Assembly the right to discuss, amend and vote every legislative bill,



Portrait of Count Pavel Kiselyov, Russian governor of Moldavia and Wallachia

the special right to vote the state budget and, last but not least, the right to advance legislative proposals to the Prince. Accordingly, the parliament was expected to play the function of a counter-power or legislative break²⁸. However, the ORs developed some peculiarities, departing from their French model. Thus, the Prince had the possibility to return to the Assembly the voted legislative projects, for a second debate (WOR), but, compared to his French homologue, he had no amendment power. This did not transform the Assembly into a co-legislator and, in the spirit of the 'constitution', its vote may be assimilated to the technique of '*avis conforme*'²⁹. The Prince was the master of the legislative power and, thus, remained the 'master of the law'³⁰. However, although only his will

gave to a legislative bill its legal force, he had no control over the material content of the law. The Prince had no obligation to accept a bill as it was debated, amended and voted by the Assembly, but if he did it, he had to take it unaltered. Considering also the power of the Assembly to accept or not for debate the bills sent by the Prince, we may say that the position of the parliament as a counter-power was pretty strong.

The Romanian scholars are questioning the reasons backing this constitutional design, its intentional or irrational character. Despite the Russian intentions, we may notice the existence of a very powerful Prince facing a surprisingly powerful Assembly in the frame of a constitutional architecture prone to serious constitutional and political deadlock. The Russians had the strong monarch they desired, empowered to keep the political and social order, and operationalized, in a modern format, the desire of the Romanian aristocracy to have the monarchical power limited. This was not the design envisaged by the Romanian boyars and it was far from meeting their claim to co-rule but, somehow, they had at their disposal a constitutional mechanism capable to contain the monarchical abuse of power, at least at the legislative level.

4. *A failed constitutional experiment*

It is not clear whether the Russians have actually intended to build a functional limited monarchy in the Romanian Principalities, but history proved the very difficult task of having the monarchical constitutionalism working at its formal-institutional parameters. Theoretically, the monarchi-

cal constitutionalism has been cornered as a transitional constitutional solution, depriving it of any inbuilt serious resources of self-reproduction. Its development closely depended on its ideological impetus and specific socio-political contexts. Its fate has been even more unpredictable when it was handled as a pragmatic tool of constitutional engineering in the hands of a conqueror. Prompting no exogenous ideological expectations, the ORs were completely at the mercy of domestic political contingency. They were two masterpieces of constitutional conflict between the princes and Assemblies, opening the political scene to future fights for political supremacy. Certainly, the Russians reserved for themselves the decisive role in political crisis management. Both main constitutional mechanisms of deadlock resolution, i.e. the dissolution of the Assembly by the prince and the deposition of the prince by the Assembly were controlled by the Turks and, especially, by the Russians. For sure, the imposed character of the ORs and the positioning of the Russians as the key third player have reduced the unpredictability that 'the deliberate vagueness and flexibility'³¹ of the monarchical constitutionalism should have provided.

In close connection with the constitutional-political and social background, the monarchical constitutionalism favoured the development of parliamentarianism, as did the French *Charte constitutionnelle*³², or the 'enlightened despotism', as happened in the southern German principalities of Baden and Bavaria³³. The path has been decided both by the particular institutional design and the political balance settled between the monarch and the parliament. Institutionally, it would have been very dif-

difficult to the Romanian political actors to develop a parliamentary regime. Besides the lack of monarchical inviolability, its other constitutional prerequisites were missing: compatibility between the ministerial and parliamentary dignities, the governmental (juridical) responsibility, and the countersigning. Beyond doubt, the political life in the Romanian Principalities between 1831 and 1848 did not encourage the birth of parliamentarianism. Quite the opposite, the Moldavian prince Mihail Sturdza (1834-1849) and the Wallachian princes (Alexandru Dimitrie Ghica, between 1834-1842 and Gheorghe Bibescu, between 1842-1848) managed to gradually secure their influence and power over the Assemblies, finally succeeding to impose a *de facto* monarchical absolutism. The political interference of the Russians, that, usually, shifted the balance of power in favour of the princes, contributed to this development. However, the cultural-political context in the Romanian Principalities has decisively adjusted this political course.

Both ORs were constitutional transplants imposed by the Russian Empire for the sake of its geopolitical interests. Accordingly, they inevitably suffered from the encounter with the local cultural background. The Romanian princes had no personal interest and no cultural incentive to strictly follow the letter of the ORs. Despite the very bad memories about the Phanariots, the popular cult of the monarchy and the centrality of the monarch in the Romanian constitutional-political culture were very strong. For centuries, the Romanian princes were the supreme policy-makers and the Romanian medieval states were far from knowing the dominant role of the estates as happened, for example, in medie-

val Poland. Having, suddenly, their power thwarted by a foreign origin constitutional text did not fit the Romanian princes' way of thinking and political behaviour. This is why they did everything to break the constitutional chains. At their turn, the Romanian boyars had no previous theoretical interest in the limited monarchy and no particular appetite for this constitutional formula developed after 1831. Considering their ideological and political goals, some boyars had still been interested in the project of the medieval estate monarchy, while many others started to be more and more interested in the values, principles and institutions of the liberal constitutionalism.

Above all, the main problem of the process of ORs acclimatisation was the political culture of the Romanian political elites. The biggest challenge for the ORs, as modern and rational legal normativity, was the Romanian political elites' lack of interest in institutions. The political life throughout the Phanariot century developed between the struggle of the Phanariot princes to keep and financially benefit from the political power and the strategies of political pressure and survival developed by the Romanian boyars, underpinned by the networks of family and class solidarity. As a consequence, the political game during the 1830s and 1840s frequently ignored the institutional constraints. The political relationships between the princes and the boyars have usually been dominated by the personal interest of the grand boyars to get strategic and lucrative dignities in the administrative apparatus and the pressures of the middle and lower boyars to have equal access to the political and economic privileges. The executive positions around the Prince have remained highly appreciated,

as long as no tradition of a powerful estate assembly developed in the Romanian history. Gradually, the Romanian equivalent of 'good governance' became the capacity of the princes to comply with the high demand of executive offices from and for the different layers of the boyars. This is why the Ordinary Assemblies created by the ORs were of secondary importance for the boyars, as a tool of political pressure against the Prince. However, the institutional channels and constitutional mechanisms have not been completely ignored, especially in Wallachia. Here, the prince Alexandru D. Ghica did not succeed to control the parliamentary elections, as did his Moldavian counterpart. Consequently, he knew a strong opposition in the Assembly that succeeded to use the counter-power role of the parliament to promote the political and economic interests of the boyars, as a privileged estate. Repeatedly, between 1834 and 1842, the Assembly managed to block the legislative projects of the Prince or to amend them according to their preferences. The Prince had no alternative than to exert his absolute veto and the foreseeable deadlock has been installed.

Overall, no visible attempts were made by the Wallachian and Moldavian assemblies to join the Prince as legislative initiators, as it practically occurred in other countries³⁴. Despite the birth of some modern parliamentary techniques, the estate-based representation blocked the rise of parliamentarianism. The timid spread of liberalism amidst the MPs and the development of a national agenda had no significant impact upon the modernization of politics and birth of a parliamentary spirit. Not accidentally, the most appreciated parliamentary mechanism (Article 54 WOR

and Article 57 MOR) consisted in official complaints against the princes' politics addressed to the Turks and Russians as it perfectly resembled the previous strategies of political resistance practiced by the Romanian boyars. This is why, the deposition (by the Sultan) of prince Ghica, in October 1842, was rather the effect of a medieval-like intrigue than that of a modern functional institutional framework. In this climate, politics was frequently a private affair and the lack of a free press interested in political analyses prevent the birth of the public opinion as a key player in making the political actors accountable.

Admittedly, no parliamentarianization of the Romanian political life could have been possible without the proactive collaboration of the princes. Far from accepting any visible traces of the representative government, they do their best to defend their traditional strong place on the top of the Romanian state and politics. To all political pressures coming from the boyars and the parliaments, the princes responded through intrigue, intimidation and political manipulation, under the guidance and blessing of the Russian consuls in the Principalities. In a relatively short term, the Moldavian prince Mihail Sturdza succeeded, through electoral manipulation, to have very friendly parliaments. His strategy was perfectly imitated by the prince Gheorghe Bibescu in Wallachia, after 1842. The lack of bicameralism made this task even easier. During the sessions of the parliament, the princes repressed any dissenting opinions making fully effective the Article 53 MOR and Article 50 WOR that allowed the Assembly to exclude its members challenging the decisions of the majority. Having no interest in acknowledging the po-

litical role of the parliamentary majority, the princes refused to recruit the ministers from its members. In fact, the Administrative Council had never gained the status of an autonomous cabinet, its members being fully at the disposal of the monarchs. Thus, the last ones had no problem in fully controlling the governmental agenda and passing, without parliamentary obstacles, any legislative initiative they needed.

Conclusions

The ORs were imposed constitutions giving birth to a monarchical constitutionalism without octroy. With the exception of a monarch self-limiting his power, the logic and mechanisms of the limited monarchy were fully present, although with striking local particularities. Of all, the lack of the amending power of the prince witnessed a special constitutional design meant both to answer the demands of the Romanian political actors and to offer the perfect leverage to the Russians for their future interference with the Romanian domestic constitutional-political life.

It was not the vague and relatively open character of the monarchical constitutionalism that determined its fate in the Romanian Principalities. There were no competing ideological narratives fighting over the constitutional text as France knew in the period of Restoration³⁵. The ORs were not interpreted and intellectually acclimated but organically rejected by the Romanian political elites and discredited by the princes as inadequate tools of governance. Excluding some short-term pragmatic instrumentalisation of the constitution-

al mechanisms for individual, group and, sometime, national interests, there was no ideological incentive to make 'the limited monarchy' a programme of future constitutional modernization. The liberal political movement developing after 1830 strongly criticized the ORs both for their feudal and imposed characters. In the presence of an upper boyar layer entrapped in the old medieval political habits, no spirit of parliamentarianism raised and the informal power of the princes grew exponentially. Beyond the political resistance of the Wallachian Assembly between 1834 and 1842, no other parliamentary mechanism succeeded to counterbalance the monarchical power. Having no room for ideological and political acclimatisation, the ORs inevitably collapsed in the turmoil of the 1848 Wallachian liberal revolution. Despite the constitutional expectations of the Romanian revolutionary, the Turks and the Russians did not accept a liberal constitution but gave up the monarchical constitutionalism. As long as the anti-liberalism and anti-parliamentarianism were still on their agenda, they chose the best constitutional format capable to guarantee their political control.

This is why the monarchical constitutionalism introduced by the ORs between 1831 and 1848 was not a transitional moment between the monarchical absolutism and the liberal-democratic constitutionalism but it facilitated a passage from the despotic-like Phanariot ruling to a constitutionalized monarchical absolutism. Acknowledging the inadequacy of the monarchical constitutionalism to the Romanian political culture and being concerned about their possible evolution towards parliamentarianism under the mark of the national interest, the Ottoman and Russian

empires strongly disempowered the Ordinary Assemblies. They lost the right to discuss, amend and vote the legislative bills, only expressing an *avis consultatif*. This is why, as long as it was meant to grant social and political order and equilibrium in the Romanian Principalities under the Russian supervision, the monarchical constitutionalism was a failed experiment. At the end, the great merit of the ORs was the rationalization of the monarchical absolute power using the (quasi) modern format of the constitution.

¹ G. Frankenberg, *Comparative Constitutional Studies*, Cheltenham-Northampton, Edward Elgar Publishing, 2018, pp. 156 ff.

² Quoted by J. Gerkrath in *Are 'octroyed constitutions' of the 19th century to be considered imposed constitutions?*, in R. Albert, X. Contiades and A. Fotiadou (eds.), *The Law and the Legitimacy of Imposed Constitutions*, London and New York, Routledge, 2019, p. 124, at note 17.

³ M.J. Prutsch, *Constitutionalism in Post-1814 Europe: Monarchy, Parliament and Sovereignty*, in «Journal of Constitutional History», n. 35, 2018, pp. 33-46.

⁴ This concept was mirroring the echoes of the Italian movement of 'carbonari' in the Romanian society and was used by the Romanian upper conservative aristocracy to label the apparent liberal revolutionary actions of the lower Romanian (Moldavian) aristocracy. Actually, no direct political or ideological affiliation between the Italian and Romanian movements could be established.

⁵ I.C. Ciubotaru, *Lucrări și proiecte în vederea elaborării Regulamentului Obștesc al Moldovei din anul 1827*, in «Anuarul Institutului de

istorie A.D. Xenopol», n. XXXVI-II, 2001, p. 145.

⁶ T. Drăganu, *Începuturile și dezvoltarea regimului parlamentar în România până la 1916*, Cluj-Napoca, Editura Dacia, 1991, pp. 39-40.

⁷ P. Eliade, *La Roumanie au XIX^e siècle II. Les trois présidents plénipotentiaires (1829-1834)*, Paris, Librairie Hachette, 1914, pp. 100 ff.

⁸ P. Negulescu, G. Alexianu, *Regulamentele Organice ale Valahiei și Moldovei*, București, Întreprinderile Eminescu, 1944, p. XXXIII. See also C.T. Axente, *Essai sur le régime représentatif en Roumanie*, Paris, Maurice Laverigne Imprimeur, 1937, p. 89.

⁹ See, for example, I. Stanomir, *Nașterea constituției. Limbaj și drept în Principate până la 1866*, București, Editura Nemira, 2004, pp. 93 ff.

¹⁰ The original French version can be read in *Analele parlamentare ale României*, Tomul I, Partea a II-a: Obșteasca extraordinară adunare de revizuirea Regulamentului Organic al Moldovei (1831), București, Imprimeria statului, 1893, pp. 18 ff.

¹¹ S. Ghervas, *Reinventer la tradition. Alexandre Stourdza et l'Europe de la Sainte-Alliance*, Paris, Honore

Champion, 2008, pp. 90-92.

¹² See M. Galedek, *The monarchical sovereignty and the ministerial responsibility in the course of works on the constitution for the Kingdom of Poland, 1814-1815*, in «Journal of Constitutional History», n. 37, 2019, pp. 153-170.

¹³ Gerkrath, *Are 'octroyed constitutions' of the 19th century to be considered imposed constitutions?*, cit., p. 125.

¹⁴ See the challenging book coedited by Albert, Contiades and Fotiadou (eds.), *The Law and the Legitimacy of Imposed Constitutions*, cit.

¹⁵ D.S. Law, *Imposed Constitutions and Romantic Constitutions*, in Albert, Contiades, Fotiadou (eds.), *The Law and the Legitimacy of Imposed Constitutions*, cit., pp. 34-64.

¹⁶ V. Sellin, *European Monarchies from 1814 to 1906: A Century of Restorations*, W. de Gruyter, 2017, pp. 39 ff.

¹⁷ Ivi, pp. 28-39.

¹⁸ W. E. Pomeranz, *Law and the Russian State. Russia's Legal Evolution from Peter the Great to Vladimir Putin*, London-New York, Bloomsbury Academic, 2019, p. 30.

¹⁹ V. Taki, *Romanian Boyar Opposition to the Organic Statutes: Rea-*

- sons, *Manifestations, Outcomes*, in «Archiva Moldaviae», n. V, 2013, pp. 204–208; 220–221.
- ²⁰ M. Orleano, *Esquisse sur l'évolution constitutionnelle de la Roumanie de 1821 à 1859*, Paris, 1935, p. 44.
- ²¹ V. Sellin, *Restorations and Constitutions*, in K. L. Grotke and M. J. Prutsch (eds.), *Constitutionalism, Legitimacy, and Power*, Oxford, Oxford University Press, 2014, pp. 90 ff.
- ²² See, for relevant German cases, J. Hummel, *La Charte française de 1814 et le Deutscher Konstitutionalismus: les inflexions d'une reception durable*, in «Jus Politicum», n. 13, 2014, p. 2, especially note 3.
- ²³ L. Lacchè, *Granted Constitutions. The Theory of 'octroi' and Constitutional Experiments in Europe in the Aftermath of the French Revolution*, in «European Constitutional Law Review», n. 9, 2013, p. 294.
- ²⁴ R. Wortman, *Russian Monarchy: Representation and Rule*, Boston, Academic Studies Press, 2013, p. 59.
- ²⁵ Ciubotaru, *Lucrări și proiecte* cit., p. 137.
- ²⁶ Lacchè, *Granted Constitutions* cit., p. 300.
- ²⁷ See St. Rials, *Révolution et contre-révolution au XIX^e siècle*, Paris, D.U.C./Albatros, 1987, pp. 112 ff.
- ²⁸ A. Laquieze, *Les origines du régime parlementaire en France (1814–1848)*, Paris, PUF, 2002, pp. 70–71.
- ²⁹ Rials, *Révolution et contre-révolution*, cit., pp. 118–119.
- ³⁰ M. Prelot, *La signification constitutionnelle du Second Empire*, in «Revue française de science politique», n. 1 1953, p. 38.
- ³¹ Lacchè, *Granted Constitutions* cit., p. 313.
- ³² The French constitutionalists make a necessary distinction between the birth of the parliamentary regime, which did not occur, and the 'parliamentarization of the political system'. See A. Laquieze, *La Charte de 1814 et la question du gouvernement parlementaire*, in «Jus Politicum», n. 13, 2014, pp. 3 ff.
- ³³ See M.J. Prutsch, *Monarchical Sovereignty and the Legacy of the Revolution: Constitutionalism in Post-Napoleonic Germany*, in «Revista de Historia Constitucional», n. 16, 2015, p. 194.
- ³⁴ Laquieze, *Les origines*, cit., pp. 175 ff.
- ³⁵ See L. Jaume, *Naissance du libéralisme et interprétations de la Charte*, in «Jus Politicum», n. 13, 2014, pp. 1–19.