

TWO CENTURIES OF GREEK CONSTITUTIONALISM: THE FIRST REVOLUTIONARY CONSTITUTIONS

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Abstract

The paper examines the foundations of the Greek constitutionalism and the formation of the democratic ideal in the modern Greek constitutional and national identity.

The term “Constitutionalism” could be attributed to more than one sense, as it is associated with the historical evolution of the state phenomenon from antiquity¹ until today, and inherently linked to the request for entering into legal restrictions to the power of State (broad meaning of the term). However, Constitutionalism, as one understands it on the basis of the present information that give a narrower interpretation of the term, is the historical movement that claimed the establishment of a formal, i.e. written Constitution, from the end of the 18th century onwards under the influence of the great Revolutions of that time, namely the American (1776) and the French (1789)². His appearance is located during the period of the European Enlightenment with the main demands being the limitation of the absolute and arbitrary power of the monarch and the clear demarcation of state powers. Under its liberal version, the constitution demanded the separation of secular from ecclesiastical power, the delimitation of political power through its distribution among the various state bodies, and its limitation through guarantees of the exercise of certain rights. Under its dem-

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¹ The foundations of the state organization were laid already with the establishment of the ancient Greek city (city-state). For Aristotle (Politics III, 1278b, 10) «Πολίτευμα δ' ἐστὶν ἡ πολιτεία». See G. Glotz, *La cité grecque* (1953). The codification of the legislation, i.e. the recording of the current rules and their exposure to public view (e.g. in a public building, in “agora”), was another step towards closer organization. In this respect, the Romans were pioneers.

² See indicatively K. Chrysogonos, *Theory of the State. The State as a form of organization of human societies* (2020).

ocratic version, which complemented the liberal one, the main demands of the Constitution were the recognition of the universal suffrage³ and the securing of the universal representation of the people in the legislature⁴. Since the first Revolutionary Constitutions in the early nineteenth century, all Greek Constitutions that have been written, are generally recognized as the supreme law. Their amendment is difficult, as the constitutional texts themselves demand certain and higher procedural and substantial requirements, in order to be protected from political volatility and the caprices of occasional majorities.

However, apart from the above versions, the request for the adoption of a written Constitution is also connected with a claim to political status for a Nation, in other words it is an element of an existential character. The first formal Constitution of a state coincides with the declaration of its independence. Thus, if for the French Revolution the Declaration of the Rights of Man and of the Citizen⁵ and a little later the enactment of the Constitution of 1791 symbolized the transition from the Old Regime⁶ to a new state, for the American Revolution the enactment of the Constitution of 1787 was the “Registry” of the birth of the mosaic that made up the American Nation. The French Revolution and the Napoleonic Wars were the events that triggered the Greek Revolution.

Before the Revolution, the liberal and democratic ideology was present in large sections of Greek society and not only among the bourgeoisie and the scholars who pioneered its spread. The modern Greek Enlightenment, which succeeded in combining progressive European ideas with the historical memories and future perspectives of Hellenism, helped the Nation to get rid of the fatalism that cultivated passivity and submission⁷. Rigas Feraios (1757-1798), an intellectual and early revolutionary, tried to secure Napoleon’s support for an insurgency in the Balkans but he was betrayed and arrested by the Austrians who delivered him to the Ottomans who tortured and executed him. He became one of the first national

³ By replacing the old system of “honorary” voting of the bourgeoisie.

⁴ From the end of the 19th century onwards. The demand for the recognition of rights to collective action, such as the right to associate, trade union rights and the right to establish and participate in political parties, was also added.

⁵ Déclaration des droits de l’homme et du citoyen de 1789.

⁶ Ancien Régime.

⁷ See A. Manesis, *The liberal and democratic ideology of the national revolution of 1821* (2021).

heroes of modern Greece and he inspired similar revolutionary activities, especially in the Greek diaspora, between merchants, students, and some Phanariotes⁸. In an effort to stimulate a Pan-Balkan uprising against the Ottomans, Rigas Feraios published in 1797 his book, entitled “New Political Constitution of the Inhabitants of Roumeli, Asia Minor, the Islands of the Aegean and the Principalities of Moldavia and Wallachia”⁹. This work includes 4 sub-works: a) a Revolutionary Proclamation, b) Rights of Man (34 articles), c) the Constitution of the Hellenic Republic (124 articles) and d) the Thourios or Patriotic hymn (poem). At the core of Rigas Feraios’s constitutional ideology is the democratic principle and, in particular, the principle of popular sovereignty. The democratic character of the regime is confirmed by the principle of political equality. The liberal character of the regime is reflected in the provisions for the exercise and protection of fundamental rights and freedoms. The fundamental rights in the Constitution of Rigas Feraios appear under the title “Rights of Man” (and not “Rights of the Citizen”), a term that eloquently refers to the theory of natural law¹⁰.

Taking into account the above assumptions, the Greek Revolution of 1821 is not only connected with the birth of the Modern Greek State-Nation but is also the birth act of the Greek Constitution. With the beginning of the Greek war of independence in 1821, the first regional governments were established: the “Organization of the Temporary Administration of Western Continental Greece”, the “Legal Order of Eastern Continental Greece” and the “Peloponnesian Senate”. Those governments were founded by regional assemblies during the first year of the revolution (1821) and facilitated provisional government and military set-ups, until the eventual establishment of the “National Assembly”. The latter would control regional administrations and possess all legislative powers¹¹. The first Greek Constitution, signed on 1st January 1822 at the First Na-

⁸ See A. Hatzis, *A Political History of Modern Greece 1821*, Encyclopedia of Law and Economics 1-12 (2018), available at: <https://www.researchgate.net/publication/327405175>.

⁹ «Ρήγα τοῦ Φιλοπάτριδος. Νέα Πολιτικὴ Διοίκησις τῶν κατοίκων τῆς Ῥοῦμελης, τῆς Μικρᾶς Ἀσίας, τῶν Μεσογείων Νήσων καὶ Βλαχομπογδανίας. Ὑπὲρ τῶν νόμων - ελευθερία, ἰσότης, ἀδελφότης - καὶ τῆς Πατρίδος».

¹⁰ See P. Pavlopoulos, *The constitutional foundations of the modern Greek state* (2021).

¹¹ See indicatively the “Constitutional History” in this link. <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagmatiki-Istoria/> (last update 23/2/2022).

tional Assembly at Epidaurus, was entitled: The Provisional Regime of Greece (“Προσωρινὸν Πολίτευμα τῆς Ἑλλάδος”), sometimes translated as Temporary Constitution of Greece. The will for the creation of a Constitution was firmly expressed with the Declaration of Independence of the 15th of January 1822, where it was clearly stated that «(...)we decided or, more precisely, we were forced to decide to organize Greece under Constitution». That was a moment of fundamental importance in the modern political history of Greece, as it highlighted the necessity of the pioneering connection between constitutional formation and political stability. It is worth noting that the main inspirer and author of the constitutional draft, that was formed by a twelve-member committee of the first National Assembly, was the Italian revolutionary and philhellene Vincenzo Gallina (1795-1842)¹². According to other sources, the main inspirer of the constitutional draft was Alexandros Mavrokordatos (1791-1865), a prominent Greek politician of Phanariote descent, while Gallina was the person providing assistance to the National Assembly due to its knowledge as concerns legislation¹³. It was an event of paramount importance, as the elected representatives of an insurgent people expressed their intention to announce their political self-existence, thus sending a message both to the Interior by replacing the various local regimes (such as the “Organization of the Senate of the West Coast of Greece”, “The Legal Order of the East Coast of Greece” and “The Organization of the Peloponnesian Senate”¹⁴, as well as the Abroad, and especially, the three most important powers of the time (England, France and Russia)¹⁵. This message is also expressed explicitly and solemnly in the moving Preamble of the Constitution, which, invoking the Holy and Indivisible Trinity, which reads as follows: The Greek nation, under the horrible Ottoman dynasty, unable to hold the heavy and unparalleled yoke tyranny, and having shaken it off after great sacrifices, declares presently via its legal Representatives, who were met as national Assembly, before God and men, “Its political presence and

¹² «The Constitution of Epidaurus consisted of one hundred and ten short paragraphs, divided according to the French standard into 'titles' and 'sections' (...)», See N. Alivizatos, *Introduction of the Greek Constitutional History*, Vol. I (1981).

¹³ See indicatively A. Pantelis, *Handbook of Constitutional Law* (2020).

¹⁴ Ὄργανισμός τῆς Γερουσίας τῆς Δυτικῆς Χέρσου Ἑλλάδος, Νομικὴ Διάταξις τῆς Ανατολικῆς Χέρσου Ἑλλάδος καὶ Ὄργανισμός τῆς Πελοποννησιακῆς Γερουσίας.

¹⁵ See indicatively N. Alivizatos, *Introduction to Hellenic Constitutional History* cit. at 13 and G. Anastasiadis, *Political and Constitutional History of Greece 1821-1941* (2001).

independence”¹⁶. The theoretical background for the preparation of the Provisional Government of Greece, but also of the subsequent constitutional texts that replaced it is found not only in the works of the European Enlightenment, but also in the political ideas of the representatives of the Modern Greek Enlightenment (such as Rigas Feraios, Adamantios Korais, the “Anonymous” author of the “Hellenic Nomarchy”, i.e. The Greek rule of law, e.t.c.), as well as in the revolutionary Constitutions of the French Revolution¹⁷. Finally, one should not forget the efforts of constitutional government in the Ionian Islands during the pre-revolutionary period and until the integration of these islands in the Greek state (1864). The Constitutions of the Ionian Islands were characterized for the maintenance of the oligarchic system. On the contrary, as it is mentioned below, the Greek revolutionary Constitutions were pioneering.

The three Greek revolutionary Constitutions were pioneering, formed on the basis of the social, geographical and demographic characteristics of the Greek Revolutionaries. Despite the strong influence of the French Constitutions and the previous American Constitution of 1787, the Constitutions of the Greek Revolution seem on the whole to reflect the Revolutionaries’ new will for a constitutional conscience, with the ultimate goal of organizing the political sovereignty of the Nation through the representatives.

The role of the Constitutions was twofold: on the one hand assertive (insofar as it regulated the functioning of the pregnant state), and on the other as a guarantor in relation to fundamental, human rights. Thus, the paradoxical phenomenon appears that there are three *mutatis mutandis* perfectly legal statutory maps, but without the other elements that make up the classic concept of the

¹⁶ «Τὸ Ἑλληνικὸν Ἔθνος, τὸ ὑπὸ τὴν φρικώδη Ὀθωμανικὴν δυναστείαν, μὴ δυνάμενον νὰ φέρῃ τὸν βαρῦτατον καὶ ἀπαραδειγμάτιστον ζυγὸν τῆς τυραννίας, καὶ ἀποσεῖσεν αὐτὸν μὲ μεγάλας θυσίας, κηρύττει σήμερον διὰ τῶν νομίμων Παραστατῶν του, εἰς συνηγμένων Ἐθνικῆν Συνέλευσιν, ἐνώπιον Θεοῦ καὶ ἀνθρώπων, “τὴν Πολιτικὴν αὐτοῦ ὑπάρξιν καὶ ἀνεξαρτησίαν”». As N. N. Sariplos characteristically wrote, «Πᾶς Ἕλληνας δις καὶ τρις καὶ τετράκις καὶ πάλιν ὀφείλει νὰ ἀναγνώσῃ καὶ ἀπὸ στήθους μάθῃ αὐτήν (τὴ Διακήρυξιν)», N. N. Saripolou, *System of Constitutional Law and General Public Law* (1903).

¹⁷ See X. Contiades, *The adventurous history of the revolutionary constitutions of 1821* (2021) and P. M. Kitromilides, *The Origins of the Greek Constitution (1797–1827)*, in: *30 Years since the Constitution of 1975* (2004).

State, as expressed by Georg Jellinek (“People and a certain Territory”)¹⁸. The first Constitution of Epidaurus, or the Constitution of 1822, did not provide full protection of individual liberties, but guaranteed the right to property, honor, security and freedom of religious conscience, while its most important provision in this chapter was the complete prohibition of torture¹⁹. Most of the provisions of the Constitution were inspired by the principle of equality, as a consequence of the popularity of Rousseau's theory²⁰. On the contrary, most of the constitutional text was devoted to the regulation of state institutions. The administration consisted of two bodies, the Parliamentary and the Executive. Members of Parliament were appointed as representatives who were elected for a 1-year term (however, the Constitution did not mention their number nor any electoral system). Although the Parliament exercised legislative power, the laws passed were valid only after their ratification by the Executive. The five members of the Executive were also elected for a 1-year term, appointing the first Secretary of State and the seven Ministers. Finally, the Judiciary, which consisted of eleven members, was appointed by a common decision of the Parliament and the Executive. According to a Law, justice was administered by independent courts. The equivalence of the Parliament and the Executive, which had as the result the paralysis of the legislative function, constituted the main weakness of the Constitution of 1822. Nevertheless, the prominent English philosopher and jurist Jeremy Bentham (1748-1832) wrote in 1823 the following words with regard to the first Greek Constitution of 1822 “To find the provisional Greek Constitution in so high a degree comfortable to the principle of the greatest happiness of the greatest number has been matter of considerable and no less agreeable surprize to me”²¹.

In April 1823, one year after the adoption of the first Greek Constitution, the Second National Assembly, convened in Astros (Kynouria), to revise the Provisional Constitution of Epidaurus. The new Constitution of Astros was more concise and an example

¹⁸ See G. Jellinek, *Allgemeine Staatslehre*, Verlag von O. Haring (1914), according to whom: «Als Rechtsbegriff ist der Staat demnach die mit ursprünglicher Herrschermacht ausgerüstete Körperschaft eines selbsthaften Volkes oder die mit ursprünglicher Herrschermacht ausgestattete Gebietskörperschaft».

¹⁹ See N. Alivizatos, *Introduction of the Greek Constitutional History*, cit. at 13.

²⁰ See N. Alivizatos, *The Constitution and its Enemies, 1800-2010* (2011).

²¹ See F. Rosen, *Bentham's constitutional theory and the Greek Constitution of 1822* (1984).

of good lawmaking. It also gave a slight advantage to the Legislative branch over the Executive given that the latter's veto power was reduced from absolute to suspensory, it improved the provisions on the protection of individual rights and democratized the electoral law. Also the new Constitution was characterized as temporary, although it was more complete than the previous one. A key feature of it was the strengthening of the Parliament against the Executive by the abolition of the absolute right of veto of the Executive. The new Constitution also strengthened individual rights with provisions that abolished slavery in Greece, established freedom of the press, the right to report to the Authorities and the right to a fair trial. An important innovation was the extension of property protection, honor and security to foreigners in Greece. Nevertheless, the civil war that broke out in Greece in 1824 prevented the implementation of the above pioneering constitutional requirements.

The Third National Assembly, also known as the Troezen Assembly, convened between March 19 and May 5 1827. On April 14 1827, the Assembly elected Ioannis Kapodistrias as the "Governor of Greece" for a seven-year term and endorsed the "Political Constitution of Greece". The Assembly established a democratic regime based on liberal principles and declared the sovereignty of the people (popular sovereignty): «Sovereignty lies with the people: every power derives from the people and exists for the people». This declaration has been included in all subsequent revisions since 1864. The Governor was only granted suspending veto powers on the bills and no prerogative to dissolve the parliament. Even though the Governor enjoyed immunity for his actions, the Secretaries of State, i.e. the Ministers, were accountable for his public actions (signaling the start of the parliamentary principle). On May 1st, 1827, the 3rd National Assembly passed a new Constitution called the "Political Constitution of Greece". One issue that concerned the members of the National Assembly was the collective or single-person nature of the executive branch. Eventually, under the influence of the US Constitution, the one-person body was chosen. In general, the Constitution of 1827 was more complete than the previous ones and, perhaps, the most democratic Constitution in time. For the first time, the principle of popular sovereignty was proclaimed, as was the explicit separation of powers (Article 36). In particular, the executive power belonged to the governor, who was elected for a 7-year term, appointed the six ministers and had the right of deferral

veto vis-a-vis Parliament. Legislative power belonged to the Parliament, which was elected for a 3-year term and its members were renewed by one third (1/3) each year (Article 57). Finally, the Constitution of 1827 established the principle of equality (also with respect to tax burdens) and provided for the possibility of imposing expropriation for the purpose of public benefit overcompensation.

The Constitution of 1827 is important because of its rather progressive character in the treatment and protection of human rights, constituting one of the most comprehensive constitutions of its time, in particular for the protection of civil rights. The Assembly aspired to provide the country with a stable government, modeled on democratic and liberal ideas. The Troezen Constitution sought to combine the need for strong centralized power with the existence of democratic institutions and practices. However, the constitution remained in force only until 1828, shortly after the arrival of Ioannis Kapodistrias, who proposed in January 1828 the suspension of the operation of Parliament with well-designed political manipulations.

For the first time in Greek history, an explicit reference to the Nation as a source of sovereignty is made in Article 5 of the Constitution of 1827 (“Political Constitution of Greece”) adopted by the Third National Assembly of Troezen on May 1, 1827, which stipulated that “Sovereignty lies with the people: every power derives from the people and exists for the people” («Ἡ κυριαρχία ἐνυπάρχει εἰς τὸ ἔθνος · πᾶσα ἐξουσία πηγάζει ἐξ αὐτοῦ, καὶ ὑπάρχει ὑπὲρ αὐτοῦ»)²². It is noteworthy that the reference to the “Nation” as a source of sovereignty, with the sole exception of the period of Absolute Monarchy (1832-1844) and the Constitutional Monarchy (1844-1862/64), is repeated in the Constitution of 1864/1911, in the Constitution of Second Hellenic Republic of 1927 and the Constitution of 1952.

The continuation of military operations against the Ottomans, the constant efforts to find a diplomatic solution to the Greek issue and the enormous difficulties encountered by the Governor (i.e. Ioannis Kapodistrias, who had been elected by the 3rd National Assembly on April 3rd, 1827) prevented the normal implementation of the Constitution. Subsequently, with a resolution of the National Assembly, the implementation of the Constitution was officially

²² See A. Manitakis, *The Greek Constitutionalism 200 years after Independence. Democratic, modern, prosperous* (2020).

suspended (January 1828). After the London Protocol (February 1830)²³, the assassination of I. Kapodistrias in 1831 and the election of Otto of Bavaria²⁴ as the first king of independent Greece (chosen by the 3 “Protecting Powers”, England, France, Russia during the London Conference of 1832), the country was ruled without a constitution until 1844. However, monarchy in Greece has always remained a foreign institution, which was accepted by the Greek people out of necessity.

Regardless of their fate, the three revolutionary Constitutions, which established the “First Hellenic Republic”²⁵, were not only pioneering for their time, but also laid the foundations of the Greek constitutionalism and the formation of the democratic ideal and the modern Greek constitutional and national²⁶ identity.

²³ The London Protocol (February 3rd, 1830) was an agreement between the three Great “protecting” Powers (The United Kingdom of Great Britain and Ireland, The Kingdom of France and the Russian Empire) established Greece as an independent, sovereign state.

²⁴ Otto Friedrich Ludwig von Wittelsbach (1815-1867).

²⁵ See J.S. Koliopoulos and T.M. Veremis, *Modern Greece: A History since 1821* (2010).

²⁶ See A. Liakos, *La storia della Grecia come costruzione di un tempo nazionale*, 4-1 Contemporanea 155-169 (2001). It is worth to add that, according to article 2 of the Constitution of 1822, «All indigenous inhabitants of the Land of Greece (Hellas) believing in Christ are Hellenes and are entitled to an equal enjoyment of every right» («Όσοι αυτόχθονες κάτοικοι τῆς ἐπικρατείας τῆς Ἑλλάδος πιστεύουσιν εἰς Χριστόν, εἰσὶν Ἕλληνες, καὶ ἀπολαμβάνουσιν ἄνευ τινὸς διαφορᾶς ὅλων τῶν πολιτικῶν δικαιωμάτων»).