

ROMANIA'S 1866 ELECTORAL SYSTEM AND THE QUEST FOR NATIONAL SOVEREIGNTY

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(Received: October 2023; Accepted: November 2023; Published: November 2023)

Abstract: In 1866, religion played a significant role in unifying the Romanian national spirit. A foreign prince was brought to rule under the Orthodox faith, and this religious aspect was incorporated into Article 82 of the Constitution.

The limitation of political rights in Romania was based on ethnic criteria, with Jews and other non-Christians excluded from full participation. The electoral system introduced a high property-based voting qualification, reflecting, to some extent, liberal principles, but effectively limiting actual participation.

Thus, the Romanian Constitution of 1866 struck a delicate balance between borrowed liberal ideals and the specific cultural context of Romania. It emphasized the role of religion and property ownership in shaping political rights and identity, while also attempting to align with European constitutional standards. The electoral system of 1866 in Romania fell short of democratic ideals and perpetuated inequalities. It shaped the political landscape and had far-reaching consequences for the country's governance and representation.

Keywords: Romanian electoral system of 1866; legal culture; legal transplant.

1. Introductory Considerations

The transposition of the principle of popular sovereignty from the realm of philosophy to the realm of politics, under legal regulation, led to the gradual elevation of the electoral system to the status of a foundational institution within the state. Through the act of voting or participating in elections, the People started to exercise its sovereignty by selecting its representatives. A distinctive characteristic of electoral institutions during the 19th and 20th centuries, particularly within the context of constitutionalism, was the concept of the "census vote", which was based on criteria such as wealth and intellectual capacity. While this approach deviated from the notion that every citizen possesses an equal share of national sovereignty, as advocated by Rousseau, it restricted suffrage to those individuals capable of

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demonstrating a conscious (intellectual) and/or economical engagement with political affairs.

Wealth played a pivotal role as the primary criterion for determining electoral eligibility, reflecting ideas akin to John Locke's theory of inequality stemming from disparities in the right to labour exercise [1]. In principle, all individuals were born with equal potential and entitlements, but the complexities of real-world circumstances led to disparities. Labor, in this context, emerged as a pivotal determinant. Furthermore, intellectual capacity, as evidenced by one's occupation, served as an additional factor of differentiation [2], granting access to the field of political expression. This prevailing situation can be attributed to the fact that democracy was not initially integrated into the deep substance of constitutionalism, despite constitutionalism's foundation on the principle of popular sovereignty. Logically, one might have expected direct, equal, and universal suffrage as a natural consequence. However, in comparison to the fight for individual human freedoms, political rights garnered significantly less attention. They were not given a central role in the specific constitutional measures designed to constrain state power. The primacy of individual freedom in relation to the framework of political rights took precedence over the equality of individuals in the expression of their political interests [3]. Negative freedom overshadowed positive freedom; notions such as personal inviolability, protection of one's residence and property, the presumption of innocence, the principle of legality in criminal matters (*nullum crimen sine lege*), the requirement of lawful judgment (*nullum iudicium sine lege*), the prohibition of *ex post facto* laws, freedom of conscience, freedom of expression, and similar rights held greater significance.

The deficiency in the ability of individuals to participate in shaping the political landscape was offset by a strong emphasis on curbing state abuses and upholding constitutional limits imposed on those wielding power. The notion that all citizens could engage in the expression of their political preferences through the election of delegates or political groups held relatively less importance. This was because these representatives were primarily tasked with formulating public policies that aligned with the principle of popular sovereignty. Consequently, the focus was on the obligation of those in governance not to enact or enforce measures that infringed upon the freedom of the people or the nation, which stemmed from the social contract. In the sphere of legislation, all participants, including the monarch, were constrained in their actions by the overarching principle of representing the entire nation. Individual or particular interests were mediated through the lens of the general will, underlining the collective interest of the populace.

During the initial stages of the development of modern liberal constitutionalism, there was a notable debate surrounding the extent of positive (legal) intervention by the state. In the latter part of the 19th century, a significant shift occurred as social

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and socio-political rights began to be recognized as essential components for ensuring the full autonomy of the individual vis-à-vis the state. During this period, the state's role evolved beyond merely refraining from infringing upon an individual's pre-existing natural rights. Instead, it took on the responsibility of actively formulating new rights and freedoms that were in harmony with the principles of equality within the constitutional society. This marked the emergence of leftist (social) doctrines within the realm of constitutionalism. These doctrines not only emphasized the concept of equal entitlement to certain civil rights and liberties but also advocated for state intervention to guarantee the exercise of these rights. For instance, the notion of work transformed from being exclusively viewed as a freedom to being recognized as a right. Consequently, the state assumed the duty of addressing and rectifying social inequalities by actively intervening to balance the scales.

2. Rights and freedoms. The exercise of political rights, between national culture and legal transplant

The Romanian Constitution of 1866 exhibited a clear influence from the Belgian Constitution of 1831, not only in terms of state organization but also in delineating the rights and freedoms of citizens. However, it is important to note that these borrowed provisions were nuanced and adapted to reflect the distinct cultural context of Romania, as evidenced by the ethnic perspective highlighted in Article 7. This nuanced adaptation suggests that the constitutional framework, though rooted in borrowed liberal principles, underwent modifications aligning it with the specificities of Romanian culture.

The constitutional framework transplanted from the Belgian model, which itself drew from French constitutionalism, introduced key elements such as the principle of the separation of powers within the state. Moreover, the constitutional text underscored the safeguarding of natural human rights and freedoms, reflecting a commitment to liberal ideals. The incorporation of such principles in the Romanian Constitution [4] (RC) underscores a deliberate effort to align with broader European constitutional traditions.

Article 31 of the Romanian Constitution is particularly noteworthy, encapsulating the fundamental principle that the exercise of sovereignty originates from national sovereignty. Article 38 of the Constitution articulated that the deputies and senators represented the nation, not merely the specific regions or localities that appointed them. In the case of the monarch, there was no explicit declaration that they represented the nation. However, Article 82 assigned constitutional powers to the monarch. Additionally, considering Article 31, it can be inferred that the monarch also represented the nation. Nonetheless, it's worth noting that during the mid-19th

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century, the sovereignty of the monarch remained a significant aspect of constitutional arrangements in liberal states. The exercise of political power was still influenced by monarchical principles. The monarch's sovereignty derived legitimacy from national sovereignty, leading to a co-sovereignty arrangement [5]. Consequently, the monarch's authority could not entirely overshadow that of the People. This was essentially a recognition of co-sovereignty. Hence, the push to strengthen parliamentary power, composed of direct representatives of the nation, relative to that of the monarch. This strengthening of the National Representation aimed to create a balance between these powers, mirroring the political authority of the people/nation. In this context, the principle of the separation of powers within the state also necessitated equilibrium, effectively curbing the monarch's power. The careful balancing of the monarch's sovereignty contributed to an increase in the People's power and consequently accentuated the parliamentary power. This shift conferred greater legitimacy upon the parliament compared to the monarch, who lacked the representative character derived from an electoral process.

The process of recruiting representatives placed less emphasis on who would participate, despite the liberal constitutionalism's advocacy for the right to equality. Equality in vocation served as a starting point, leading to a distinction between passive and active citizens [6]. The active citizen, by better embodying, for instance, the freedom to work, stood apart from the passive citizen, who, while having an equal vocation, did not fully realize it. Consequently, only major taxpayers were granted the right to delegate a portion of the nation's political power on behalf of all. During the period of 1800-1822, the concept of people's sovereignty was absent from the organic and formal structure of the Romanian constitutionalism. The determined period still underlined monarchical sovereignty, prioritized class privileges and underscored the central role of the boyars in all social, economic, and political affairs. In the year 1822, the seeds of democratic principles began to emerge within the framework of the social contract theory. During this time, there was a gradual shift in how state organs were perceived, with a growing recognition that they should represent the nation to some extent. A notable example of this shift was seen in the "Constituția Cărvunarilor"[Constitution of Cărvunarilor] in 1822. Although this "constitution" (lato sensu) emphasized a return to traditional organization in Article 19 [7], it also aimed to connect its demands with the will of the People, referred to as "norodul", albeit in a somewhat symbolic or fictional manner.

Moving forward to 1848, Romanian constitutionalism underwent significant changes influenced by the French revolutionary sphere. During this period, the principles of representative government made their way into Romanian political thought, albeit in somewhat inconsistent forms. Concepts such as universal suffrage, equal suffrage, and direct suffrage were considered [8], with limitations primarily based on age requirements. Additionally, various forms of suffrage based on factors

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such as gender [9], wealth, and capacity [10] were introduced during this transformative period.

The year 1857 marked a pivotal moment in Romanian constitutionalism, particularly in the discussions held within ad-hoc assemblies. These debates centred around the relationship between the principle of national sovereignty and representative government. The assembly's discussions resulted, presumably, in the proposal of a monist parliamentary system, reflecting their strong interest in strengthening the power of a unicameral parliament. This parliament was seen as the first representative political body of the nation, possessing the highest legitimacy and the capacity to represent the general interests of society in shaping public policies [11]. In alignment with the prevailing liberal thinking of the era, a distinction was made between active and passive citizens.

Regrettably, the progress made during the ad-hoc assemblies was overshadowed by the political developments that followed. The Convention of Paris [12] imposed a political system with authoritarian characteristics, diverging from the parliamentary system based on representativeness envisioned by the ad-hoc assemblies.

The Draft Constitution of the Central Commission from Focșani [13] (DCCCF, hereinafter), from 1859, unlike the admired Belgian model promoted by M. Kogălniceanu at the time, proposed an ethnic approach to the sphere of political rights. Religion played a crucial role in the exercise of political rights. The project only recognized the political eligibility of Romanian citizens of Christian faith, and naturalization could not be granted to non-Christians.

Article 10 DCCCF: (...) Only the greatest naturalization puts the foreigner in a line with the Romanian to be able to enjoy all political rights, as well as the right to possess estates. Naturalization should only be given to foreigners of the Christian religion. [My translation from Romanian]

The intention was to remove Jews from political life, thus introducing religion into the Romanian national spirit, forming the Romanian national ethos. Religion became a part of Romanian culture (both politically and legally), and as a result, the Orthodox Church was granted the status of the state church. Religious affiliation transformed into the primary element of Romanian constitutional identity.

Article 19 DCCCF: The Orthodox religion of the East is the religion of the Romanian state (...) [My translation from Romanian]

In 1866, religion also played a significant role in uniting the Romanian national spirit. A foreign prince was summoned to rule under the Orthodox faith. At the Constituent Assembly, at the end of the session on June 26, 1866, it was enthusiastically announced that:

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His Highness desires that the children who will inherit the Throne grow up in our religion (prolonged applause). Simultaneously, his Highness wants this provision to be included in the Constitution [14]. [My translation from Romanian]

Article 82 of the 1866 Constitution (RC, hereinafter) established this constitutional rule regarding the inheritance of the princely throne.

Article 82 RC: The constitutional powers of the Lord are hereditary (...) The descendents of His Majesty will be raised in the Orthodox religion of the East. [My translation from Romanian]

It is interesting to note that the Council of State Project [15] did not condition the exercise of political rights on Christian religion (Article 6), even though it declared in Article 16 that the Eastern Orthodox religion was the state religion of Romania. In the deliberations of the Council of State, the Eastern Orthodox religion was not directly linked to the sphere of political rights. On the other hand, the framers of the constitution, while showing even greater fidelity to the Belgian constitutional text, chose to place a political emphasis on the Christian confession of Romanian citizens. Similar to 1859, these regulations were primarily directed towards Jews (Articles 7 and 8 of the Constitution).

It was not by chance that only the legislative power, identified with the parliament, had the authority to grant citizenship (a consequence of directly adopting Article 5 of the Belgian Constitution). Due to its increased legitimacy stemming from a direct electoral mandate, the Parliament was the entity that expressed the fundamental nature of the Romanian citizen - the Orthodox religion. Therefore, in 1866, religion served as the basis for political rights, even though Article 21 of the Romanian Constitution stated that freedom of conscience is absolute.

Before 1866, the Developing Statute of the Paris Convention [16] (1864), like the Paris Convention of 1858, did not limit the exercise of political rights based on religious affiliation. The electoral law drafted by A.I. Cuza led to the expansion of the right to vote. Not only that, but it also even contributed to the improvement of the legal status of Jews [17]. In December 1863, on New Year's Day, A.I. Cuza announced to the Jewish delegation:

In 1864 the Jews will enjoy many rights. Even before we received a request for this purpose, we had already decided on gradual emancipation, seeking to gradually grant civil and political rights equal to those of other classes. I wanted to give you everything, I couldn't. You will receive gradual emancipation. However, wherever I was, I loved you and I never made any religious distinction [18]. [My translation from Romanian]

Indeed, the electoral reform of 1864 did not emphasize religious criteria. However, in 1866, religious ethnicity became a central element in shaping the political identity of the unified and national Romanian state. Religious ethnicity and the historicization of the ethnos provided legitimacy to the political struggle [19]. To

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defend and strengthen the Romanian community, a negative image of the non-Christian foreigner, the "enemy", was constructed or perpetuated. As a result, political battles were fought for the recognition of a nation based on collective solidarity, reminiscent of ancient community bonds among peasant communities, which could form an undifferentiated collective entity.

These aspects were quite evident in the debates of the Constituent Assembly, where positive discourses about the traditional solidarity of the Christian Romanian people had the effect of politicizing the spiritual history of the Romanians. The political missionary spirit that emerged in 1848 in Wallachia was also utilized to shape the constitutional moment of 1866. The strengthening of the spiritual (national) identity of the Romanian state was achieved through religious differentiations and through the lens of xenophobic and anti-Semitic cultural reflexes. Religion formed the basis for political dialogue with society. Thus, the process of asserting the Romanian spirit as a nation-ethnicity unfolded concurrently with the formation of the modern state. The cultural community had to be conceived as a political community that would support its own unified and independent state. The construction of the political demos was achieved by appealing to ethnicity and historicism [20], with the idea of creating a supportive relationship between the individual and the state - citizenship. The latter was meant to reflect collective sovereignty, and the collective was united by ethnicity and the religious factor.

This Constitution can only proceed from the initiative and from the heart of the nation's sovereignty, and the head of the State is called only to accept it or not to accept it; because the Assembly does not work on this Constitution in the name of God, but in the name of the Romanian people. Instead of title I, about territory, we found a way to put the title: about religion [21]. (T. Ladeț, in the meeting of June 17, 1866) [My translation from Romanian]

Title I remained the one referring to the territory of Romania, but the speeches within the Constituent Assembly on the topic of religion maintain their eloquence for the way in which "political actions" were complemented by "cultural actions", based on religion.

(...) I support that the first article of the Constitution deals with religion; because this institution was cruelly hit by the May 2 regime, and today we must give a guarantee to the country that its religious traditions will not be attacked in any way. In our Constitution, I believe that this important point would not be better understood than when we recall that the primordial institutions of our State were so closely linked with religious institutions, as the basis of political rights in this country was religion itself; (...) Today, however, when we invoke not only individual freedom but also the freedom of dogmas, I believe that for all the inhabitants of the country

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it is an imperative duty to protect the Romanian State's ancestral character [22]. (N. Ionescu, in the meeting of June 20, 1866) [My translation from Romanian]

The electoral law of 1864, since it did not base political rights on religion, was considered by the constituent assembly to be contrary to the Romanian national spirit. Romanian national culture was closely tied to the Orthodox religion. This notion was reinforced in Article 21 of the Constitution, but paradoxically, immediately after proclaiming in the first paragraph of the same article that freedom of conscience is absolute. Article 21 was intended to be included in Title I of the fundamental law, which was about religion. Ultimately, as the importance of territory for the political identity of the Romanian nation was also discussed, Title I was condensed to focus solely on the characteristics of the territory. Regarding Article 2, which highlighted the inalienable nature of Romanian territory, it was noted that:

Gentlemen, this article is not an invention of ours, because today especially such inventions are hard to come by, we limit ourselves to taking only eclectically from what is best in more civilized nations. So, I think I will give an insight into what this article required. Article 2, first paragraph, says: "the Romanian territory is inalienable". From this it is understood that a sovereign cannot by treaty or convention alienate a part of the territory without doing so with the will of the nation; in other words, any convention made by the sovereign for this nation with another nation, must be with the will of the nation, so that it is binding for it [23]. (A. Pascal, in the meeting of June 20, 1866). [My translation from Romanian]

Although we are still dealing with a product of mimicry, the territory has been rightfully associated with national sovereignty, the expression of political power within a specific sphere of influence that does not tolerate interference from other national sovereignties. By blending the new mental profiles of the era with the traditional Romanian ones, the distinction between natives and foreigners has been emphasized. This also explains Article 3 of the Constitution, claiming that the territory of Romania cannot be colonized with foreign populations.

Romanian culture, aside from its spiritual or religious aspects, has also been marked by a certain level of distrust or animosity towards foreigners, and this sentiment needed to be clearly distinguished. The connection to historical traditions has both provided a foundation and validation for the Romanian nation within the same religious context. However, the shifting balance between historical legacies and contemporary Western influences has not only contributed to the formation of a national identity but has also paradoxically created a sense of identity crisis. This may be attributed, most likely, to the necessity and urgency of modernizing the state. Nevertheless, when it comes to establishing the rights and freedoms of Romanian citizens, it has become evident that culture plays a crucial role in shaping the realistic framework for these rights and liberties.

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Gentlemen, it is very easy and very comfortable to talk only about the freedoms of man, about natural, imprescriptible freedoms, and other beautiful and pompous things, it is easy, but it is more difficult for someone to think about the nature of those freedoms, to distinguish between those freedoms and to see according to culture, according to the advancement of society, what freedoms can be given, to see for example in our country what freedoms are those that can be enjoyed in practice and not only on paper; for according to each country there is also freedom: there is French freedom, Italian freedom, English, etc., but there is also the freedom of the Mormons; but I never want this one for my country (...) because it is incompatible with our country (...) gentlemen, don't believe much in written things, believe in things that are in the hearts of the people and which, if we write them into laws, let's put them into practice once and for all [24]. (G. Știrbei, in the meeting of June 20, 1866) [My translation from Romanian]

Jews and other perceived "enemies" of the Christian faith were unable to fully enjoy the concept of Romanian freedom, which was primarily centered around Orthodoxy. It's noteworthy that G. Știrbei placed importance on rights and freedoms that could genuinely benefit Romanian citizens. What's crucial to understand is that this wasn't an attempt at adaptation or any form of constitutional or social engineering. Instead, it was a campaign to incorporate Romanian freedom into the Constitution. What kind of principles and values could have been enshrined in this? Could Romanian traditions have contributed rights and freedoms that align with the principles of representative government? This seems improbable. However, the sudden introduction of liberal forms could have been seen as a potential disruptor in the receiving context.

Do you want to put in the Constitution unlimited freedoms with which we do not know where we will come to be? [25] (G. Știrbei, in the meeting of June 20, 1866) [My translation from Romanian]

During the meeting on June 21, 1866, a discussion centered around the "Jewish issue" took place. There were differing opinions, with some advocating for the emancipation of Jews and others opposing it. Ultimately, those who argued for safeguarding the Romanian national identity from what they perceived as incompatible foreign Jewish elements prevailed [26].

It's worth noting that Romanians often defined themselves in relation to foreigners, driven by a range of fears and complexes. Surprisingly, these differences led to an alignment with the Belgian model. Despite the fact that the Romanian sense of national identity was shaped through resistance to foreign influences, the nation ended up adopting foreign institutional forms.

(...) the nation wants to get out of this hangover and see itself constituted. Maybe I too would have wanted more freedoms to be included in this Constitution, more

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guarantees to be taken, but the biggest guarantee is to give us a base and to be able to show ourselves constituted in the face of foreigners, to make them perish, both in the spirit of those outside, as well as in those inside who still want this state of affairs, let any hope perish [27]. (In the meeting of June 20, 1866) [My translation from Romanian]

The limitation of political rights in Romania was based on ethnic criteria and this aspect has been a defining characteristic of Romanian constitutionalism since 1866. This wasn't a result of directly adopting the Belgian liberal model, but rather a reflection of looking back at Romanian traditions, often influenced by religious factors, which introduced certain anti-liberal elements into the constitutional framework. Nevertheless, the 1866 Constitution faithfully incorporated a comprehensive catalogue of rights and freedoms for citizens, thus formally liberalizing the status of Romanian citizens. The primary focus of this constitution was on negative liberty and the recognition of natural (inalienable) human rights, which implied that the state should refrain from interfering in these rights.

Within Title II, titled "Rights of Romanians," various crucial rights were established, such as the inviolability of an individual's person (Article 13), the inviolability of one's domicile (Article 15), personal security within criminal matters (Articles 16, 17, 18), the sacredness of property (Article 19), freedom of conscience (Articles 5, 21), freedom of expression (Articles 5, 24), freedom of movement, freedom of assembly, and the right to associate (Articles 26, 27). Additionally, some positive rights were also recognized, including the right to education (framed as a form of freedom; Article 23) and certain forms of social assistance (Article 28). The purpose of transplanting these rights and freedoms was to create a distinctive profile for the free Romanian citizen and, simultaneously, to nurture a sense of citizenship.

It is not enough to tell Romanians that they have the freedom of the press and other freedoms, but they must learn to see in these freedoms their natural and inalienable rights, which no one can take away, which no law can restrict, but only to regulate their exercise [28]. (R. Ionescu, in the meeting of June 20, 1866) [My translation from Romanian]

It's essential to understand that the foundation of these rights and freedoms rested on the concept of property [29], which was seen as an embodiment of individual freedom and the principles of liberal individualism. This perspective can be likened to John Locke's contractualist theory, where a citizen's true freedom was measured by his ability to express his calling through labour. Property, in this context, was viewed as the natural outcome of one's labour, and labour itself was regarded not as a right but as a personal liberty. It was only later that the state was called upon to address social inequalities stemming from wealth accumulation.

In the mid-19th century, property ownership wasn't just a part of social life but also a fundamental aspect of political participation. Property owners were those who

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could effectively contribute to society through their intellect or their responsible approach to work. They were individuals capable of transforming their labour into property and wealth, granting them the right to play a role in the public interest, both at the national level and in shaping the organization of society through representation. Hence, the idea of a voting system based on property ownership, often referred to as "census suffrage", seemed like a natural solution within the framework of liberal constitutionalism. The fact that only a portion of the population had the right to vote didn't necessarily contradict the principles of freedom or equality, as each individual, at least in theory, had an equal potential for wealth accumulation. In essence, equality among citizens, as a legal concept within liberal ideology, aimed at ensuring consistent outcomes for similar situations rather than attempting to create artificial equality.

The electoral system of 1866 was fundamentally rooted in the liberal principles of the era. The introduction of a property-based voting qualification in both the Fundamental Law and the Electoral Law of 1866 reflected, we may say, a liberal stance on political rights (extrinsically). Regrettably, the census threshold set was exceedingly high in relation to the actual wealth of the Romanian populace. This is an intriguing aspect to consider, given that during the debates, the framers of the constitution were keen on clarifying who could exercise political rights. They excluded individuals of non-Christian faiths (like Jews) and placed significant emphasis on the religious affiliation of Romanian citizens. They essentially made religion a cornerstone of political rights, only to later greatly restrict the electoral participation of "Christian" Romanian citizens.

3. The electoral system established by the Constitution and the electoral law from 1866

After the revolutionary moment of 1848, which envisioned universal, equal, and direct suffrage, and the constitutional debates of 1857 that concluded with a monist parliamentary system, and the electoral law of 1864 that expanded the scope of the electorate, the Constitution of 1866 was anticipated as a culmination of democratic aspirations. The introduction, or rather confirmation, of the census vote did not negate the democratic characteristics of the electoral framework. Unfortunately, the very high census restricted the realization of these expectations. The interests of the privileged classes received heightened attention. The Constitution of 1866 represented a step back from the Developing Statute of the Paris Convention concerning the electoral body.

The Developing Statute of the Paris Convention introduced a bicameral system comprising the Senate and the Chamber of Deputies, with only deputies being elected. The Senate consisted of members by right and those appointed by the ruler.

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To form the Chamber of Deputies, the electorate was divided into two colleges, each with two categories of voters, based on the paid census. These colleges elected two categories of deputies representing cities and counties. Each college consisted of primary and direct voters. A primary voter was someone who paid a tax of 80 lei in cities with up to 15,000 inhabitants or 110 lei in larger cities. Peasants paying a tax of 48 lei were included in this electoral body. One hundred primary voters appointed a delegate to express their choice publicly, making their vote indirect. Direct voters were those contributing at least four florins (1200 francs), were at least 25 years old, and could read and write. Pensioners had to receive a minimum pension of 2000 lei per year. Their vote was direct and secret. Therefore, the first chamber, the Elective Assembly (Chamber of Deputies), was composed of members elected based on a property census that brought a significant number of wealthy bourgeoisie and prosperous peasants into the circle of voters.

In 1866, despite the existence of a catalogue of rights that included broad individual and collective freedoms intended to ensure a degree of individual autonomy and the strengthening of political and professional associations, significant electoral restrictions were introduced. In addition to religious issues, there were electoral constraints placed on Christian (Romanian) citizens. The Chamber of Deputies and the Senate became the domain of a relatively educated and wealthy minority. Although, unlike the Developing Statute of the Paris Convention and the Electoral Law of 1864, which were criticized by the 1866 constitutional framers in discussions about the exercise of political rights, the Senate was supposed to be composed of elected members, with exceptions as provided in Article 76 of the Constitution, there was a regression compared to previous electoral provisions [30].

According to the provisions of Articles 58-63 of the Constitution (1866), for the election of deputies, the electoral body was divided into four constituencies in each county. In the first constituency, those with an annual land income of at least 300 gold coins were eligible to vote (Article 59 of the Constitution). In the second constituency, those with an income ranging from 100 to 300 gold coins were eligible (Article 60 of the Constitution). The third constituency was for cities and included merchants and industrialists who paid an annual tax of 80 lei (Article 61 of the Constitution). Professionals, retired officers, and state pensioners were exempt from property requirements in this constituency. These three constituencies directly elected deputies (Article 62 of the Constitution). The fourth constituency included all those who paid any amount of tax to the state and those who did not fall into any of the categories mentioned in Articles 59-61 of the Constitution. In this constituency, voting was indirect. Fifty registered voters in each county would appoint a delegate, who would then choose the deputy (Article 63 of the Constitution). The term of office for deputies was 4 years.

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The regression compared to the electoral system of 1864 is highlighted by two main factors. Firstly, the number of voters called to the polls decreased significantly. During the reign of A.I. Cuza, the ratio was approximately one voter for every 8-10 inhabitants, but under the 1866 Constitution, this ratio dropped to one voter for every 83 inhabitants [31]. Secondly, the regression was even more pronounced in the fact that in 1866, unlike the Statute (1864), all indirect voters formed a single college (IV). This resulted in a situation where 37,070 primary voters elected only 30 deputies, which accounted for just a little over 1/5 of the total number of deputies. In contrast, the remaining 23,584 voters elected 115 deputies, representing 4/5 of the total Chamber of Deputies [32].

Regarding the election of senators, Articles 68-71 of the Constitution established two separate colleges. The first college consisted of rural property owners in each county, with an income of at least 300 galbeni. The second college was made up of property owners in the capital cities, with a similar income requirement. These two colleges voted separately and each selected one senator per county. In cities where there were not enough voters to form the second college (at least 100 voters), additional members were drawn from property owners in the county with incomes ranging from 300 to 100 galbeni.

Preference was given to those with lower incomes and urban property owners in case of a tie among those eligible for inclusion in the second college. If there were still too many eligible individuals, a lottery system was used to determine the final selection. Additionally, the universities in Bucharest and Iasi had the right to appoint one representative each to the Senate, and there were also ex officio members in the Senate, including the heir to the throne, metropolitans, and diocesan bishops.

Unlike the voters for the Chamber of Deputies, those for the Senate were separated based on their rural or urban character. The first Senate constituency had a predominantly landowning character [33]. Senators had a mandate of 8 years, which aimed to shield the Senate from direct control by voters and strengthen its role as a "weighty body [34]". However, in the middle of each legislature, half of the Senate members would lose their mandate through a random draw (Article 78 of the Constitution), and new senators would be elected in their place, following the same property-based voting system.

The voting eligibility of each citizen depended on meeting specific conditions outlined in the electoral law: Romanian citizenship, being at least 21 years old, and meeting the property requirements. Those incapable or unworthy of voting included individuals subject to foreign protection, servant contract holders, beggars, those under judicial interdiction, those in bankruptcy, and those deprived of political and civil rights (Article 19 and Article 20). Voting was conducted in secret (Article 53).

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Article 66 of the Constitution regulated the eligibility criteria for the Chamber of Deputies. To be eligible for the Chamber of Deputies, a citizen had to be Romanian by birth or have acquired large property ownership, enjoy civil and political rights, be at least 25 years old, and have a domicile in Romania. According to Article 74 of the Constitution, to be eligible for the Senate, a citizen had to be Romanian by birth or naturalization, enjoy civil and political rights, be at least 40 years old, reside in Romania, and have an income of at least 800 galbens of any kind. Several categories of state dignitaries were exempt from this property requirement (Article 75 of the Constitution). Incompatibilities were regulated in Title IV of the electoral law, Articles 26-29.

The electoral body and voter turnout were far from reflecting the entire nation. In 1883, C.G. Dissescu concluded that the electoral system of 1866 imposed a higher property requirement than that in England. English voters from the first constituency could only vote in Romania in the fourth constituency [35]. This aspect symbolizes the purpose of the 1866 electoral institution. In 1912, G. Tătărescu (1866-1957) expressed the fact that:

This system not only reinforces the existing natural barriers between classes, not only politically separates those who were separated from an economic point of view but makes the very principle of class representation unjust and inequitable, by the way it applies it [36]. [My translation from Romanian]

During the constitutional debates of 1866, the majority of liberals supported universal suffrage, believing that civil and political rights and freedoms were absolute and inherent. Conservatives, on the other hand, emphasized the fruits of labour, the freedom to work, and the freedom to be different through wealth or ability. This was in contrast to liberal philosophy, which leaned towards the abstract concept of citizens having effective political rights. However, it is understandable why conservatives took this position, as a high property ownership threshold indirectly preserved the old privileges enjoyed by the large landowners. In such electoral circumstances, conservatives were the ones who benefited. It is worth noting how the conservative perspective was described through liberal lenses by N. Blaremburg (a conservative and a member of the Constituent Assembly) in his work "Egalitate, suveranitate și sufragiu" [Equality, Sovereignty, and Suffrage], published in 1866. The conservative based his ideas on natural human rights and made numerous references to the capacity derived from property [37].

(...) the masses being more often ignored and always poor, their first concern, their first thought will always be to satisfy their material and immediate interests [38]. [My translation from Romanian]

C.G. Dissescu highlighted that the introduction of universal suffrage in 1866, on the surface, recognized the right of any Romanian (Christian) who paid a minimal tax to the state to vote. However, a drawback emerged due to the way voters were

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distributed and isolated in electoral constituencies. This led to the characterization of our electoral system as "universally restrictive" [39].

The electoral system of 1866, to some extent, deviated from the liberal principles outlined in the Constitution. The census imposed was disproportionately high in comparison to the realities of Romanian society. The limited number of eligible voters and the absence of regulations to prevent interference from both central and local authorities in the electoral process created opportunities for fraud [40]. The introduction of property-based voting in 1866 reflected not just the interests of large landowners but also the political immaturity of those involved in reshaping the Romanian national state. What was initially intended as a tool for establishing a democratic regime ultimately proved to be another transitional mechanism toward achieving a more politically equitable society [41].

As those who were disadvantaged by the 1866 electoral law, the liberals consistently sought its revision. During the electoral campaign of May 1876, they presented a political program titled "Romanian Democratic Union," signed by C.A. Rosetti (1816-1885) and I.C. Brătianu (1821-1891). Through this program, they advocated for a constitutional revision to rectify the electoral law. Partial success in achieving this objective was realized in 1884.

According to G. Tătărescu [42], the constituents of 1866 exacerbated the division between social classes, which ultimately contradicted the principle that all powers derive from the nation. In his perspective, the reality demonstrated that minority groups played a significant role in shaping the governance of the country [43]. This system even refined the class-based regime further by introducing subcategories within the same class, with each subcategory carrying equal political weight to its economic influence [44].

The 1866 electoral system incentivized the "estrangement" of votes through corrupt practices and pressure exerted on voters, allowing the administration to evolve into a governmental electoral apparatus [45]. Without necessarily being fully aware of the implications of the political system established by the 1866 fundamental law, G. Tătărescu managed to identify certain distinct features of parliamentary governance. Parliament is a fiction (...) because the elections from which it was born are, in turn, fictions and cannot count. The Parliament must therefore be the expression of the will of the country, so that the government can be the expression of the will of the Parliament. The reorganization of the electoral regime here must begin [46]. [My translation from Romanian]

In a dualist parliamentary system where the monarch's sovereignty still held significance, it was of utmost importance that elections be conducted freely and result in the formation of a robust parliamentary majority capable of supporting both its own political agenda and that of the government emerging from its ranks. Apart

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from the ability of those involved in the legislative process to navigate the intricacies of dualist parliamentarism, the electoral system used to shape parliamentary majorities played a pivotal role. The potential for manipulation and electoral fraud posed a serious threat to the stability of the state apparatus. It's worth noting that such a situation could arise not only due to the electoral system in practice but also due to the (in)abilities of the political parties participating in the electoral competition and the political intentions of the monarch, who still wielded significant powers and prerogatives.

N. Blaremborg contended that the limited number of voters merely reflected the capacities of Romanian citizens. Furthermore, he argued that those few individuals called upon to exercise their political will, a right they acquired through their ability to participate in suffrage, possessed the capability to resist electoral manipulations and pressures [47]. In his view, universal suffrage represented a...

...ideal, the point of perfection towards which all our efforts must strive, although its realization is a utopia (...) We all have a vocation to vote, but only those who have reached that degree are allowed to exercise this right of intelligence and non-attachment that alone can make us a good and honest choice. We are not, however, absolutely opposed to crowds being represented so that their interests can have a guiding body; but we will never allow these elements to overwhelm so as to darken the intelligence of a nation [48]. [My translation from Romanian]

This conservative leader's vision aligns with the electoral system of 1866, where millions of peasants were unable to participate in the political process. These individuals were considered elements that could potentially "diminish the intelligence of the nation". N. Blaremborg, despite his conservative interests, believed that by educating citizens and promoting a free press, a political consciousness could be cultivated [49]. Indeed, N. Blaremborg's ideas had theoretical foundations. At that time, it was considered acceptable for political rights not to precede economic development. Unfortunately, in practice, it became evident that partisan interests took precedence. For instance, the conservatives, led by G.M. Sturdza and M.C. Epureanu, initiated the Iasi Petition in 1871. This petition proposed an increase in property qualifications for all constituencies, granting the ruler the authority to directly appoint 16 senators, and reinforcing the role of large landowners in rural communal councils, among other measures [50].

It is interesting to note that after the constitutional transplant of 1866, conservatives shifted towards promoting the theory of organic development by preserving the country's traditional institutions rather than overthrowing them and importing foreign ones. This is despite the fact that they themselves, during the constitutional debates, encouraged the faithful adoption of modern forms from Western Europe. The conservatives embraced the liberal vision of political rights only when it was convenient for them, given the historical context of Romanian politics. When party

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interests called for changes in legal regulations or within Romanian society, they did not hesitate to request and provide examples from the West, even though this contradicted their so-called conservative spirit. An emblematic example of this is the conservatives' promotion of bicameralism, even though the country's traditions favored unicameralism. Furthermore, the political regime of A.I. Cuza was criticized precisely because of the existence of the Senate, which they referred to as the "Corpul Ponderator."

Following the adoption of the 1866 Constitution and the electoral law, Romanian political life gained a distinct level of intensity. Electoral processes became more frequent due to the practice of appointing new governments, which typically involved dissolving the legislative chambers and holding fresh elections. With King Carol I playing a significant role in shaping the political landscape, governments started to secure the necessary parliamentary majorities through the post-dissolution elections. The parliament, outside the usual parliamentary framework, began to emanate from the government's agenda, aligning with the king's will. Despite the small number of voters, it did not, as N. Blaremburg had argued in theory, guarantee immunity against corruption and electoral pressures. On the contrary, it made electoral manipulation and control more accessible and rapid, thus serving the political interests of the king or the government.

5. Conclusions

In 1866, religion played an instrumental role in forging a unified Romanian national identity. The appointment of a foreign prince who adhered to the Orthodox faith underscored the profound significance of religion in shaping Romania's destiny, a point explicitly enshrined in Article 82 of the Constitution.

However, the Constitution of 1866 had its share of shortcomings. It employed ethnic criteria to curtail political rights, effectively excluding Jews and other non-Christians from full participation in the nation's affairs. While on the surface, the electoral system introduced a property-based voting qualification, ostensibly aligning with liberal principles, it, in reality, created insurmountable barriers to meaningful political engagement.

The Constitution walked a precarious tightrope between embracing borrowed liberal ideals and preserving the unique cultural context of Romania. It gave prominence to religion and property ownership as pivotal factors in determining political rights and individual identity, all while attempting to conform to broader European constitutional norms. Regrettably, the electoral system it established – in conjunction with the Electoral Law – fell far short of democratic ideals, perpetuating social and political inequalities.

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The ramifications of these constitutional choices reverberated throughout Romania's history [51], significantly influencing the country's political landscape, governance, and representation.

Acknowledgments

The authors thank the anonymous reviewers and editor for their valuable contribution.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Author Contributions

The entire article was written by Răzvan Cosmin Roghină.

Disclosure Statement

The author has not any competing financial, professional, or personal interests from other parties.

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22. https://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=37755 (accessed on 12.09.2023).

Notes:

- [1] J. Locke, *Two Treatises of Government*, T. II, Chapter 2, 5.
- [2] Ibidem, Chapter 5, paragraph 35, 50.
- [3] A. Sajó, *Limiting Government, An Introduction to Constitutionalism*, CEU Press, Budapest, 1999, p. 53.
- [4] https://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=37755 (accessed 12.09.2023)
- [5] C. Grewe, H. Ruiz Fabri, *Droits constitutionnels européens*, P.U.F., Paris, 1995, p. 203.
- [6] M. Goldoni, *At the Origins of Constitutional Review: Sieyès' Constitutional Jury and the Taming of Constituent Power*, *Oxford Journal of Legal Studies*, Vol. 32, 2012, p. 213.
- [7] "Norodul, spre a I să ocârmui trebile sale cele din lăuntru în chipul cuviincios, ca să poate folosi cu dreptățile vechilor sale privileghiuri, cere ca să I să întărească și legiuirea aceia a sfatului obștesc ce nu au avut-o pamântul acesta iarăși, din vechime, legiurie după care puterea ocârmuirei și a împlinirii să fie în singura mână a domnilor, iar puterea hotărârei să fie pururea în mâna domnului împreuna cu sfatul obștesc." (The people, in order to manage their internal affairs in a proper manner, so that they can use their ancient privileges with justice, ask that they also strengthen the legislation of the public council, which this earth did not have again, from ancient times. , legislation according to which the power of control and fulfillment should be in the sole hand of the lords, and the power of decision should always be in the hand of the lord together with the public council.) [My translation from Romanian]
- [8] E.g., *Proclamația de la Islaz*. See the text of the Proclamation of Islaz in C. Ionescu, *Dezvoltarea constituțională a României. Acte și documente 1741-1991*, C.H. Beck, Bucharest, 2016, pp. 177-182.

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- [9] In Mihail Kogălniceanu's draft Constitution, universal male suffrage was enshrined for all Romanian citizens aged at least 21 (the influence of the French Constitution from 1848 - art. 26 - is obvious).
- [10] In the anonymous booklet *Ce sunt meseriile?* See, C. Bodea, 1848 la români. O istorie în date și mărturii, Vol. I, Editura Științifică și Enciclopedică, București, 1982, pp. 421-425.
- [11] Stanomir, *Nașterea Constituției. Limbaj și drept până la 1866*, Nemira, Bucharest, 2004, p. 268.
- [12] See the text of the Paris Convention in: C. Ionescu, op. cit., pp. 306-311.
- [13] See the text of DCCCF in: Ibidem, pp. 330-353.
- [14] A. Pencovici, *Desbaterile Adunării constituante de la 1866 asupra constituției și legii electorale din România*, Tipografia Statului, Curtea Șerban Vodă, Bucharest, 1883, p. 240.
- [15] Cristian Ionescu, op.cit., pp. 426-436.
- [16] Ibidem, pp. 311 et. seq.
- [17] D. Berindei, *Evgenii în Principatele Unite (1859-1866)*, in "Românii și Europa în perioadele premodernă și modernă", Editura Enciclopedică, Bucharest, 1997, pp. 231-244.
- [18] B. Segel, *Rumanien und seine Juden*, Berlin, 1918, p. 38, apud C. Iancu, *Evreii din România (1866-1919)*.
- De la excludere la emancipare, Editura Hasefer, Bucharest, 1996, p. 62.
- [19] C. Karnouh, *Romanii. Tipologie și mentalități*, C. Stoean (trad.), Humanitas, Bucharest, 1994, p. 73.
- [20] C. Turliuc, *Naționalismul – sursa a populismului în construcția politică*, in „Populism, demagogie, realism politic”, C. Turliuc, Al. Zub (eds.), *Fundația Academică „A.D. Xenopol”*, Fundația Konrad Adenauer, Iași, 2001, p. 21.
- [21] Pencovici, op. cit., p. 57.
- [22] Ibidem, p. 64.
- [23] Ibidem, p. 71.
- [24] Ibidem, p. 89.
- [25] Ibidem.
- [26] Ibidem, pp. 90-119.
- [27] Ibidem, p. 73.
- [28] Ibidem, p. 81.
- [29] The Constitution of 1866, in the catalog of rights, article 20, established the property acquired by the peasants through the rural law, respectively the compensations guaranteed to the owners by that law. It was a logical consequence of the liberal principles embraced, but, beyond these aspects, it was a strategic measure intended to avoid the uprising of the peasants (the majority of the population of the Romanian state) against the new political-state organization. They were confirmed with that property right, which determined their loyalty to A.I. Cuza, to accept Carol I with the same "faith".
- [30] T. Drăganu, *Începuturile și dezvoltarea regimului parlamentar în România, până la 1916*, Editura Dacia, Cluj-Napoca, 1991, pp. 188-191.
- [31] Ibidem, p. 190.
- [32] Ibidem.
- [33] Ibidem, p. 191.
- [34] Ibidem.

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- [35] C. G. Dissescu, *Chestiunea revizurii electorale*, Bucharest, 1883, p. 12.2.
- [36] G. Tătărescu, *Regimul electoral și parlamentar în România*, ed. a II-a, Editura Pro, Bucharest, 2004, pp. 36-37.
- [37] N. Blaremburg, *Egalitate, suveranitate și sufragiu*, Tipografia Stephan Rassidescu, Bucharest, 1886, passim.
- [38] *Ibidem*, p. 40.
- [39] C.G. Dissescu, *Drept constituțional*, 3rd edition, Editura Librăriei SOCEC & Co, Bucharest, 1915, p. 730.
- [40] K. Hitchins, *Romania. 1866-1947*, Humanitas, Bucharest, 1996, p. 37.
- [41] A. Stan, *Putere politică și democrație în România 1859-1918*, Editura Albatros, Bucharest, 1995, p. 63.
- [42] He made his views known in 1912, the year he joined the National Liberal Party led by I.C. Brătianu.
- [43] G. Tătărescu, *op. cit.*, pp. 37-38.
- [44] *Ibidem*, p. 36.
- [45] *Ibidem*, pp. 39-76.
- [46] *Ibidem*, p. 150.
- [47] N. Blaremburg, *op. cit.*, pp. 69-70.
- [48] *Ibidem*, pp. 72-74.
- [49] *Ibidem*, p. 71.
- [50] T. Maiorescu, *Însemnări zilnice*, vol. I (1855-1880), Editura Sicec&Co, Bucharest, 1937, pp. 49 et. seq.
- [51] R. Roghină, *Cultural and Political Challenges in the Historical Roots of Legal Transplants in Romania. The Paradox of Conservation through Change*, in *Romanian Journal of Comparative Law*, Vol. 13, nr. 2, 2022, pp. 145-227.