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IOANNIS A. CAPODISTRIAS' CONSTITUTIONAL THOUGHT A COMPARATIVE STUDY OF I. A. CAPODISTRIAS' CONSTITUTIONAL PLANS FOR SWITZERLAND AND GREECE

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Ioannis A. Capodistrias' constitutional thought A comparative study of I. A. Capodistrias' constitutional plans for Switzerland and Greece

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Abstract: A cornerstone of I. A. Capodistrias' multi-faceted political action either as a diplomat to consolidate the European political system of neutral state federations (1815-1821) or as a Governor of Greece (1828-1831) was his faith in the constitutional institutions and the defence of human rights. From the perspective of Constitutional Law, this paper investigates the part of Capodistrias' political career relating to the constitutional reorganisation of Switzerland and Greece, to highlight the unprecedented nature of his constitutional thought combining commitment to the democratic and liberal ideas of the Enlightenment with pragmatism. It analyses the fundamental features of Capodistrias' constitutional thinking on (a) the right to constitutional self-determination, (b) constitutional-writing in response to the political, social and economic conditions at that time, and (c) the consideration of the historical *acquis* of a country, its constitutional tradition and the European institutional standards of modernisation while drafting a Constitution.

Keywords: Ioannis Capodistrias, Constitutionalism, Pragmatism, Alte Eidgenossenschaft, Bundesvertrag (1815), Constitution of Troezen (1827), Human Rights.

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1. Introduction

According to I. A. Capodistrias' constitution the establishment of constitutional institutions and safeguarding peoples' right to freely determine their constitutional organisation was a prerequisite for the democratic organisation of a state and the effective protection of human rights within that state. This is borne out by the study of his multi-faceted political achievements in Europe over time. In particular, his contribution to (a) the establishment of the Heph-tanese State (Kyriazis and Oikonomou 2019), (b) the consolidation of Swiss independence and neutrality (Amberg 2015), (c) the establishment of the German Federation (Kyriazis and Oikonomou 2019), (d) the consolidation of the restoration of the French Nation (Petridis 1988) and (e) his political plans for a new order in Europe (Kennedy 1968). This paper aims to illustrate the main features of Capodistrias' constitutional thought, as deduced from the study of (a) his contribution to the drafting of the Constitution of Switzerland (Bundesver-trag 1815) and (b) his design of the constitutional reorganization of Greece on the basis of the democratic and liberal declarations of the Revolutionary Provisions of the Greeks (Epidauros 1822, Astros 1823, Troezen 1827).

Despite the different political, social and economic conditions taking place in Switzerland and Greece at the beginning of the 19th century, the study of Capodistrias' plans concerning the constitutional reorganization of these two countries highlights very clearly the innovation characterising his constitutional thought, which functionally combines adherence to demo-cratic and liberal ideals of the Enlightenment with pragmatism.

2. Capodistrias' contribution to the constitutional reorganization of Switzerland

2.1 The constitutional acquis of Switzerland in 1813

Ioannis Capodistrias' arrival in Switzerland overlaps with the end of the second phase of Switzerland's constitutional history (Mediation 1803-1813). Under the 1803 Act of Media-tion (Mediationsakte) Switzerland was a federation of 19 states (cantons), each of which had its own constitution and specific self-determination rights while the central government had only limited powers – mainly in the area of foreign policy. A characteristic of the constitu-tional texts of these states was uniformity and the fact that they did not take account of the historical, religious and linguistic particularities of each canton (Bonjour 1966: 34; Steiner 1924: 21). This level of constitutionalisation provided by the 1803 Act was largely imposed on Switzerland by Napoleon; following the withdrawal of his troops from Switzerland in 1802 and the preceding shortlived organisation of Switzerland by the 1798 Constitution in line with the French central state model. Napoleon had imposed a federal system on the Swiss by giving cantons back their powers and abolishing central government. However, despite the above institutional changes, between 1803 and 1813 the dependence of Switzerland on France became even greater, as Switzerland was now obliged to contribute 16.000 soldiers to Napoleon's army to participate in the various wars, which resulted in significant fatalities, mainly during the Russian campaign (Amberg 2015: 164).

The beginning of the end of this peculiar constitutional period of the Swiss State took place in 1813 when 130,000 Russian and Austrian troops invaded Switzerland to fight the French troops on the Swiss borders. The Federal Parliament, which was made up of two MPs from each canton but lacked substantial powers, abolished the 1803 Mediation Act (Petridis 1977: 24; Amberg 2015: 164).

The victorious forces, England, Russia, Prussia and Austria, started reorganising Europe by mainly restoring the old order. Among the great powers, Russia showed the most interest in Switzerland. Capodistrias received a mandate from Tsar Alexander I to “save (Switzerland) from French despotism” and assist it “to rediscover itself and participate [...] in the great European restructuring project” (Enepekidis 1972: 42).

2.2 On the economic and social pluralism of Switzerland

Ioannis Capodistrias' constitutional thought had always been marked by pragmatism and faith in democracy which stipulated the need to safeguard the ability of a people to lay its own constitutional foundations. Thus, his priority upon arrival in Switzerland was to (a) consult with all cantons in order to achieve internal peace, (b) study and understand the complex economic and social conditions of that country and (c) study its constitutional history in order to formulate viable operational proposals on the constitutionalisation of the country.

Ioannis Capodistrias arrived in Switzerland as a special envoy and authorized representative of the Russian tsar in November 1813 and stayed there until September 1814. At the time of Capodistrias' arrival, Switzerland was a fragmented country torn apart by political divisions and territorial claims and was practically on the verge of civil war. Realising how critical the situation was, Capodistrias undertook diplomatic initiatives immediately (Bonjour 1966: 24).

Within a short period of time he became an expert in Swiss matters. He visited all the important statesmen and officials, as well as all the cantons, drew up draft decisions and constitutions, engaged in consultations, appeased animosities, sought compromises, with the ultimate goal of establishing a long-term domestic peace based on concession and mutual compromise (Petridis 1988: 83; Verosta 1967: 41).

In addition to his achievements within the country, in the diplomatic field in the formal discussions of the Congress of Vienna and supported by Baron von Stein, Capodistrias defended the unity of the Swiss, the recognition of canton independence and the largest territorial arrangements in favour of that small country. One of the outcomes of his endeavours was the signature, by all participants in the Congress, of the Declaration on the affairs of the Helvetic Confederacy of 20 March 1815, which secured Capodistrias' aspirations for Switzerland (Bonjour 1966: 25). That declaration, all drafts of which had been processed by Capodistrias, finally regulated long-term neutrality and the independence of Switzerland based on the 19 cantons that were the foundation of the Swiss federal system. The first step towards the neutrality of Central Europe, moving it away from warfare and unrest, was then made by the unanimous recognition of the fundamental rules of general international law. 7 August, 1815, he saw the completion of the editing work by the Diet of the Swiss Confederation, which was based on the Memorandum drawn up on 21 April 1814, by Capodistrias and which finally

defined the Federal Constitution of Switzerland of 7 August 1815 (Petridis 1988: 87; Kennedy 1968: 169).

The result of the constitutional plan of Ioannis Capodistrias for Switzerland based on pragmatism and the establishment of constitutional self-determination of a nation was (a) the restoration of civil peace within the country, (b) the guarantee of the federal nature of the Swiss State mainly characterised by political decentralisation through a strengthening of the powers of the states (cantons) vis-à-vis the central government and (c) the international recognition of Switzerland by her Allies. Switzerland in 1815 was certainly very much different from the country that later developed in 1830 and 1848. The federal state was still weak and its existence was at an embryonic stage. However, thanks to I. A. Capodistrias' constitutional design the foundations were already laid, and this facilitated the later development of the federal polity of Switzerland considerably (Bouvier 1984: 19).

2.3 Main features of I. A. Capodistrias' constitutional plan of Switzerland

2.3.1 The federal nature of Switzerland's polity and its institutional guarantees

Starting from the economic and social conditions of the time in the Swiss cantons and taking into account the institutional tradition of Switzerland, and in particular the law of the Swiss Confederation (Alte Eidgenossenschaft), Capodistrias formulated proposals concerning the constitutional reorganisation of Switzerland. He proposed the creation of institutional guarantees to ensure domestic peace and hence sustainability of its polity, which were adopted when the 1815 Constitution (Bundesvertrag) was passed. While drafting his memorandum concerning the Constitution of Switzerland, his primary concern was the consolidation of the country's federal nature. Therefore, according to his plan, the 1815 Constitution (a) provided for the creation of a federation essentially made up of 22 sovereign states loosely linked together as a union, (b) abolished the position of the President and (c) weakened the powers of the central government as it limited them to the management of cases dealing with foreign and defence policy and essentially upgraded the competencies of the cantons (Art. 1 & 8, 10 Bundesvertrag).

In addition to the declaration and consolidation of the federal nature of Switzerland, the 1815 Constitution – according to I. A. Capodistrias' proposals – saw to the provision of sustainability guarantees for the newly founded federal state by enshrining the obligation of solidarity between cantons, both at the economic and defence policy levels. The 1815 Constitution specifically foresaw that each canton was obliged to financially contribute towards defence costs as well as any other public expense of the federal state and each canton's financial contribution reflected its relative wealth (Art. 3 Bundesvertrag). For the economy, following the example of the 1798 Constitution, it is also worth mentioning the consolidation of the free movement of goods, as well as the conclusion of sales and purchases of land between canton citizens, which reinforced financial exchanges between cantons and decisively contributed to their economic interdependence through the operation of a common internal market (Art. 11 Bundesvertrag).

For defence, the 1815 Constitution foresaw that, in case of an emergency situation caused either by external or internal factors, each canton was entitled to request the practical assistance of another canton and the central government to restore internal peace, which was in Capodistrias' mind one of the key aspects that would sustain the Swiss Federal State (Art. 4 Bundesvertrag).

As stated, Capodistrias' aspiration and ultimate goal in the aforementioned provisions of the 1815 Constitution, which introduced a kind of institutional interdependence of the cantons that was crucial for the prosperity of the federal state, was to consolidate the solidarity between the cantons as a primary factor to ensure coherence and, consequently, the sustainability of the newly founded federal state. A corollary of these guarantees of institutional interdependence for the cantons was the constitutional enshrinement of the institution of arbitration to settle disputes between cantons, foreseen by the 1815 Constitution, which had already been a century-long practice of the Swiss Confederation (Alte Eidgenossenschaft). In particular, the 1815 Constitution distinguished between disputes falling under the jurisdiction of the law introduced by the 1815 Constitution and disputes resolved on the basis of customary law of the Swiss Confederation (Alte Eidgenossenschaft); customary law had to be applied by arbitrators. Arbitrators were elected by the litigant cantons specifically for that purpose and had to come from other cantons to guarantee independence of judgment (Art. 5 Bundesvertrag). This constitutional enshrinement of arbitration under the law of the Confederation could in Capodistrias' mind greatly contribute to the consolidation of solidarity between cantons as it was part of the historical tradition of Switzerland and at the same time constituted a clear declaration of its institutional continuity (Bonjour 1966: 241).

2.3.2 The consolidation of the neutrality of Switzerland

According to Capodistrias the question of constitutional reorganisation of Switzerland was closely linked to the issue of consolidation of its neutrality. Specifically, he strongly believed that establishing a constitution guaranteeing Switzerland's neutrality would protect it from any foreign influence, become the basis of its prosperity and enable it to develop political connections with all the European powers. Therefore, Capodistrias initially sought – always in a spirit of moderation and reconciliation – consultation with the representatives of all the Cantons of Switzerland and achieved their active participation in the formulation of its constitution. After stressing the urgent need for rapid reorganisation of the country he then put forward his proposals for a number of specific amendments to the authors of the draft Federal Constitution. These amendments included (a) the integration of the territories that were to be granted to Switzerland, (b) the allocation of these territories among the cantons with large and small populations in order to restore balance and (c) the organisation of the federal government (Oechsli 1898: 15; Petridis: 1977: 219).

In addition to the above proposals, while drafting the federal charter of Switzerland, Capodistrias undertook an initiative of paramount importance for the final consolidation of the neutrality of Switzerland. He contributed to the final and fair achievement of internal peace for the Swiss attained through the promotion and resolution of certain claims by the Canton of Bern, whose participation in the constitutionalisation was historically and geopolitically imperative (Steiner 1924:31).

The outcome of his on-going consultations with the representatives of the cantons involved in the drafting process in the Diet of Zurich was the draft Constitution which (a) provided for the creation of 22 sovereign cantons, (b) abolished the position of the President, (c) limited the number of states that could become the administrative base of the federal state for a maximum period of 2 years (Zürich, Bern and Lucerne), (d) recognized the right of each state to ally itself with non-member states of the Confederation and (f) restricted central government powers in favour of a balanced reinforcement of canton powers (Petridis 1988: 85).

The draft Constitution was the basis of the declaration of the Allies' Commission which recognised the independence of 19 cantons in Switzerland on 10 December 1814 and was subsequently signed on 20 March 1815, by the participants in the Congress of Vienna. That declaration regulating Helvetic affairs established the permanent neutrality and independence of Switzerland based on the 19 cantons that became the foundation of the Swiss federal system. On 27 May 1815, the declaration of 20 March 1815, was accepted by the Swiss Diet. This was the successful culmination of the efforts of the Swiss people and of Capodistrias, as the members of the Steering Committee of the powers undertook the obligation to officially guarantee the neutrality and integrity of Switzerland, as well as its independence from any influence for the sake of overall European interests (Dyroff 1966:143; Papermann 1977: 243).

With reference to the completion of the proceedings concerning the constitutional reorganization of Switzerland Capodistrias wrote the following in a letter to his father on 10 September, 1814:

"The end of that very complicated negotiation cost me great suffering, a lot of travels, documents, speeches, Constitutions and drafts, but it does not matter. These brilliant people embraced me with friendship and genuine warmth. The trust they honoured me with rewarded me for all my suffering. If they can remain happy and enjoy their independence in the future, I will then say my time and work did not go to waste" (Enepekidis 1972: 70).

3. Capodistrias' plan for the constitutional reorganisation of Greece

3.1 Greek constitutional acquis

The essential acquis of Greek Constitutionalism until Ioannis Capodistrias took over as the first Governor of Greece was mainly shaped during the revolutionary decade and based on the three national constitutions passed by the 1st, 2nd and 3rd National Assembly of the Greeks in Epidaurus (1822), Astros (1823) and Troezen (1827), respectively. The three revolutionary constitutions led to the creation of an innovative constitutional tradition, which was to prove crucial for the later course of the Greek polity, as these three constitutions greatly contributed to the consolidation of constitutionalism in the conscience of Greek society as a fundamental prerequisite of political legitimacy (Svolos 1998: 15; Daphnis 1976: 31; Sofiotis 2013: 55). This is explicitly acknowledged in Article B of the Constitution of Astros (1823), which contained an early form of wording of today's principle of the rule of law and the administrative principle of legality. The Constitution and compliance with the Constitution during the exercise of public power was acknowledged as a prerequisite of that legality since it foresaw

that “[...] in no case and for no reason may the Administration legislate against this Polity” (Despotopoulos 2008: 14).

The most progressive of the three revolutionary Constitutions of Greece was however the Constitution of Troezen. The Third National Assembly, which convened in three different locations – Nea Epidaurus, Hermione and Troezen – between March 19 and May 5 1827, decided on April 14 1827 the handover of executive power to “one and only one” person and unanimously elected Capodistrias as Governor of Greece for a seven-year term. On May 1 1827 the national assembly approved the Constitution of Troezen. The Constitution of Troezen provided for and also defined the separation of powers (Art. 36-42 Constitution of Troezen) and recognised the Greek people as sovereign (Art. 17). In the field of civil liberties, the Constitution of Troezen added to the list of individual rights of the two previous revolutionary constitutions and established real guarantees for citizens’ protection for the first time. Under the heading “Public Law of the Greeks”, adopted by all subsequent constitutions of Greece until the current Constitution of 1975, it provided for the full consolidation of personal safety (Art. 1), freedom of the press and banning of censorship (Art. 26), the principle of equality (Art. 7) and the banning of titles of nobility (Art. 27). It also established the proportional allocation of taxes (Art. 10) and accessibility of public offices to all Greeks (Art. 8), freedom of expression (Art. 20), the freedom to choose an occupation (Art. 20), the principle of non-retroactivity of the laws (Art. 19) and foresaw the institution of forced expropriation for public utility purposes following prior compensation (Art. 17).

In addition to these provisions concerning individual rights and the basic principles of the democratic organization of the polity, the Constitution of Troezen introduced to the governance of the Greek state the peculiar institution of a Governor, an elected Head of State whose responsibilities resembled those of the US President (Art. 102-125). Disappointed by their experience with the multi-member executive power over the previous few years the Greeks wanted the concentration of powers in one person. This decision was also taken because the first Governor would be Capodistrias, a personality of international standing who had already been elected for a seven-year term (Alivizatos 1981: 61).

However, the democratic and liberal ideas of the Enlightenment, as declared in all the revolutionary constitutions, were still important. So the Greeks tried to create safeguards and institutional barriers to the Governor’s extended executive power (Anastasiadis 1989: 47). The result of these efforts was the provision of a strong Parliament in the Constitution of Troezen, where representatives of the nation would not only legislate but also shape the dominant political will (Art. 43-101).

3.2 The suspension of the Constitution of Troezen and constitutional reorganisation

When Capodistrias took over his duties on January 7 1828, he proposed to the Parliament that the operation of the Constitution of Troezen should be suspended. In the Resolution of 18 January 1828 Parliament endorsed the suspension and was self-abolished to be replaced by the “Pan-Hellenic” and later the Senate, the 27 members of which were chosen by the Governor. In his report dated 11/23 July 1829 to the National Assembly of Argos, he explained that the suspension of the operation of the Constitution would last until the fate of Greece was

finally assessed and he committed himself to the constitutional reorganisation of the country's constitution with respect to the democratic and liberal acquis of the revolutionary constitutions (Despotopoulos 2008: 81).

This decision by Capodistrias was based on a realistic appraisal of the Greek social political reality, up to that point in time, in conjunction with the existing balance of powers in Europe and the dependence of the successful outcome of the Greek issue upon the great powers. The main reasons that led to his decision are detailed below: (a) the political and social conditions in Greece at the time, (b) the emerging lack of functionality of the government system as set out by the Constitution of Troezen and (c) the dependence of the establishment of the new Greek state on the great powers in diplomatic and economic terms (Tsatsos 1994: 35; Manesis 1980: 62).

Specifically, according to Capodistrias, the implementation of the Constitution of Troezen presupposed its comprehension and implementation by the citizenry as sovereign and the guarantee of the functionality of the system of governance introduced. However, as he soon understood, these conditions were not met at the time (Pantazopoulos 1983: 62; Svolopoulos 2015: 30).

As the cornerstone of Capodistrias' constitutional thought was the right of each people to institutional self-determination; the implementation of the conceptually progressive declarations of the Constitution of Troezen required the education of the Greek people based on those values. However, such education was not achieved at that time as Greece (a) fully lacked an elementary education system, (b) there was no indigenous legal or juridical corpus; there were only certain legal practices that had customarily survived in the conscience of the Greek people and (c) a patronizing influence of primates (*proestoi*) – known as “kodjabashis” in Ottoman Greece – over ordinary citizens prevailed as the latter financially depended on the former, which effectively precluded the people's free and genuine will (Anastasiadis 2001: 23).

In addition, the functionality of the system of governance foreseen by the Constitution of Troezen was highly questionable and its implementation would have entailed political instability, which would have become extremely dangerous for the country at that time, pending the final outcome of the national war of independence. It was also necessary to create the basic structures of the new Greek state in the sectors of defence, economy, education and health care immediately. As stated above, the Constitution of Troezen foresaw the establishment of the Governor's institution (Art. 102-125) and, at the same time, placed barriers to the Governor's executive power by creating a strong Parliament based on the need to protect democratic principles (Art. 43-101). The result of these constitutional provisions was to create watertight compartments for the operation of the legislative and executive powers without foreseeing their counterbalance, balance or harmonization. A characteristic example thereof was that under the Constitution of Troezen the Governor was not allowed to dissolve Parliament and Parliament was not allowed to reprobate or directly control the Governor (Despotopoulos 2008: 101; Pantazopoulos 1983: 63).

Moreover, the Constitution of Troezen did not regulate the case of disagreement between Parliament and Governor. It established that the Governor's strong executive power was not subject to political parliamentary accountability (Art. 103 Constitution of Troezen) and at the same time it recognised the political supremacy of Parliament. However, Parliament did not have any access to the sector of executive power since the ministers appointed and dismissed by the Governor were subject to the control of the Parliament while performing their duties, but they did not depend on Parliament's trust (Art. 110 Constitution of Troezen). The provision concerning the duties of the executive and legislative power in the Constitution of Troezen was indeed original and combined features of a presidential and parliamentary system; its functionality was however highly questionable for these reasons.

Finally, another important factor that influenced the Governor's decision to suspend the Constitution of Troezen was his conviction that suspension and the concentration of powers in the Governor's hands could be used as a lever for negotiating his foreign policy. The fate of Greece entirely depended upon the will of the three powers, the governments of which were also conservative, and Capodistrias therefore expected they would be more favourable vis-à-vis a country that also had a governance system of a centralized nature. (Anastasiadis 2001: 43).

3.3 Basic principles of Capodistrias' plan for the constitutional reorganisation

The suspension of the Constitution of Troezen by Capodistrias was accompanied by the declaration of the Governor of the National Assembly of Argos in July 1829 where, after having expressed his respect for the general democratic and liberal principles of the Revolutionary Constitutions of the Greeks, he committed himself to the constitutional reorganisation of the country through the preparation of definitive constitutional laws. According to Capodistrias' plan these laws would become permanent guarantors of civil rights and would be legislated following an in depth consultation based on democratic and liberal principles set by the Assemblies of Epidaurus, Astros and Troezen (Despotopoulos 2008: 81). The cornerstone of his draft constitution for Greece was the guarantee of the Greek people's right to their self-reliant constitutional organisation. To that end the Governor declared the need to convene the national assembly, which, being free from internal and external distractions and as representative as possible, would make decisions concerning the constitutional reorganisation of the country in such a way that they might enjoy broad consensus and scope (Pantazopoulos 1983: 41).

However, being fully aware of the insufficient familiarity of the Greeks with the institutional declarations of the Constitution of Troezen, Capodistrias had set the goal of the Greeks' effective participation through the national assembly in the production of a new constitution, their prior education and emancipation. Thus freely thinking and without being manipulated, the Greeks could participate in the production of political will and in the drafting of the constitutional charter of the country. According to Capodistrias the expression of political will had to be based on a continuous and creative dialogue with all state bodies and in particular with Greek citizens (Gianopoulos et al. 2003: 82).

At the same time, in order to further ensure participation of the Greeks in the participatory democratic processes free of political clientelism, he considered it necessary to decouple voting rights from any social and economic restrictions. As stated above, citizens' free expression was distorted by their economic dependence upon the primates (*proestoi*) – important landowners known as “kodjabashis” in Ottoman Greece. For this reason, but also to deliver social justice, Capodistrias' priority in his design for an effective implementation of the Constitution and national reconstruction was the fair distribution of national lands for the Greek citizens and voters to free them from the economic patronage of important landowners. The financial autonomy of citizens would enable them to express their true political will (Kaltsas 2010: 110; Alivizatos 2012: 151).

As an experienced diplomat and expert in European politics and being fully aware of the dependence of a successful outcome of the Greek issue on the assistance of the great powers, he considered that the success of his project for a constitutional reorganisation of the country would also be the most important security that the newly founded Greek state had to deliver the great powers for “*Greece to be granted an honorary position among nations through the power of law [...]*” (Anastasiadis 1989: 52).

Unfortunately, the assassination of Ioannis Capodistrias abruptly called a halt to his plan to bring a representative constituent assembly to the fore and lay down a constitution that would lead to the establishment of a democratic and liberal polity in Greece meeting both the requirements of the domestic historical *acquis* and the European institutional standards.

4. Conclusion

Studying Capodistrias' constitutional drafts for Switzerland and Greece illustrates the main characteristics of his constitutional thought, which combined his faith in the democratic and liberal ideas of the Enlightenment and the necessary pragmatism he required as a diplomat and later as Governor of Greece. With regard to the first component of his constitutional thought, his commitment to democratic ideals, Capodistrias believed it to be imperative that a state's constitutional organisation was a prerequisite for its democratic organisation. A cornerstone of his plans for Switzerland and Greece was the adoption of a constitution in which the state would be organised and citizens' individual rights would be established. However, the drawing up of a country's constitutional charter had to be a genuine expression of people's will, i.e. the result of public consultation, in which all citizens as sovereign and recipients of a basic education of institutions would equally participate by freely expressing their point of view.

However, for Capodistrias, successful realization of the ideals of democracy during the drafting of the Constitution, first required the functionality and resilience of democratic institutions for state organisation and individual freedoms. His firm conviction was that the drafting of a constitution should in no way be the theoretical guarantee of idealistic patterns that would not be able to resist future social and political developments. On the contrary, as a supporter of pragmatism, he believed that the functionality of a constitution and its resilience over time would guarantee its drafting based on (a) the constitutional *acquis* of a country, (b)

the existing political, social and economic conditions, and (c) the existing international conditions in force.

To this end, he initially focused his diplomatic efforts in Switzerland and how best to alleviate the various social and economic differences and safeguard internal peace by achieving mutual institutional compromises and concessions between cantons. In doing this he laid the foundations for the equal participation of the cantons in drafting the federal constitution of 1815. At the same time, he established the obligation of solidarity between cantons in the defence and economic policy sector as a bond guaranteeing political and social coherence. He also kept several components of the confederation law in the 1815 Constitution (such as the conservation of arbitration as an institution for the practical resolution of disputes between cantons). The confederation law (*Alte Eidgenossenschaft*) was the constitutional *acquis* of the country and conveyed the message to citizens that the current constitution was a continuation of their constitutional tradition (Petridis 1988: 83).

Regarding Capodistrias' plan for the constitutional reorganisation of Greece, the main characteristics of his constitutional thought were the same despite the significant differences between the political and social situation in Switzerland and Greece at that time. Upon taking up his tasks as the Governor of Greece, he identified a major institutional contradiction, which led to his decision to temporarily suspend the Constitution of Troezen. Upon his arrival, Greece had one of the most progressive constitutions in the world, which had been drawn up by the Third National Assembly at Troezen (1827). However, the people did not have the required institutional education and familiarity with the constitutional institutions foreseen by the Constitution of Troezen and were not able to form and freely express their opinion on the democratic participatory processes. They had been turned into a peculiar kind of political hostages because of the economic dependency of most Greeks upon the primates, i.e. important landowners (Despotopoulos 2008: 82).

Under these circumstances Capodistrias put forward pragmatism as the basis of his plan for the constitutional reorganisation of the country and, being aware of the need for international recognition and support of the newly founded state, he temporarily suspended the entry into force of the 1827 Constitution until suitable conditions existed that would lead to the democratic drawing-up of the constitutional charter of the country guaranteeing its functionality and resilience over time. He therefore started his reform policy by planning the distribution of national lands to the Greeks in order to free them from the economic and political influence of the primates, i.e. important landowners. At the same time, he considered the education of the Greeks in relation to the institutions, i.e. their familiarisation with constitutional institutions. This was necessary, as Greece did not have any indigenous jurisprudence at the time. For precisely that reason he declared the law of the Byzantine emperors (*Hexabiblos* of Constantine Harmenopoulos) as the applicable law for civil disputes in the Greek courts as that was the legal tradition in the Greeks' conscience and had partially survived at customary levels in the daily practice of community organisations and resolution of civil disputes in the citizenry (Pantazopoulos 1983: 43; Sofiotis 2018: 98).

However, the main component of Capodistrias' constitutional policy was the fundamental sense of political responsibility he demonstrated until the very end of his life. He proved that

the pursuit of democracy specified in constitutional texts, was perfectly feasible and not just a utopia, but required a great degree of political responsibility and altruism on the part of governing leaders. Capodistrias believed that the exercise of any power must have a human dimension, for the political and institutional speech of the government agencies and organisations to be convincing and educate citizens (Anastasiadis 1989: 52).

Unfortunately, unlike Switzerland, where the legacy of Capodistrias contributed to the constitutional reorganisation of the country, establishment of the federal system, neutrality and securing internal peace, which over time fostered its economic and commercial success, in Greece the assassination of Capodistrias deprived the country of the opportunity to have an autochthonous democratic constitutional reorganisation following the example of other European States. This resulted in Greece's turmoil for almost 145 years – with very few breaks – centred around the anachronistic institution of a monarchy imposed from abroad (Pantazopolulos 1983: 52; Sofiotis 2018: 107).

Capodistrias' assassination deprived Europe of one of the main shapers of the European political stage after the end of the Napoleonic wars; his constitutional thought contained innovation in democratic and liberal components which surpassed the legal culture of the time, and echoes ideas and values adopted by the European and global legal culture centuries later. Such ideas and values include (a) his plan for the establishment of a supranational union of European States that would guarantee peace and self-determination through the gradual construction of a single European identity, based on the values of Western democratic culture (Dyroff 1966: 143), and (b) his proposal to the Congress of Vienna concerning the abolition of the slave trade. This latter proposal, which strongly demonstrates the respect for human dignity intrinsic to Capodistrias' constitutional thought, was finally adopted 67 years later at the Congress of Berlin (1884-85), where the issue of the African continent was discussed. As suggested in Capodistrias' plan this resulted in the foundation of an organization, the Association International Africaine, for the resolution of the slave trade issue at the Congress of Berlin in accordance with the principles laid down by him in 1818 (Kennedy 1968: 170).

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