

**SUMMARY OF DOCTORAL THESIS**  
**POWER SEPARATION IN ORGANIC REGULATIONS AND**  
**CONSTITUTION PROJECTS FROM THE FIRST HALF OF THE**  
**19<sup>TH</sup> CENTURY IN ROMANIAN PRINCIPALITY**

The idea of modernity was, in a limited matter, the integration sphere of Romanian society in Europe. The states from Western Europe were becoming a role-model for Romanian society that had been for several centuries under the suzerainty of the Ottoman Empire, an Eastern state, glued in the Middle Age structure. In consequence, modernization – in its complexity – assumes first, the joining Romanian state structure at what it was sketched as meaning in the ideology and philosophy of the Western regarding the report between monarchs and government art, expressed in the revolutions at the end of the 18<sup>th</sup> century and the beginning of the 19<sup>th</sup>, always started against total monarch power. Reforming programs and projects or revolutionaries from that period had included one of the fundamental principles of statehood in the idea of modernization, of creative participation of all social forces in the government aware of the concrete needs of the concrete needs of the present and future assuming. The principle to which we refer is the separation of powers in state.

Separation of powers in state is one of the fundamental principles of constitutional law. The principle is closely linked to the ideas of a representative regime in which the danger of tyranny and abusive restriction of individual rights and freedoms are eliminated.

The theory of power separation is a famous one, of large audience and frequently invoked. Knowing this theory enables explanation of constitutional systems.

The principle made room in the thinking of humanity when the need was felt to establish a constitutional system. When, once with the system, it was the idea of the rule of law, the principle of powers separation was considered the only instrument able to achieve it.

It occurred when the enlightened minds of the time considered that society should no longer bear the abuses, suffering felt by people, considering that power does not have to be concentrated in the hands of one man or a group of individuals. Power needed to be concentrated in the hands of separate bodies, independent, starting like that the principle of power separation.

This content of the concept “separation of powers” was outlined after a long historic and doctrinal process”:

- the principle of separation of powers had been foreshadowed from *antiquity*, especially in the efforts of politic thinkers of the “*the secret of a good government*”.

- during “*the Middle Age*” the ides of separation of powers was seen as a limitation mean of arbitrary power of the Head of State, power specific to the absolutist regime.

- theoretization of power separation as a fundamental principle in the modern state was made by John Locke, Montesquieu and Rousseau.

If until now, in the historians and jurists’ writings the principle of separation has not mean a favourite theme, but only reference in the analysis of complex processes in from the last two centuries of fixing Romanian society in the path of modernity, we established an interpretative based on synchronism of ides, general development adoption and redefining democratic state structures.

Chapter I called *The principle of separation of powers in other states Constitutions before 1831* places the phenomena which foreshadowed the modernization of the West and its transformation into a role-model of civilization progress in the world.

Revolutionary changes in the West, in the most influential countries, have been profound. Change or social upheaval broke medieval tradition, the privileges and opened the path of modernization. Structural reforms imposed by revolutionary violence included, as a base, improving operational management of state affairs. To this flood of new life, unshackled for all social energies focused on all people, starting with colonists in North America and with the revolutionary movements after Napoleon in the 1820-1825, in Europe from the Atlantic to Urals and South America. The picture of restructuring state organization in the West, focusing mainly on the separation of powers, clears a general understanding in the area of Europe, which for some nations was the sluice superstructure medieval imperial. The latter not only made desperate efforts to counter any changes, but maintained the national spaces oppressed by state leadership, became lever rule of domination.

In this situation, in the Romanian Principalities (Walachia and Moldavia), “both Dacian people” – according to the expression of a Romanian from Săcele –, hope and “awakens” in European ideas were built gradually, simultaneous and in common as their projects were expresses towards great powers, some ultra-conservatories and moderate citing socio-political imoilism or at the most aristocratic republic, others liberals full of conceptions and ideals.

After 1821, in the Principalities, the democratic current widened while local political groups have promoted “the application of egalitarian principles to the tip of social pyramid, to transform the leadership of the state from Eastern despot to absolutist light. Under the influence of French

Revolution principles from 1789, the so-called “national party” radicalized the modernization concepts, giving them motivation – and implicitly – legitimacy by invoking social-political states from West Europe.

Chapter II *Powers in the state in Romanian law systems before 1831* lists constitutional attempts of Constantin Mavrocordat, the first attempt to separate the administrative and judicial powers during the ruling of Ipsilanti evolution programme regarding state organization and numerous memories, projects (1769-1831) and the 1821 revolution programme regarding state organization. Both the boyars’ petitions after 1769, as well as codes of laws (Register Prescribed by Law, The Calimachi Code, Caragea Law) did not go over the level of “improvements” demanded by virtue of class interests.

Mavrocordat’s Reform, was brought again, in Romanian Country, by Alexandru Ipsilanti, as a result of the conditions created by Peace Treaty from Kuciuk-Kainargi (1774). The principles drawn-up by the voivode in the Royal Charter from 1774 were stipulated in detail in the one from 23<sup>rd</sup> of October 1775 and completed through princely acts until 1780, when the *Register Prescribed by Law* appeared. After 1780 until 1821 several projects were drawn that included the principle of powers separation: *The Petition* addressed, in 1790, by Wallachian boyars to prince von Saxa-Coburg, written petition from 1793 addressed by Wallachian boyars to the Ottoman Porte, at the appointment of Alexandru Moruzi in 1793, as voivode of the Romanian Country, *A Form of Democratic Republican Government* of Dimitrie Sturdza, Iordache and Nicolae Rosetti-Rosnoveanu, *Considering Certain Improvements in the Administration of Moldavia*, Nicolae Rosetti-Rosnovanu, *Reflexions sur le droit d’éléc-tion*, Andronache Donici, *Assembly including Justinian Codes for allowing their acknowledgement, with reference to books, title, and the head of Justinian Code, the Calimachi Code* (1817).

The most important projects drawn up during the revolution from 1821 are *The Proclamation from Tismana* and *Demands of the Boyars*.

After defeating the revolution from 1821 until 1831 there were several petitions formulating the principle of powers separation: Carbonari's constitution, Roznoveanu, Simeon Marcovici, Alexandru Villara, Iordache Golescu's projects.

Analyzing the petitions and reform projects between 1821-1832, we can say that the great nobility wanted to improve the institutions of the country in a modern way, with the conditions of transferring the privileges of the old Regime, under the form of economic and political positions in the new society, able to provide political power. From the start, the great nobility was supported by Russia, the small nobility was supported by the Ottoman Port, without any result.

Chapter III *Organic Regulations – the first constitutional laws regarding powers separation* includes the evolution of the Romanian society from medieval to modernity, the time of the Organic Regulations being considered by historians and jurists as being determining for the organization of state institutions on modern principles.

Organic Regulations from Romanian Country and Moldavia are considered the chronological mark of a new age. Now, according to Nicolae Bălcescu's interpretation, the Romanian feudal state transformed from its initial phase of "*noble or absolute state*" into "*boyar or aristocratic state*", then into "*Phanariot state*", covering "*a century of ordeals and robberies, corruption and degradation, weakness and cancelation of nationality*". During the first half of the 19<sup>th</sup> century, with the introduction of the two Principalities of Organic Regulations, the state transformed into a "*boyar's or bureaucratic state*" and the task of Pasoptist revolution was that of making it "*Romanian or democratic*".

Organic Regulations (introduced in 1831/1832) announced institutions similar to the ones of a parliamentary regime, inaugurating the modern system of representation and enforcement of the fundamental principle of powers separation. These Regulations, which had a very similar content are *the first written constitutional laws* introducing in the two Romanian Principalities *modern representative assemblies*, chosen based on qualified vote. At the same time, Organic Regulations *explicitly established for the first time powers separation in state*. This is how Nicolae Bălcescu appreciated the role of Organic Regulations: “Organic Regulation, despite all its faults, brings some useful principles and is a instrument of progress. It admitted the principle of commercial freedom, the separation of juridical, administrative and law powers and introduced the parliamentary regime”.

Nicolae Bălcescu’s conclusions have repeated until today. Our contemporaries’ opinions are eloquent.

In their works they say: the Ordinary National Assembly had legislative attributes. The Extraordinary National Assembly had the mission of electing the voivode (only one voivode was elected by this procedure, Gheorghe Bibescu, in 1842). Administrative attributions were given to an Administrative Board. National Assemblies acquired in time the character of an authentic parliament, with various positions and interests. Along with the great nobility, dominating these institutions, the small and middle nobility also displayed their interests being more attached to the third state or liberal thought exponents. Assemblies managed to modernize internal legislation in certain administrative, economic, cultural and social fields, in agreement with the new trends and ideas of the time. These legislative assemblies drew-up the two trends, the conservatoire and the liberal one, the latter developing as a fighting force debating on

numerous initiative of Romanian society democratization, as well as national unification projects.

Chapter IV *The principle of powers separation in constitutional documents and programs (1831-1848)* deals with revolutionary programs from Moldavia and Romanian Country between 1831 and 1848, especially the constitutional projects of Ioan Câmpineanu (1838), Leonte Radu and Mitică Filipescu, as well as the proclamations from March 1848 (Iași) and June from Islaz, the constitution projects of Mihail Kogălniceanu and Ioan Ghica.

During the years preceding the events from 1848 and in revolutionary programs there were critical conceptions favourable for the change of regime and reorganization of political structures from Romanian Principalities. Proclaiming the modern political principles of democratic government, the participants at the Revolution from 1848 foresaw in the Romanian Country the idea of Constituent National Assembly, necessary for drawing-up a constitution as a fundamental act of a democratic regime.

1848 revolutionary moment, besides economic and social claims included by it, is a turning moment for the affirmation of ideas of freedom and political reform, with the major objective of *introducing a modern constitutional and democratic regime, based on the principle of people's sovereignty and free election of the legislative body*. Revolutionaries rejected the Organic Regulations and redefined the fundamental status of the parliament in the political structure of the state. According to the programmatic documents of the revolution from 1848, the legislative forum, that should have been elected by universal, equal and direct vote was an actual representative institution, with representatives of "all states of the society".

Although defeated the revolution from 1848 a promoted political organization programs, trying to enlarge the social basis and the

composition of Legislative Assemblies and develop their attributions. After the defeat of the revolution, democratic goals regarding the organization of political institutions on the support of popular sovereignty principle, of universal vote and powers separation were reactivated in the new conditions of the fight for the establishment of the Unitarian national state.

Chapter V *International projects and treaties regarding Principalities organization (1849-1858).*

After 1848, democratic goals regarding the organization of public institutions based on popular principle sovereignty and powers separation were reactivated in the following decade, marked by unionist projects, the provisions of the Peace Treaty from Paris (1856), resolutions of ad-hoc assemblies from Bucharest and Iași and the Convention from Paris from 1858.

In the decade preceding the Union from 1859, the Romanian state problem became an European problem. After the Convention from Balta Liman, voivodes Barbu Dimitrie Știrbei (in Romanian Country) and Alexandru Ghica (in Moldavia) applies, through reforms the provision of regulating regime restoration. Crimean War, developed during the first phase on the territory of Principalities, allowed the Peace Congress from (1856) to discuss the ways to accommodate Romanian history to the European trend.

During the Conference from Wien and the Treaty from Paris, numerous petitions were submitted including reform plans, constitutional renewal projects, signed by counsellors and foreign diplomats. Among them we notice the petitions submitted by Henry Richard Wellesley and Meusebach.

In 1858, the Convention from Paris established a Constitution for the Principalities, enforcing for the first time in our constitutional practice the principle of powers separation, that were to be exercised in every



Principality by the voivode and the Elective Assembly, both of them working in the cases established by the Convention with the support of a common body, the Central Commission from Focsani respectively.

Based on the provisions of the Convention from Paris, the Central Commission from Focsani issued a constitution including the principle of powers separation in state which was the basis for adopting the Romanian Constitution in 1866.

Chapter VI *Romanian projects for the constitution (1849-1859)* develops Romanian concerns for state restructuration, recorded in the projects of Barbu Dimitrie Știrbei, important political figures (Nicolae Șuțu, Emanoil Kinezu and Mihail Sturdza), in the desires expressed by Ad-Hoc Assemblies.

In conclusion, the principle of powers separation in state required several decades to become from imperfect projects and introduction to Organic Regulations a stable principle of modern state organization.

Once established in history, it has become the guarantee of democracy after the achievement and exercise of popular power through elections.