The Revolutionary Constitutions of the first Hellenic Republic: The Struggle between Tradition and Modernity

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In 2022, Greece celebrated the bicentennial of the first revolutionary Constitution. Throughout the Greek revolution, three constitutional texts were put into effect, culminating in the establishment of the First Hellenic Republic. This article delves into the legal aspects of revolutionary constitutions, examining the ongoing struggle between tradition and modernity. The central argument posits that the revolutionary constitutions found themselves entangled in a tug-of-war between the traditional and modern conceptions of early constitutionalism, between Monarchies and Republics.

An intriguing insight emerges when we investigate primary sources. The position of the Great Powers is conspicuously reflected in Annex F of the Protocol of the Conference held on the island of Poros in September 1828. The minutes of the discussions among the representatives of the Great Powers explicitly reveal a skepticism towards the modern model of Republics. Simultaneously, there's an expressed belief that only the traditional model of government, rooted in monarchy, could thrive, given the Greeks' demonstrated weakness in managing political conflicts during the First Greek Republic.

Keywords: Greece, Greek War of Independence, First Hellenic Republic, Monarchy, Traditional Model

1 INTRODUCTION

In 2022, Greece celebrated the bicentennial of its first revolutionary Constitution adopted by the First National Assembly of Epidaurus on 1 January 1822. During the Greek revolution, three National Assemblies convened, leading to the adoption of three constitutional texts in 1822, 1823, and 1827 respectively establishing the First Hellenic Republic.[1]

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[1] During the first year of the revolution, three local constitutions were also adopted while the Constitution of 1922 was temporary subject to a one year sunset clause. Accordingly, the constituent assembly of 1823 revised and replaced that constitution. For more details about the constitutional history and the constitutional text *see* Nicholas Kaltchas, *Introduction to the Constitutional History of*

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The Greek revolution garnered the attention of policy-makers both in Europe and in the New World. The period saw numerous publications related to the Greek revolution, which stirred global public opinion and gave rise to a wave of philhellenism.

In post-Napoleonic Europe, two political ideologies clashed: the traditional and the modern. The traditional approach, often referred to as the Vienna system or the Congress of Vienna,[2] advocated maintaining the status quo, resisting border changes, and opposing revolutionary and liberating movements.[3] In contrast, the modern political perspective of that era supported social and political reforms and national self-determination, which entailed border changes and the contraction of empires.

A similar struggle between tradition and modernity unfolded in the legal realm. In the early twentieth century, the traditional view of constitutionalism emphasized creating constitutions while preserving the monarchical regime, whether as a Constitutional Monarchy or as a Parliamentary Monarchy.[4] Conversely, the modern constitutional perspective championed constitutionalism rooted in the sovereignty of the people and the establishment of Republics.[5] As Finlay states, 'it was everywhere the fashion for disgruntled subjects of established governments to imitate the French', and to form parties and secret organizations along the lines of the Paris party-unions during the years of the French Revolution.[6]

This study delves into the Greek revolutionary constitutions from the legal standpoint exploring the conflict between tradition and modernity. Within this framework, several critical questions arise. First, why did the drafters of the revolutionary constitution opt for a Republican form of Government? Second,

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Modern of Greece (The Hellenic Parliament Foundation for Parliamentarism and Democracy 2010) Ch. 2. *See also* Nicos C. Alivizatos, *Assemblies and Constitutions,* in *The Greek Revolution: A Critical Dictionary* 439, at 442 ff (P. Kitromilides & K. Tsoukolas, eds, Harvard University Press 2021).

2 About the Congress in Vienna *see* Adam Zamoyski, *Rites of Peace: The Fall of Napoleon and the Congress of Vienna* (Harper Perennial 2007).

3 For more details about the dipole between tradition political ideals and modern (revolutionary) ideas in post Napoleonic Europe *see* Richard Stites, *The Four Horsemen: Riding to Liberty in Post-Napoleonic Europe* (OUP 2014); Michael Broers, *Europe After Napoleon: Revolution, Reaction, and Romanticism, 1814–1848* (Manchester University Press 1996).

4 Roobol offers a complete account of monarchies after the Congress of Vienna in 1815. Roobol counts 57 monarchies and only seven republics, of which Switzerland was the largest. *See* Wim Roobol, *The State of the European Union's Monarchies: Twilight of the European Monarchy,* 7 Eur. Const. L. Rev. 272, 278 (2011), doi: 10.1017/S1574019611200075.

5 For more details, *see* R. R. Palmer, *Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800. 2, The struggle* 29–30 (Princeton University Press 1970). Actually, the political and the legal dipole overlap. This overlap is encapsulated in the words of Mazower who states 'Resistance to the Holy Alliance also saved the spirit of republicanism.' *See* Mark Mazower, *Governing the World: The History of an Idea* 31 (Penguin 2013).

6 *See* George Finlay, *History of the Greek Revolution, Volume 1* 120 (W Blackwood and sons 1861).

why did the Great powers decide to impose a monarchical regime in Greece, effectively ending republicanism in Greece? While ample research and literature exist on the former question,[7] the latter has received less scholarly attention.[8] Therefore, this article aims to illuminate why the Great Powers chose to impose a Monarchy and rejected the modern constitutional approach supporting republicanism.

Interestingly, research into primary resources reveals that the traditional constitutional thought of the Great Powers is evident in Annex F of the Protocol of the Conference held on the island of Poros in September 1828. The minutes of the discussions among the Great Powers' representatives explicitly demonstrate a mistrust of the modern model of Republics. Simultaneously, they expressed a belief that only the traditional model of government based on the Monarchy could succeed, citing the Greeks' perceived weakness in managing political conflicts during the First Greek Republic. Similar arguments are also found from the Russian Ambassador in Greece to the Russian Minister of Foreign Affairs.

The central argument posits that the revolutionary constitutions and the First Hellenic Republic found themselves ensnared in a tug-of-war between tradition and modernity. Consequently, the First Hellenic Republic succumbed to the prevalence of the traditional perception favouring Monarchical regimes in Europe, leading to the establishment of the Greek State under King Otto in 1832.

The first part of this article commences with an examination of constitutional texts as integral components of national revolutions, symbols of independence, and expressions of national sovereignty. It will also explore the emergence of the dichotomy between traditional and modern constitutional thought, particularly concerning the Head of the State. Traditional early constitutionalism favoured monarchical regimes, while modern thought advocated for an elected Head of State (a Republic).

The second part of the article shifts focus to the constitutions of the First Hellenic Republic, with particular attention to the United States' stance toward the newly formed Hellenic Republic. The analysis begins by scrutinizing the normative content of the revolutionary constitutions in the context of the tradition-modernity divide. It further examines primary sources that shed light on the regulatory content of these constitutions, particularly the Republican form of government, and explores evidence of Greek support for a monarchical regime.

Finally, the third part of the article investigates the pivotal events that led to the imposition of the traditional Monarchy model in Greece, ultimately marking the end of the first Greek Republic. This analysis uncovers why and under what

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7 *See* below text to n44-46.

8 For instance, Kaltchas mentions briefly the Annex F of the Protocol of Paros. *See* Kaltchas, *supra* n. 1, Ch. 2. 83.

conditions the European Great Powers – UK, France, and Russia – decided to enforce a monarchical regime in the newly formed Greek state, despite the intentions of the Greek revolutionaries favouring a Republic, as reflected in the revolutionary constitutions.

2 THE REPUBLIC AS A MODEL OF STATEHOOD AND THE REACTION OF MONARCHICAL REGIMES

A significant milestone in the emergence of constitutionalism and the establishment of constitutional texts as constituent elements of national liberation and social revolutions was the Constitution adopted after the American War of Independence. The United States Constitution, drafted on 17 September 1787, ratified on 21 June 1788, and entered into force on 4 March 1789, represents a pivotal moment in history, marking the advert of modern state structures featuring an elected Head of State – the President of the Republic.

In the novel structure, the President of the Republic serves as both the Head of the State and the Head of the Government, distinguishing it from other democracies with a dual executive, a Head of the State with hereditary authority, and an elected Head of the Government. Undoubtedly, the United States Constitution was a constitutional experiment,[9] and as Horton speculates, the traditional powers treated it 'at that time idealistic to the point of naivety'.[10]

It is worth noting that the United States Constitution was not the first to introduce an elected Head of State.[11] Centuries prior, the short-lived Constitution of the Commonwealth of England in 1653 stood as a pioneering example of constitutionalism. The 'Instrument of Government'[12] enacted during the Protectorate of Cromwell, constituted the first instance of a constitution featuring a republican form of government.

Moreover, the initial Constitution of Corsica drafted in 1755 for the short-lived Republic of Corsica, also provided for an elected Head of State. Corsica had gained its independence from Genoa and its constitution remained in effect until its annexation by France in 1769.[13]

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[9] For experiments at the constitutional level, *see* Antonios Kouroutakis, *The Constitutional Value of Sunset Clauses* 85 (Routledge 2017).

[10] A. S. Horton, *Jefferson and Korais: The American Revolution and the Greek Constitution,* 13 Comp. Lit. Stud. 323, 326 (1976).

[11] Even in the United States of America, the short-lived Constitution of the Confederation of 1777 that came into force in 1781was the first Republican Constitution. *See* The Articles of Confederation and Perpetual Union 1781.

[12] Instrument of Government, 1653. For more information *see* George D. Heath III, *Making the Instrument of Government*, 6 J. Brit. Stud. 15 (1967), doi: 10.1086/385534.

[13] Dorothy Carrington, *The Corsican Constitution of Pasquale Paoli (1755-1769),* 88 The English Hist. Rev. 481 (1973), doi: 10.1093/ehr/LXXXVIII.CCCXLVIII.481.

In essence, the concept of popular sovereignty as a novel model of governance emerged from the French Revolution stemming from the historical events that led to the schism between monarchical governments and the first French Republic. Remarkably, during the French Revolution, in November 1792, the National Assembly called upon the European peoples to revolt against their rulers, be they secular and spiritual, and to overthrow them. Additionally, the French offered to help the revolutionary movements, believing they possessed the solutions to all social, political and economic issues based on the tripartite principles of liberty, equality, and fraternity.

In line with the aforementioned sentiment, Robespierre, one of the most renowned and most influential figures of the French Revolution, adopted rhetoric antagonistic toward the monarchical regimes. In his famous speech justifying the use of violence during the Revolution, Robespierre elucidated to the role of the revolutionary government and the role of the constitutional government. Notably, Robespierre drew a connection between the revolutionary government and the establishment of a Republic contrasting it with the constitutional government's role in preservation. Specifically, Robespierre states that:

> *It is the function of government to guide the moral and physical energies of the nation toward the purposes for which it was established. The object of constitutional government is to preserve the Republic; the object of revolutionary government is to establish it. Revolution is the war waged by liberty against its enemies; a constitution is that which crowns the edifice of freedom once victory has been won and the nation is at peace. […] The principal concern of constitutional government is civil Liberty; that of revolutionary government, public liberty. Under a constitutional government little more is required than to protect the individual against abuses by the state, whereas revolutionary government is obliged to defend the state itself against the factions that assail it from every quarter. To good citizens revolutionary government owes the full protection of the state; to the enemies of the people it owes only death.*[14]

The call from the French National Assembly and the impassioned rhetoric of French revolutionaries captured the attention of Europe's monarchical regimes. A pivotal event that intensified tensions between these monarchical regimes and the French Republic was the execution of King Louis XVI of France on 21 January 1793. This event led to the formation of a coalition among the Monarchical regimes of Europe, namely of England, Spain, Prussia, Holland and Portugal. They war against the First French Republic, which came to be known as the War of the First Coalition. The primary aim of these monarchical powers was to contain France and prevent the spread of radical and modern ideas.

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[14] *See* Jackson J. Spielvogel, *Western Civilization: Volume II: Since 1500* 593 (Wadsworth 2012). For more analysis on the political thought of Robespierre *see* Alfred Cobban, *The Political Ideas of Maximilien Robespierre during the Period of the Convention,* 61 The English Hist. Rev. 45 (1946), doi: 10.1093/ehr/LXI.CCXXXIX.45. *See also* Peter McPhee, *Robespierre A Revolutionary Life* (Yale University Press 2012).

During the war, France's military successes resulted in Austria ceding territories in Northern Italy leading to the establishment of French sister republics. Consequently, the Habsburgs found themselves at the negotiation table, where they signed the Treaty of Campo Formio (17 October 1797). This period saw the emergence of several Republics, the Cispadane Republic in northern Italy. Later, the Swiss Republic within Switzerland and two very unstable republics – the Roman Republic in central Italy and the Parthenopean Republic in the south around Naples.[15]

The Republican form of government that transformed subjects of the crown into civilians had a profound impact on the art of war. Clausewitz noted, and explicitly stated, that:

> *We do not need to study in detail the conditions that accompanied this enormous development. We only need to note the results related to our discussion. The people participated in the war. Instead of governments and armies as hitherto, the whole weight of the nation has been thrown on the scales. The resources and efforts now available for use have gone beyond all conventional boundaries. Nothing prevented the vigour with which the war could be fought anymore, and, as a result, France's adversaries faced the ultimate danger.*[16]

However, with the abolition of the French Republic by Napoleon and his subsequent rise to power, traditional constitutionalism was revitalized. The Constitution of 1814 (known as the Charte Constitutionnelle du 4 Juin 1814), restored the Monarchy in France, bringing back the Bourbon dynasty.[17] The Old Regime (Ancien Régime) was restored, with the Monarch consolidating executive, judicial, and constituent powers, and holding a dominant role in the legislature.[18] The term 'Constitution' was avoided because it implied cooperation between the king and his subjects. Instead, the word 'Charter' was used to convey that the document was freely granted by the sovereign Monarch to his subjects.[19]

In fact, the Constitutional Charter of France of 1814 served as a model for the constitutions of the southern German states, such as Bavaria of 1818 and Baden of 1818.[20] Simultaneously, the British model of the Parliamentary Monarchy inspired several constitutions, including, the Constitution of Norway of 1814, the Constitution of Belgium of 1831 and the Constitution of Italy in 1848.[21]

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15 *See* Palmer, *supra* n. 5, at 293 ff.

16 Carl Von Clausewitz, *On War* 238 (Michael Howard and Peter Paret tr. OUP 2007).

17 *See* Pamela M. Pilbeam, *The Constitutional Monarchy in France, 1814–48* (Routledge 2014).

18 Luigi Lacche, *Granted constitutions. The Theory of Octroi and Constitutional Experiments in Europe in the Aftermath of the French Revolution,* 9 Eur. Const. l. Rev. 285 (2013), doi: 10.1017/S1574019612001150.

19 A Laquièze, *Les origines du Régime Parlementaire en France* 53 (1814–1848) (PUF 2002). *See* Lacche, *supra* n. 18, at 285, 293.

20 Yasuo Hasebe, 'Imposed Constitutions (constitutions octroyées)' Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL] [6]. Lacche, *supra* n. 18, at 285, 306.

21 Miguel Herrero de Miñón, *Monarchie et développement démocratique*, 78 Pouvoirs 7, 9 (1996). *See also* Roobol, *supra* n. 4, at 272, 276.

Conversely in regions where the monarchical power had been weakened, efforts were made to re-empower the role of the Monarch. In Spain, the Constitution of Cadiz in 1812 was replaced with a new one that strengthened the executive power of the Monarch. Similarly in Portugal, after the Revolution of 1820, the Constitution of 1822 established a Constitutional Monarchy, but two years later, the previous regime of absolute monarchy was reinstated.

Alexis de Tocqueville's words succinctly encapsulate why the constitutional experiment of the Republic failed in France:

> *The democracy of France, checked in its course or abandoned to its lawless passions, has overthrown whatever crossed its path, and has shaken all that it has not destroyed. Its empire on society has not been gradually introduced or peaceably established, but it has constantly advanced in the midst of disorder and the agitation of a conflict.*[22]

This regression in the concept of modern statehood within Europe inevitably solidified the Constitution of the United States as the quintessential milestone of the Republican form of government. This legal and political document effectively organized the newly established United States. Notably the United States Constitution exerted a global influence, serving as a model and a source of inspiration for numerous other constitutions. In particular, the Constitution of the United States had great influence in Nineteenth-century Latin America,[23] especially in federal countries such as Argentina,[24] Mexico,[25] and Venezuela[26] but also in Europe, among them the revolutionary constitutions of Greece.

Consequently, the Constitution evolved into a vital constituent of the state, gaining increased formal validity. These constitutional provisions not only established rules for the operation of the institutions but also explicitly defined the terms of the social contract in each state.

As Colley argues, constitutions were adaptable pieces of technology that travelled great distances.[27] Their dissemination was facilitated by a combination of factors: the print media, the speeding-up of long-distance travel, and communication.

Firstly, printed books and collections of constitutions circulated globally, allowing ideas to spread from one corner of the world to another. In fact, even concerning the first Revolutionary Constitution of Greece enacted in 1822, one of the authors, an Italian philhellene, Vincenzo Gallina, possessed a collection of

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22 Alexis de Tocqueville, *Democracy in America* 22 (Henry Reeve tr The Pennsylvania State University).

23 J. A. Cheibub, Z Elkins & T Ginsburg, *Latin American Presidentialism in Comparative and Historical Perspective,* 89 Texas L. Rev. 1707 (2011).

24 *See* Argentine Constitution of 1819.

25 Constitución Federal de los Estados Unidos Mexicanos de 1824.

26 Federal Constitution of the Venezuelan States: 21 Dec. 1811.

27 Linda Colley, *The Gun, the Ship, and the Pen: Warfare, Constitutions, and the Making of the Modern World* (Liveright Publishing 2021).

Constitutions.[28] Secondly, advancements in long-distance travel and communication played a pivotal role in disseminating constitutions. Interestingly, Bentham, an English philosopher and jurist, communicated with revolutionary governments, including the Greek government, offering advice on the content of constitutional texts.[29]

3 THE STRUGGLE BETWEEN MONARCHY AND REPUBLIC IN REVOLUTIONARY CONSTITUTIONS

The Greek Revolution was part of a broader wave of revolutionary and liberation movements that swept across the world, starting in America, then extending to the countries of Latin America, and the Iberian Peninsula ultimately reaching the Balkans.[30] The revolutionary constitutions born from these movements embraced the modern model of state power- the Republic- along with a web of liberal provisions that establish a liberal Republic.

The temporary nature of the first revolutionary Constitution reflects a sign of mature constitutional design.[31] Titled the 'Provisional Administration of Greece', this constitution by the decision of the Vice President of the Executive on 8 November 1822, was stipulated to be valid for one year.[32] It established democratic principles based on a representative system,[33] the separation of powers with institutional checks and balances,[34] an independent judiciary,[35] one-year term of office of both the executive[36] and the legislature[37] and a collective executive body.[38]

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28 Mazower, *supra* n. 5, Ch. 8.

29 John Bowring, *The Works of Jeremy Bentham, Vol. 10* 899 (William Tait, Edinburgh 1838). *See also* F. Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and early Liberal Political Thought* (OUP 1992).

30 Especially in the Mediterranean, in the early 1820s in Spain a revolutionary movement in favor of the 'Constitution' was proclaimed and a little later a similar movement took place in Portugal. Then, in Jul. of the same year, a revolution broke out in what is now Italy in the Kingdom of Naples, and in Mar. 1821 it spread to other Italian cities in Piedmont and Sicily. *See* James H. Billington, *Fire in the Minds of Men: Origins of the Revolutionary Faith* (Routledge 1999); Linda Colley, *The Gun, the Ship, and the Pen: Warfare, Constitutions, and the Making of the Modern World* 208ff (Liveright Publishing 2021).

31 *See* The Provisional Government of Greece, 1 Jan. 1822. While the constituent assembly completed its proceedings in late Jan. 1822, the constitution was backdated 'by a few days to 1 Jan. to mark the beginning of Greece's first calendar year of independence'. *See* David Brewer, *The Greek War of Independence: The Struggle for Freedom from Ottoman Oppression* 129 (Overlook Press 2001).

32 Resolution of the First National Assembly, 8 Nov. 1822.

33 The Provisional Government of Greece, 1 Jan. 1822, Title B, s. D, Art. k .

34 *Ibid.*, Title B, s. C, Art. j.

35 *Ibid.*, Title V Part IX Art. pz.

36 *Ibid.*, Title B, s. D, Art. xd.

37 *Ibid.*, Title B, s. D, Art. s.

38 *Ibid.*, Title B, s. D, Art. k.

It recognized a range of civil rights, for instance, the right to property,[39] and political rights,[40] and it is particularly innovative as it also recognizes social rights, as it establishes the obligation of the State to support widows and orphans.[41] It is also noteworthy that the subjects of rights are not only Greek citizens, but also foreigners who reside in the territory.[42]

While the revolutionary constitutions had symbolic value. In impressing foreign governments and positioning Greeks as a civilized nation deserving support in the struggle for their independence,[43] their organizational significance was limited. They did little to resolve the conflict between different sources of power.[44] However, they did make it clear which authorities had external force, recognition by international political actors.

The reasons behind the Greek drafters' selection of the Republic as form of government is not entirely clear. The absence of minutes from the three constituent assemblies, leaves this topic shrouded in uncertainty Several explanations and assumptions have been proposed.

For instance, Mazower argues that the question of monarchy versus a republic was left open for a decision by the European powers. The republican form of government may have been a strategic move, a negotiation weapon, wielded by the Greeks against European Monarchies:

> The telling silence on the key question of whether the country should be a republic or a monarchy – not a matter of much consequence to most Greeks at this time – allowed an appeal to Europeans across the political spectrum and, when the time came, easy adjustment to the evident monarchical preferences of the European Powers.[45]

In like manner Brewer argues that the temporary nature of the Constitution of 1822 was seen by many as 'holding operation until Greece acquired a king'.[46] Additionally, it is suggested that the choice of a republic may be attributed to the influence of liberal individuals involved in drafting the constitutions.[47]

This question becomes particularly intriguing, as sources indicate that among the Greek population, there was support for a monarchical regime. Secondary sources suggest that many ordinary people in Greece expected a monarchical

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39 *Ibid.*, Title A 'Section B' article g.
40 *Ibid.*, Title A 'Section B' article b'.
41 *Ibid.*, Annexes, article rz '.
42 *Ibid.*, Part B Art. d.
43 *See* Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire 1815–1914* 64 (Princeton University Press 2012).
44 For more information, *see* George Finlay, *History of the Greek Revolution, Volume 1* 295 ff (W Blackwood and sons 1861). *See also* Brewer, *supra* n. 31, at 180 ff.
45 *See* Mazower, *supra* n. 5, at 179.
46 *See* Brewer, *supra* n. 31, at 129.
47 *See* Aristides Hatzis, *A Political History of Modern Greece 1821–2018*, in *Encyclopedia of Law and Economics* 838, 842 (Alain Marciano & Giovanni Ramello eds, Springer 2021).

regime in Greece. Trikoupis documents that when the revolution erupted, between the three systems, the monarchical, oligarchy and democracy, the most popular was the monarchical as people were asking: 'when the ruler will come'[48]

In addition, when Ypsilantis, as a representative of the Filiki Etaireia arrived in Peloponessus (Morea), common people welcomed him 'as the ruler of the place'.[49]

Interestingly, one local constitutional document, the Areopagus of Eastern Continental Greece, was monarchical.[50] This constitution was enacted during the first year of the revolution and recognized a Monarch as the Head of State. Chapter 3 provided that the national parliament is placed as deputy to the future King who will be appointed by the European Christian nations.

The presence of Greeks who supported the traditional monarchical regime, extended beyond the national borders. While the revolutionary war was raged on, the normative content of the revolutionary constitutions and the choice of a republican state structure attracted the interest of policymakers worldwide and became a central issue in recognizing the newly established state.

In 1823, Bentham explicitly denounced the Greeks in favour of a monarchical regime:

> *Some there are among you who say, – Give yourselves to a king! Give yourselves to a king? Know that, if you do so, you give yourselves to an enemy – to an enemy, and that an irresistible and perpetual, an irresistible and implacable one. Yes – diametrically opposite in everything is his interest to yours: and what worse can be said of the worst enemy? It is your interest to keep, every one of you, the fruits of his own industry for his own use. It would be your king's interest to get from each of you the last penny, to lavish upon his own lusts, his instruments, and his favourites, to satiate what is insatiable – his own rapacity, and that of his instruments and favourites.*[51]

In a letter sent by Thomas Jefferson to Korais, a major figure in the Greek Enlightenment living in Paris, Jefferson offers an introduction of the US Constitution. In relation to the Head of State, he states that:

> *Our Executives are elected by the people, for terms of one, two, three or four years; under the names of Governors, or Presidents, and are re-eligible a second time, or after a certain term, if approved by the people. may your Ethnarch be elective also? or does your position, among the warring powers of Europe need an office more permanent, and a leader more stable?.*[52]

In the words of Jefferson, the modern and the traditional approach on the head of the state is encapsulated. The US was the paradigm of the new and modern constitutional structure, while the monarchical regimes in Europe exemplified the traditional approach.

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48 S. Trikoupis, *Istoria tis ellinikis epanastaseos* 110 (London 1853).
49 *Ibid*., at 239.
50 Nomiki Diataxis tis Anatolikis Xersou Elladas (Legal Order of Eastern Continental Greece) 1821.
51 Βλ John Bowring, *The Works of Jeremy Bentham Vol. 10* 899 (William Tait ed.).
52 From Thomas Jefferson to Adamantios Coray (31 Oct. 1823).

The same year, in a correspondence exchange between the General Secretary of the Executive in Greece, Mavrokordatos, and Adams, the Secretary of State of the United States, it is recorded how the proximity of the Constitutions of Greece and America as Republics is used in order to foster an alliance between the two countries.[53]

In particular, Mavrokordatos, in his effort to convince the US to grant a loan and to recognize the Greek State, states 'If an immense distance separates America from Greece, their constitutions and their reciprocal interests bring them so close together'.[54] In his reply, Adams to Mavrokordatos clarifies that:

> *But, while cheering with their best wishes the cause of the Greeks, the United States are forbidden, by the duties of their situation, from taking part in the war, to which their relation is that of neutrality. At peace themselves with all the world, their established policy, and the obligations of the laws of nations, preclude them from becoming voluntary auxiliaries to a cause which would involve them in war.*[55]

While Adams delivered a negative response pertaining to the loan, he left the door open in relation to the recognition by the United States and the conclusion of diplomatic and trade relations with Greece subject to conditions. Specifically, Adams states that:

> the United States will be among the first to welcome them, in that capacity, into the general family; to establish diplomatic and commercial relations with them, suited to the mutual interests of the two countries, and to recognize [sic], with special satisfaction, their constituted state in the character of a sister Republic.[56]

However, in November 1823, the President Monroe, in his speech to Congress, reconsidered the recognition of the Greek state. He ultimately decided against it. Fearing that US interference in European affairs might provoke counter reactions from the European Powers in Latin America and their possible intervention in the newly established countries.[57] This led to the formulation of the Monroe Doctrine, establishing non-interference in the New World by European countries and vice

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53 *See* William St Clair, *That Greece Might Still Be Free: The Philhellenes in the War of Independence* 299 (Open Book Publishers 2008).

54 Correspondence between John Quincy Adams and Alexander Mavrocordatos Tripolitza (22 Jun. 1823), https://www.greekrevolution.org/correspondence-john-quincy-adams-alexander-mavrokordatos-6-22-1823-and-8-18-1823/ (accessed 19 Oct. 2022).

55 Correspondence between John Quincy Adams and Alexander Mavrocordatos, Washington (18 Aug. 1823), https://www.greekrevolution.org/correspondence-john-quincy-adams-alexander-mavrokordatos-6-22-1823-and-8-18-1823/ (accessed 19 Oct. 2022).

56 Angelo Repousis, *The Cause of the Greeks: Philadelphia and the Greek War for Independence, 1821–1828,* 123 The Pennsylvania Mag. of Hist. & Biography 333, 338 (1999).

57 Correspondence between John Quincy Adams and Alexander Mavrocordatos, Washington (18 Aug. 1823), https://www.greekrevolution.org/correspondence-john-quincy-adams-alexander-mavrokordatos-6-22-1823-and-8-18-1823/ (accessed 19 Oct. 2022).

versa in the Old World by the United States.[58] Specifically, the President of the United States explicitly stated that 'we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety'.[59] This US policy of non-interference in European affairs left the issue of Greek statehood as a matter solely between European powers and the revolutionary Greeks.

Later in 1825, in the correspondence between Korais and Jefferson, Korais complains about the presence of Europeans who influence the revolutionaries in favour of monarchical features such as titles of nobility. In particular, Korais denounces the presence of the British, stating that 'They have already begun to honor us with titles and you know that in some ears, the titles sound so pompous and so dazzling that they drown the modest voice of the homeland' and asks Jefferson to mediate so that America can send emissaries who will strengthen the desire of the Greeks for a Constitution to the American standards.[60]

The tension between traditional constitutionalism favouring monarchy and modern constitutionalism advocating for a republic did not lead to significant conflicts. Civil strife occurred within rebellious Greece due to tension among various power centres.[61] Despite controversies, the third revolutionary Constitution of 1827 emerged as the most constitutionally mature act, strengthening the executive power as a single-member body with a seven-year term[62] while retaining the office of elected Head of State.[63]

4 THE TRADITIONAL MODEL PREVAILS

Since the declaration of independence and the writing of three constitutions, the war of independence in Greece evolved with both military successes and failures. Throughout the war, civil strife among the Greeks heightened the uncertainty regarding the war's outcome. However, when the major European powers

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58 For the Monroe doctrine in relation to the Greek Revolution *see* Lawrence S. Kaplan, *The Monroe Doctrine and the Truman Doctrine: The Case of Greece*, 13 J. the Early Republic 1, 2 (1993), doi: 10.2307/3124186.

59 2 Dec. 1823: Seventh Annual Message (Monroe Doctrine), https://millercenter.org/the-presidency/presidential-speeches/december-2-1823-seventh-annual-message-monroe-doctrine (accessed 19 Oct. 2022).

60 To Thomas Jefferson from Adamantios Coray (30 Jan. 1825), https://founders.archives.gov/?q=Correspondent%3A%22Coray%2C%20Adamantios%22%20Correspondent%3A%22Jefferson%2C%20Thomas%22&s=1111311111&r=5 (accessed 19 Oct. 2022).

61 Regarding the civil conflicts between the Greek revolutionaries, *see* Nikos Rotzokos, *Revolution and Civil War in 1821* (Irodotos 2016). *See also* Brewer, *supra* n. 31, at 226 ff.

62 Political Constitution of Greece (1 May 1827), Art. 121.

63 *Ibid.*, Art. 120.

expressed support for the creation of an independent state in Greece, it solidified the positive outlook of the struggle for liberation.[64]

The neutrality of the United States in European affairs, as articulated in the Monroe doctrine, meant that the European powers had complete discretion in managing the issue of the Head of State. In parallel, the re-establishment of the monarchical regime in France signalled the prevailing traditional conception of the Head of State at the European level.

Indeed, the intentions of the great powers were reflected in the international texts they signed, which constituted significant *faits accomplis* both for the Sublime Porte, the top Ottoman Authority, and for the Greeks.

The first international agreement signalling the intentions of the European powers in favour of establishing a new Greek state was the St. Petersburg Protocol signed between Russia and England on 4 April 1826. Under this international agreement, England and Russia committed to mediating between the Greeks and the Sublime Porte to establish an autonomous Greek state.[65] Greece would function as an autonomous region within the Ottoman Empire, paying an annual tribute to the Sublime Porte. The Greeks would have the freedom to select their government, although, the Sultan would exert influence over their representation.[66] The exact same institutional framework was adopted by the Treaty of London adopted on 6 July 1827, this time between England, France, and Russia.[67]

The Greek revolutionary government's positive response,[68] the initially negative reaction of the Sublime Porte to accept Greece's autonomy,[69] the Russo-Turkish war stemming from the violation of the terms of the Treaty of Akkerman,[70] and the military actions taken by the great powers against the Ottoman Empire[71] led to new developments. With the signing of the London Protocol, on January 22/3 February 1830, the Great Powers officially recognized

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64 For more information on the reversal of the Great Powers *see* Loyal Cowles, *The Failure to Restrain Russia: Canning, Nesselrode, and the Greek Question, 1825–1827,* 12 The Int'l Hist. Rev. 688 (1990), doi: 10.1080/07075332.1990.9640564.

65 Protocol of Conference between Great Britain and Russia, signed at St. Petersburg, 23 Mar. (4 Apr.) 1826 (76 CTS 175) Art. 1.

66 *Ibid.*, Art. 2.

67 Treaty between France, Great Britain and Russia for the Pacification of Greece, signed at London, 6 Jul. 1827 (77 CTS 307).

68 Foreign Office, *Papers Relative to the Affairs of Greece, 1826–1832* 352 (London: J. Harrison and Son 1835).

69 The Sublime Porte after the defeat by the Russo-Turkish War accepted the autonomy of Greece with the treaty of Andrianoupolis. Treaty of Adrianople 14 Sep. 1829 (80 CTS 83).

70 *See* Treaty of Akkerman Convention, 7 Oct. 1826 (76 CTS 411).

71 For more information on the Battle of Navarino (Oct. 8/20, 1827) *see* Will Smiley, *War without War: The Battle of Navarino, the Ottoman Empire, and the Pacific Blockade*, 18 J. Hist. Int'l L. 42–69, doi: 10.1163/15718050-12340051 (2016).

Greece's independence (rather than autonomy). Simultaneously, another Protocol on the same day determined that Prince Leopold of Saxe-Coburg would assume the throne as the Head of the newly established Greek State.[72]

Comparing the Treaty of London of 1827, which allowed the Greeks to choose their representatives, with the London Protocol of 1830, which imposed a monarchical regime, reveals a contradiction.[73] The factors that intervened and influenced the Great Powers' shift towards a monarchical regime, in contrast to the intentions of the rebellious Greeks (at least as reflected in the revolutionary constitutions) has not been thoroughly discussed.

In 1827, Count Ioannis Kapodistrias was elected Governor of Greece and issued an ultimatum suspending the Constitution of 1827 due to the prevailing state of emergency.[74] The archives of the Ministry of Foreign Affairs of Great Britain provide us with crucial information. The turning point took place in early September – early December 1828, when the Great Powers organized an Ambassadorial Conference in Poros, attended by the ambassadors Stratford Canning of England, the General Count Armand Charles Guilleminot of France, and Count Alexander Ivanovich Ribeaupierre of Russia.[75] The purpose of the conference was to define the borders of the autonomous state of Greece as a continuation of the Treaty of London of 1827.

Interestingly, Annex F of the agreed Protocol entitled 'Suzerainty' dealt with the question of how the Sultan would have an influence over who would represent the autonomous state of Greece. The main conclusion was that 'it would be impossible to determine what are the surest ways to reach the desired result, before [UK, France and Russia] know how, ultimately, the government of Greece will be organized. If this government will remain in the hands of a single person, it will either sit on a supreme council, a senate, etc'.[76]

Furthermore, they noted that the Greeks had an elected government since the beginning of the revolution, and they observed that:

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[72] This decision was officially notified to the Greek Government by letter (Mar. 27 / 8 Apr. 1830) *see*, https://www.antikrizontas-tin-eleftheria.gr/ekthemata/koinopoiisi-apofaseon-trion-megalon-dynameon/ (accessed 19 Oct. 2022).

[73] In practice, the Great Powers are consistent in the hegemonic nature of the head of state. The creation of an autonomous regime, according to the St. Petersburg Protocolo of 1826 implied that the Sultan would retain the hegemonic role of head of state. In fact, the term used in relation to Greece was suzerainty. Suzerainty implied that Greece will have sovereignty for the internal affairs, but for the external affairs, Greece will be represented by the Sultan.

[74] *See* NHI Resolution of 18 Jan. 1828. *See also* Alivizatos, *supra* n. 1, at 439, 449. About the reasons which supported the suspension of the Constitution of 1827 *see* Kaltchas, *supra* n. 1, at 68.

[75] Foreign Office, *supra* n. 68, at 491.

[76] *Ibid.*, at 515.

> *As long as the Greeks sought to compose the Government of one or more people chosen from among themselves, that Government was never able to resist the shock of factions, the injurious influence of localities, the ascendency of that innumerable crowd of individual and irregular powers, - the first moving principle, it is true of the destruction of the Ottoman yoke in Greece,- a principle however which has since become fatal for the nation, by the anarchy which it inevitably brought along with it.*[77]

Moreover, the representatives of the Great Powers commented on the current Governor of Greece, Kapodistrias, and they mentioned that:

> Convinced since then of the inability to entrust the government to one of their own, without immediately seeing a coalition of a thousand opposing forces agitated against it, and without thus prolonging indefinitely the calamities of Greece, the Greeks turn their eyes abroad, and they called Count Kapodistrias at the helm of the affairs.[78]

Although they applauded the work and role of Kapodistrias, they expressed concerns about the temporary nature of his power and stated that even if his power were for life, the possibility of elections for the selection of a new Governor would be detrimental, as the tensions of the pre-Kapodistrian era would be revived.[79]

Consequently, they concluded that:

> *the morals, the habits, the interests that were created in the country during the long Turkish occupation and that under its influence time developed, are the many causes that exert such a destructive influence on the situation of the country. And if we add the natural state of Greece, the various elements of which it is composed, and the diversity of local interests which is a natural consequence, we must recognize that to prevent first of all the return of an anarchy that has not been limited in the last year due to the needs of war and the presence of allied forces and which [anarchy] will they reappeared in the hour of peace, and at the moment when allied forces would withdraw; to assure the Greeks in retrospect of the degree of prosperity promised to them by the Treaty of London; to put them in a position to maintain on their own the conditional independence they will enjoy; finally, to find in their new existence a lasting guarantee of the tranquility of Europe; They should recognize, we say, that the heredity system in government is the only one that can give all these guarantees.*[80]

Interestingly, the representatives of the Great Powers examined two objections regarding the imposition of the monarchical regime on Greece. The first objection concerned whether this system would violate the freedoms of the Greeks, and the second objection concerned the violation of the Treaty of London of 1827, which provided for the possibility of the Greeks to choose the way of their governance and the influence of the Sultan on this decision.

In relation to the first objection, the representatives opined that by proposing the creation of a hereditary government in Greece, it does not mean that Greeks will not participate in the legislative power. They concluded that:

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77 *Ibid.*
78 *Ibid.*, at 515.
79 *Ibid.*, at 515.
80 *Ibid.*, at 515–516.

> by combining this principle [participation in the legislative process] with that of hereditary succession to the supreme power, the desire of the Greeks would be amply fulfilled and that public order, a necessary condition of the continued interest of the Courts in favor of Greece, would thus be established upon lasting foundations.[81]

As for the objection concerning suzerainty, the Representatives of the Great Powers considered that this objection is more substantive, and the proposal for succession in respect of the Head of the State of the Greeks did indeed go beyond the letter of the Treaty of London. But they considered that the principle of the election is incompatible with the political and moral situation in Greece, that competition would exacerbate the problems and rivalries, that there would be constant anarchy that would be the consequence of the rivalry, that the Sublime Porte would have an interest in maintaining these problems and would constantly exercise in Greece, a kind of influence so fatal to the independence of the Greeks, contrary to the purpose of the Alliance.[82] Moreover, they noted that there would be a problem if the Sublime Porte had the power of veto over the elected representative of the Greeks.[83]

In Annex F of the Protocol to the Poros Conference, the distrust of the traditional model of power with regard to the election of the Head of State was essentially unfolded.[84] Moreover, such distrust was exacerbated by the inability of the Greeks during the years to the First Republic to manage political confrontations.

Similarly, the correspondence exchanged between the Ambassador of Russia in Greece, Count Bulgary and the Minister of Foreign Affairs, Count Nesselrode, a couple of months after the Protocol of Poros, in December 1828, further elaborates on the conclusions of Annex F of the Protocol of Poros.[85]

Count Bulgary starts his letter with the following question: 'What is the mode of organization and the form of Government which can best assist the accomplishment of the magnanimous views of the triple Alliance?'.[86] To respond this question, he compares and contrasts the three models of government, the federative, the elective and the monarchical.

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81 *Ibid.*, at 516.
82 *Ibid.*, at 516.
83 *Ibid.*, at 516.
84 In theory as well, it was believed that instability is one of the principal vices of elective governments. *See* Alexis de Tocqueville, *Democracy in America* 149 (Henry Reeve tr The Pennsylvania State University 2002).
85 The Portofolio; A Collection of State Papers, and other Documents and Correspondence, Historical, Diplomatic and Commercial Vol V 566 (London, Frederic Shoberl 1837).
86 *Ibid.*, at 566.

While he rejects the federative model, as the Greeks themselves have rejected such model, Count Bulgary raises concerns about the elective model, which was the model according to the Constitution of Troizina (1827). In particular, he states that:

> if we now consider the difficulties inherent in every elective Government, and the disorders which are almost always the result of it, as long as liberal institutions are neither consecrated by the moral habits of the people nor by time, it must be confessed that the three Allied Courts would destroy with one hand the work which would have founded with the other, if they should consent to establish in Greece an order of things, the danger and absurdity of which are sufficiently demonstrated by sever years of anarchy, by the immorality and the ignorance of the most influential class of the higher orders of this country.

And he continues that 'it would be a strange delusion to believe seriously in the possibility of organizing any Government whatever in Greece upon purely constitutional principles'.[87]

In January 1829, in a letter sent from Count Nesseldore to the Prince of Lieven, Ambassador or Russia in London, it appears that the Russian delegation endorses the Austrian proposal to 'place the State under the government of a Chief, invested with a power which would be more beneficial in the same degree in which it should be more extended, and more nearly approach to monarchical power'.[88]

The recommendations of the Poros Protocol in relation to the model of government of Greece were accepted by another protocol which was signed in London in March 1829 by the British Foreign Minister, George Hamilton-Gordon, forth Earl of Aberdeen and by the French and Russian Ambassadors in London Jules de Polignac and Christoph von Lieven.[89] This time the Great Powers officially endorsed the imposition of a Christian Prince to the Greek Autonomous state, which will be subject to the suzerainty of the Ottoman Sultan.

By 1830, the imposition of a hereditary Christian Prince as Head of the Autonomous Greece had been consolidated, and the choice of the person to take over as Monarch was pending. The throne was proposed to Leopold of Saxe-Coburg, and during the negotiations between the Great Powers and Leopold of Saxe-Coburg, the Great Powers decided to recognize Greece as an

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87 *Ibid.*, at 574.

88 Papers relative to the Affairs of Greece, Protocols and Conferences 277 (Harrison and Son 1880). The Austrian proposal as put forward my Metternich was an effort for the reconciliation between the Great Powers and Porte. It included 6 main points about the territory of the new state, the issue of suzerainty and the model of governemnt in Greece. *See* Metternich to Ottenfels, Vienna, 21 Jan. 1828, HHStA, StA, 35.

89 Protocol of the Conference held at the Foreign Office, on the 22nd of Mar. 1829, 263, available at Papers relative to the Affairs of Greece, Protocols and Conferences 263 (Harrison and Son 1880).

independent State. Interestingly, the creation of an independent state was proposed by the Austrian Cabinet in 1828 but it was initially rejected by the British and the Russians.[90]

The Minister of Foreign Affairs of Great Britain, Lord Aberdeen, in communication with Leopold of Saxe-Coburg, in January 1830, explicitly stated that 'It is true that there has been a discussion, especially recently, with the view of the withdrawal of the Greek State from the sultan's dominance'.[91]

While the monarchical regime was agreed upon, it was pending whether a Constitutional Monarchy or an Absolute Monarchy would be established. In public speeches in the UK, Parliament MPs testified to this.

Specifically, a member of the Parliament, Charles Grant, first Baron of Glenelg, in 1830, criticized the foreign policy of the United Kingdom as vague on the issue of the independence of Greece.[92] He wondered, however, what form of monarchical regime would be imposed on Greece, a Constitutional Monarchy or an Absolute Monarchy, with the choice of the Republic not on the table. 'What would be the form of government that would be imposed on the people? They were told that it was going to become a Monarchy, of a mixed kind, with the advantages of a Constitution, or was it to merge into a pure and inimitable despotism?'[93]

In addition, another MP, Lord John Russell,[94] on the same subject stated:

> *there are one or two points concerning the settlement of Greece, which must be made soon, which require some explanation. The first concerns the form of government to be established in Greece. At this point, ominous rumours have circulated about the intention of the Allied Powers, which, it was said, were intended to introduce a despotic Government into Greece. […] The Mr [Minister of Foreign Affairs] to declare that the Government of his Majesty has no intention of intervening to prevent the Greeks from governing themselves according to their wishes and views. I would be very pleased with such a statement. Because, on the one hand, there is nothing more repugnant than the introduction, by such a nation as this, of a despotic government in any country. So, on the other hand, I know how difficult it is to adapt any constitution to a people made up of different classes of men, whose habits and origins are fundamentally different. and, therefore, I do not see any course that is likely to be effective in forming a permanent government in Greece other than consulting the feelings of the people who are going to be governed by it. At the same time, I feel, as an Englishman and as a citizen of a free country, that for the new state to be founded, freedom – political freedom – must be an integral part of the principles on which his government must be based*

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90 *See* Metternich to Esterházy, Vienna, 25 Apr. 1828, HHStA, StA, 182. *See also Prince Clemens Wenzel Lothar Metternich Memoirs of Prince Metternich: 1773–1829, Volumen 2* 821 (Clemens Wenzel Lothar Metternich ed., Alexander Napier tr, Harper Brothers Franklin Square 1881). *See also* C. W. Crawley, *The Question of Greek Independence* 104 (CUP 1930).

91 Foreign Office, *supra* n. 68, at 540.

92 Minutes of Parliament, 5 Feb. 1830, Volume 22: Column 147.

93 *Ibid.*

94 *Ibid.*, Column 545.

In John Russell's question, Minister Peel refuted the rumours and assured that no agreement has been made on the imposition of absolute monarchy on Greece. However, referring to the other Great Powers, he stressed that 'any desire to intervene in the establishment of such institutions is well calculated in order to ensure [France and Russia] freedom and promote the happiness of Greece'.[95]

Unfortunately, the events that followed confirmed the concerns of the Members of the British Parliament regarding the status of the absolute Monarchy in Greece. Leopold of Saxe-Coburg explicitly stated in his communication with the Prime Minister of Great Britain that if he accepted the throne, he would want to decide whether and when he would give institutions to the new state.[96]

On 27 March 1830, the Great Powers announced to Kapodistrias their decisions based on the Protocol of London of 3 February 1830. Among other things, they stated that 'only the monarchical government can guarantee the stable situation that peace requires', and, for this reason, they unanimously decided to offer to Leopold of Saxe-Coburg the throne of the independent Greek State.[97] It is interesting that the Great Powers presented their decision without giving the Greeks the opportunity to raise objections regarding the person of Leopold, although Leopold of Saxe-Coburg had asked the British Prime Minister in communication with him on 9 February 1830, to grant such options to the Greeks.[98]

All in all, a Monarchy was established in Greece according to the traditional conception that was dominant in Europe. This development comes to confirm Elster's theory about the role of the external actor to place restrictions (upstream constrains) on the content of the Constitutions.[99] In this case, since Greece's independence was granted due to the external intervention of the Great Powers in Europe, these Great Powers had the competence to impose restrictions on basic constitutional choices. Of course, the imposition of a Monarchy in Greece became a source of tension and was finally resolved after 150 years with the establishment of a Republic.

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95 *Ibid.*, Column 550.

96 Foreign Office, *supra* n. 68, at 548. 'Please declare to Your Grace clearly that I interpret the meaning of this paragraph - that I will have complete freedom to give or not to give such institutions, compatible with a Monarchy, whenever I deem, in time, necessary for the prosperity of the New State'.

97 Archives of the Greek Revolution 1821–1832, *Documents of the Kapodistrian Period*, Volume E 19 (Greek Parliament 2012).

98 Foreign Office, *supra* n. 68, at 547. Finally, after the refusal of Leopold of Saxe-Coburg to accept the throne, Otto accepted in 1832 and became King of Greece.

99 For restrictions on the content and method of ratification of constitutions by external factors, *see* Jon Elster, *Forces and Mechanisms in the Constitution-Making Process,* 45 Duke L. J. 364 (1995), doi: 10.2307/1372906.

5 CONCLUSIONS

This study focused on examining the revolutionary constitutions of the First Greek Republic from a legal perspective, with a central theme being the struggle between tradition and modernity. The Greek Revolutionary Constitutions and the First Republic of Greece became embroiled in a tug-of-war between traditional and modern conceptions of the state form. In the early Nineteenth century, the traditional view of constitutionality emphasized the creation of constitutions that preserved the monarchical regime, whereas the modern perspective advocated for Republics.

The traditional approach argued that Monarchies provided greater stability and served as a counterweight to the tensions arising from the electoral process. Given the prevalence of the traditional legal perspective in Europe, the First Hellenic Republic faced challenges in dispelling doubts associated with the traditional legal approach. Consequently, the political landscape during the First Hellenic Republic intensified the belief that an elected Head of State would struggle to contend with the strong presence of local interests, the absence of central hegemonic power, and the fragile truce among the various parties prevailing in Greece.