The constitutional consequences of the peace: a short outline of Post-World War I constitutionalism, a century later

di Marco Olivetti

Abstract: *Le conseguenze costituzionali della pace: una breve descrizione del costituzionalismo del primo dopoguerra, un secolo dopo* - This essay outlines the context of the Post-World War I European constitutionalism in which the Turkish constitution of 1924 must be situated. The impact of World War I on the constitutions of the European States was extremely relevant and produced a wave of new constitutions adopted in the newly independent States and in the defeated Powers. At the same time, a series of constitutional reforms was adopted in the victorious European States. While there are common trends to the constitutional novelties of the post-war years (universal male suffrage, proportional representation, rationalization of the parliamentary system, procedures of direct democracy, first attempts of constitutional justice, introduction of social rights in the constitutional texts, etc.), the task of State building and of constitutional founding proved to be extremely challenging. The lack of maturity in democratic culture was in many cases an obstacle to the consolidation of the new institutions.

Keywords: Democracy, Proportional representation, Universal suffrage, social rights, Constituent Assembly.

1. The constitutional question after World War I

At the end of the First World War, the problem of what we may define – quoting indirectly John Maynard Keynes[1] – the "constitutional consequences of the peace" was at the same time at the center of European politics and at its margins, somewhat in the shadow. This statement may seem and actually is contradictory, but this contradiction is a consequence of the complex situation of the political reality of the post-war period.

A) The constitutional question was at the center of the political debate well before the end of the war, and it involved its most dramatic form, that concerning the form of the State as a whole.

The crisis of the authoritarian or semi-authoritarian Empires that composed one of the two conflicting alliances of the Great war, but also one of the main powers of the Entente (Tsarist Russia), had become evident during the evolution of the war, and 1917 was surely the key-year, with the fall of monarchy in Russia, the failure of the Kerensky compromise solution

[1] J.M. Keynes, *The Economic consequences of the peace*, London, 1919.

and the seizure of power by Lenin's Bolshevist party, for which the constitutional organization of Russia was more important than the borders of the State, as may be seen with the dramatic conditions accepted by the Soviets in the Brest-Litovsk treaty.

But the crisis affected also constitutional monarchies and proto-liberal democracies, in which the mass mobilization that had been made necessary by the long and devastating war had put in the agenda the need for extensive reforms, generally in the sense of a wider democratization and of the recognition of social rights.

The geopolitical and diplomatic consequences of the war and the birth of a series of new States in Europe produced an escalation of the constitutional question, as they made necessary not only to reform or to re-write anew constitutions of already existing States, but also to found new States from the base, giving them first a provisional constitution and in a short time their "final" constitution.

B) Yet, notwithstanding the sheer dimension of the constitutional problem, this issue was marginalized by many factors, that seemed to be more important for the political actors of the time.

First of all the material consequences of the war were without precedents, given the enormous loss in terms of human lives and material goods that the war had produced, specially in the areas more affected by three or four years of battle with modern war techniques, like Belgium, north and east France, north-east Italy and the area between the Baltic and the Black sea, just to limit the analysis to Europe.

Secondly, the character of a "war to end to all wars" that World War I had assumed after the American intervention in 1917 gave priority to the question of building a new international order suitable to substitute the one that had been engineered by Metternich and by his colleagues in Vienna one century before. And this problem had at least three macro-dimensions: the definition of the new borders in Europe, the fall-out of the war outside Europe (with the colonial question at the center) and the construction of an international organization that should have been the framework of the new world order. Behind these dimensions, the French hegemony in post-World War I Europe was the geopolitical fact around which the new order was being built and if this fact reflected the outcome of the war, it was not supported by a material strength to justify it, as the 1930s would have clearly shown.

Thirdly, it could be doubted that November 1918 actually marked the end of the war throughout all Europe. Of course the Franco-German and the Italo-Austrian border conflicts were concluded, but the "rage of the defeated"[2] continued and the war had at least four opened "chapters" that resulted in the continuation of military confrontation: the Sino-Japanese conflict, the Greek-Turkish war, the civil war in Russia (with its appendix of the Russian-Polish war of 1919-1920) and, on a smaller scale, the Italo-Yugoslav border question.

On the whole scenario, the economic dimension of the end of the war and of the peace also was perceived to be more important that the

[2] R. Gerwarth, *The Vanquished. Why the first World War failed to end, 1917-1923*, London, 2016 (tr. It. *La rabbia dei vinti. La guerra dopo la guerra, 1917-1923*, Roma-Bari, 2017).

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constitutional question, and Keynes was the one who had the ability to recognize that the road toward failure had been clearly taken in this field.

2. The paradoxical dimension of the constitutional question in 1918

But which were, more exactly, the dimensions of the constitutional question?

On this point, a paradox took rapidly shape. As Hans Kelsen remarked in 1929 in the preface to his seminal book on democracy[3], before the war the democratic principle had gradually became unquestioned. Therefore, the victory of the Allied forces should have opened the way to a full-scale democratization of all the States. But the war and the post-war crisis unexpectedly generated new alternatives to representative democracy: the Russian communism and, in the mid-20s, Italian fascism.

In the crucial years between the end of the war and the mid-1920s, while the scenario of international relations seemed to find very slowly at least a partial stabilization, the prestige of authoritarian solutions grew sharply. In the majority of cases, it was not the traditional monarchical authoritarianism that had been present throughout the European XIX century (and in the States at the border of Europe, like Persia, Egypt, Turkey and – in the Far East – China and Japan). The XX century authoritarianism was beginning to take the forms that would have dominated the central years of the century, with its totalitarian character, centered around the mobilization of the masses.

The reason of this phenomenon was to be found of course in the disruption of European social, economic and political life produced by the war[4], but there was also an upgrading of the ghost whose existence Marx and Engels had denounced in 1848: the social question was again at the center of the discussion and this time, in the war and post-war context, it structured all constitutional discourse, also because socialist parties of various trend had a remarkable share of the MPs in the Constitutional assemblies or in ordinary parliaments elected just after the war[5]. At the opposite of what had happened in the XIX century, the social question was destined to enter in the text of the constitutions and post-World War I constitutionalism was necessarily going to be a "social constitutionalism", even if not necessarily a "socialist" constitutionalism. The Mexican Constitution of 1917 had already showed the way in a context almost totally independent from World War I and with a striking parallelism not only with the Weimar Constitution, but also with the constitutions of some new European States (like the Yugoslav[6] or the Polish). The history of "social

[3] H. Kelsen, *Vom Wesen und Wert der Demokratie*, Tübingen, 1929.

[4] M. Baumont, *La faillite de la paix – De Rethondes à Stresa (1918-1935)*, Paris, 1967, 8 : the title of the first chapter of this book is actually "le désordre européen".

[5] The main exceptions were France and Britain, where right-later wing majorities dominated the first parliament elected after the end of the war. But socialists were the main single party in Germany, in Austria, in Czechoslovakia, in Italy, in Poland and in Estonia.

[6] J. Péritch, *Les dispositions sociales et économiques dans la Constitution yougoslave*, in *Revue de Droit public*, 1926, 485 and ff.

constitutionalism" had begun. And this "social" dimension was going to be inserted not only in the democratic constitutions, but also in the authoritarian ones: the Russian communist and the Italian fascist "constitution" (see the so called "Labour Charter" adopted by the Italian fascist regime) [7].

But this picture risks to be partial if we don't give the due attention to another dimension: nationalism, that had been the main cause of the war, was still there after its conclusion, although in different forms. It appeared both in the aspirations of the Victors, in the frustrations of the defeated and in the internal constitutional organization of the States, both old and new, but specially the latter. The framework created at Versailles was supposed to regulate and moderate this kind of questions, but it proved to be inadequate for the lack of will to compromise in many States: the new multinational States of central-eastern Europe (Poland, Czechoslovakia and the Kingdom of Serbs Croats and Slovenes) were all shaped by the dominating will of one nationality (Polish, Czech, Serb) over the others, even where the minorities (Ukrainians and Lithuanians in Poland; Germans, Slovaks, Hungarians, Ruthenians in Czechoslovakia; Croats, Slovenes, Moslems and various others in the Southern Slave State) were on the whole a substantial part of the new State.

3. Constitutional (re-)foundation at the center of European constitutionalism

Constitutional foundation – or refoundation – did not concern only the central-eastern part of the continent, but the center, the heart of Europe itself. Germany was maybe in 1914 the most advanced European State, both from the cultural, and from the social and economic point of view. It was also the main military power – at least as a land power – and its defeat had been possible only through a large coalition of the other main three powers (England, France, United States, if we don't want to consider Russia). It was also a State with the most advanced constitutional culture and the one whose constitutional system had combined after 1871 elements of traditional authoritarianism (the Prussian and German monarchy, with its social base, the aristocratic-military class of the Junkers) with a very open form of political representation, centered in the *Reichstag*, elected through universal male suffrage and in a party system that had seen the gradual growth of the first modern mass party, the Social-democratic party. Around this system, the German *Staatslehre* had developed a powerful analysis of the role and of

[7] Also the Charter of Carnaro should be duly considered as a manifestation of this "social turn". That Charter was elaborated in Fiume, during the years 1919-20, when the city was under the direction of Gabriele d'Annunzio and of his irregular troops. It was promulgated by D'Annunzio's regency as Constitution of the city of Fiume, but never entered into force, as at the end of 1920 the revolutionary government was suppressed by the Italian regular troops. On that Charter – and on its social-corporatist principles – see D. Rossi, *D'Annunzio, the Charter of Carnaro, and the Crisis of the Liberal State, between Representation and Anti-Parliamentarianism*, in *Giornale di Storia Costituzionale*, 38 (2019), p. 135 ss. See also G. Ambrosini, *Gabriel D'Annunzio et la constitution syndicale de Fiume*, in *Revue de Droit public*, 1926, p. 741 and ff.

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the functions of the State with a positivist methodology, culminating in the *Handbook of Public Law* of Paul Laband[8] and in the *General Theory of the State* of Georg Jellinek[9].

The breakdown of the German Empire through a revolution, who had its roots in the navy and immediately after in the action of the Social democratic party in Berlin, generated the need of re-building from the foundations the German constitutional machinery. This was done in a very short period of time and rather smoothly, specially considering the external constraints (social disorder, radical revolutionary and counter-revolutionary pressure, international demands), in the months between January and August 1919, when the German constitution of Weimar was finally adopted.

Given the fact that the Weimar constitution is one of the best studied subjects in the fields of political science and of constitutional law, it is neither useful, nor possible to give here an illustration of the constituent process and of the content of the new Constitution. Here it is enough to underline the main choices adopted in the *Nationaltheather* of Weimar.

The new Constitution kept Germany inside the model of the liberal-democratic State: the authoritarian element embodied by the Hohenzollern monarchy was removed, the alternative Soviet model was clearly refused and a "fundamental decision" was adopted in favor of constitutional democracy[10].

The parliamentary principle was enshrined in art. 53, thus closing the long debate on the parliamentarisation of the German State that had taken place before and during the war[11]. Political representation was opened to the role of parties, recognizing the proportional representation as rule for the election of the *Reichstag* and, at the same time, was integrated with a wide range of instruments of direct democracy. But the logic of Parliamentary government was also integrated with a strong President, who had to be elected by universal male suffrage, and had extensive ("dictatorial") powers that could be activated in situation of emergency on the base of the very controversial art. 48.

The constitution also recognized a full catalogue of fundamental rights, in which the fundamental freedoms were integrated by a list of social rights, while the principle of the social obligations deriving from private property and the proclamation of the principle of justice as directive element of the economic system should have opened the way to a mixed economy, with a strong role of the State. Two years after the Mexican constitution of February 1917, also a great European State had adopted the model of social constitutionalism, while refusing the Soviet model of a fully nationalized economic system.

The Weimar constitution wasn't the only product of German constitutionalism. The constitutions had to be re-written also at the level of the member States, as Post-war Germany confirmed its federal structure.

[8] P. Laband, *Das Staatsrecht des deutschen Reiches*, V ed., Tübingen, 1911.

[9] G. Jellinek, *Allgemeine Staatslehre*, II ed., Berlin, 1905.

[10] C. Schmitt, *Verfassungslehre*, Berlin, 1928, it. tr. *Dottrina della Costituzione*, Milano, 1984, 48 ss.

[11] See for example M. Weber, *Parliament und Regierung im neugeordnte Deutschland*, Berlin, 1918.

Also the constitutions of the German member-States shared the main characters of the federal one, with the exception of presidential authority.

4. Constitutional reforms in the victorious semi-liberal democracies

The impact of the First World War on constitutional law was extremely relevant in almost every European State, but it was more radical in the defeated States than in those that found themselves on the side of the victors at the end of the conflict.

The victorious western Powers – that may be defined as semi-democracies, leaving aside the remarkable differences existing in their constitutional structures (republican in France, monarchical in the United Kingdom, Italy and Belgium) – were not foreign to a process of constitutional reform, that in general simply confirmed already existing trends toward further democratization, often achieving the implementation of reform projects already discussed before the Great war. Similar trends involved also States that had remained neutral in the war, like Switzerland, the Netherlands and Spain.

In general the process of parliamentarisation of constitutional monarchies – that had started already in the first part of the XIX century – was integrated with a democratization consisting in the extension of the right to vote, arriving almost in all States to universal male suffrage and in some to full universal suffrage, with the recognition of the right to vote also to women.

At the same time, social reforms were also introduced, like the reduction to the maximum of eight hours[12] of the working day, but, differently from the countries in which new Constitutions were adopted, this and other social reforms remained at the level of ordinary legislation.

4.1 France

In France the "ivresse" produced by the Victory strengthened the institutions of the Third Republic and in a certain sense "freezed" the formal constitutional law in the conditions in which it was before the war. The French constitutional acts of 1875, together with their implementation in the political practice, were actually taken as a model, or at least as a point of reference, by the constitutional assemblies that drafted new constitutions in central-eastern Europe (e.g. in Czechoslovakia).

The contradictions of the constitutional system of the Third Republic, and in particular its "absolute parliamentarism" and its notorious governmental instability, were of course very well known, and some remarkable proposals for constitutional reforms had been elaborated by the

[12] The eight-hours working day was approved in France on April 23rd, 1919, following a proposal of Prime Minister Clemenceau (C. Delporte, *La III République – III – 1919-1940 – De Poincaré à Paul Reynaud*, Paris, 1998, 26 and J. Chastenet, *Histoire de la troisième République*, vol. V – *Les années d'illusions 1918-1931*, Paris, 1960, 53). Some months before a similar reform had been adopted in Spain.

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most prestigious constitutional lawyers (like Léon Duguit, Maurice Hauriou and Joseph Barthélémy) already before 1914: the election of the Senate on the base of the representation of professional categories, the introduction of direct democracy, the strengthening of the President through its election not by the two Chambers but by a larger body[13]. But all these proposals did not convince the political class to amend the constitutional acts of 1875 and remained in abeyance, with the exception of some proposals of Alexander Millerand at the moment of his candidacy to the Presidency in 1920[14], that were swiftly abandoned. It was only after the constitutional crisis of 1934[15] that the debate on constitutional reform acquired a central importance, but without practical results, even though some factors of change (reduction of the role of Parliament, increased relevance of political parties[16]) began to be evident already in the years following the end of the war.

The main institutional novelty was the electoral reform introduced by the law of July, 12th, 1919, based on a system mixing elements of proportional representation with the majoritarian principle[17]. But its effects were not satisfactory for the political class and the law of July 21st, 1927 brought back in force the system that had been used between 1889 and 1914.

The other elements on which constitutional reform had been proposed already before the war – referendum, a non-political representation in the Senate, an increased role for the President, judicial review of legislation – remained outside the real agenda of the ruling groups.

Therefore, the main change in the working of the French institutions took place in the practice: historians generally underline the decline of the Third Republic in the interwar period, with a reduction of the role of parliament (for example through delegation to the government of legislative powers), and a strengthening of the role of the Prime Minister, whose office grew during the war from the administrative point of view[18], notwithstanding political instability (40 governments in 20 years).

[13] See a reasoned discussion of the proposals in G. Sacriste, *La république des constitutionnalistes. Professeurs de droit et légitimation de l'Etat en France (1870-1914)*, Paris, 2011, 451 and ff. See also, F. Saulnier, *Joseph-Barthélémy 1874-1945*, Paris, 2004.

[14] These proposals were aimed at the creation of a new equilibrium between the executive and the legislative power, restoring the position that the Head of State had lost after the constitutional crisis of 1877. Other proposals in the 1920s concerned the limitation of the time of the speeches in Parliament and the strengthening of the government: see S. Berstein, M. Winock, *La république recommencée. De 1914 à nos jours*, Paris, 2004, 55-56.

[15] For the debate in the 1930s see J. Gicquel, *Le problème de la réforme de l'Etat en France en 1934*, in J. Gicquel, L Sfez, *La réforme de l'Etat en France depuis 1934*, Paris, 1965, 1 ss.

[16] See e.g. M. Prelot, *Institutions politiques et droit constitutionnel*, III ed., Paris, 1963, 474 and ff.

[17] It was a two-rounds system: in the first a candidate could be elected if he got the absolute majority of votes; otherwise, in the second tour the seats would be distributed through a proportional system. Moreover, the districts there small, with the consequence that the proportional effect was limited. See a description in R. Bonnard, *Précis de droit public*, Paris, 1939, 53-54 and 60 ss.

[18] M. Duverger, *Institutions politiques et droit constitutionnel*, vol. II, IV ed., Paris, 1959, 453-454.

Notwithstanding formal constitutional continuity, relevant elements of discontinuity took shape in Italy and in Belgium, mainly through the reform of ordinary legislation on topics of high constitutional relevance.

4.2 Belgium and the Netherlands

The Belgian case is of special interest because in that country the rigidity of the Constitution was bypassed introducing a reform of the electoral legislation without changing the constitutional provisions regulating the right to vote.

Once returned in Brussels, King Albert I installed of its own initiative a new Cabinet – different from the one that had originally been supported by the Chambers since 1914 and that had later been exiled in Le Havre – and led a "reform" of the electoral legislation that was adopted by an ordinary statute, without a formal amendment the relevant articles of the 1831 Charter[19].

Universal male suffrage and equal individual vote was introduced by the law of May 9th, 1919 despite the existing provisions of the Charter, that had established (after the 1893 reform) a system of universal male suffrage, but with the correction deriving for the plural vote recognized to a number of persons in specific conditions, while proportional representation – that had introduced in 1899, for the first time in the world – was maintained. It was only the Chamber elected on the base of the new (unconstitutional) electoral law that gave constitutional status to the electoral reform[20].

The post-war period also generated an upgrading of the "Flemish question", with a change in direction of a wider recognition of the language rights of the majority of the Belgian population that was also connected to the further democratization of the country.

In the Netherlands the universal suffrage had been discussed during the war, as the country had not been invaded by Germany and had remained neutral. In 1917 universal male suffrage was introduced, while, after the July 1918 election, women suffrage was adopted in 1919.

4.3 Italy

In Italy[21] – where the idea of a radical constitutional renovation through a Constituent assembly was discussed in the immediate post-war period but

[19] See the speech of King Albert before the Chambers on Nov. 22, 1918. This process bore usually the name of the royal palace (Lophem) where it was agreed upon by the King and some political leaders. On this phase of Belgian history see C.H. Hõyer, *Le régime parlementaire belge de 1918 à 1940*, Uppsala-Stockholm, 1946, 63 ss.

[20] H. Van Impe, *Le régime parlementaire en Belgique*, Bruxelles, 1968, 34-35. The difference between the old and new system was not marginal if we consider that after the 1893 reform the number of persons with the right to vote was of 1.354.891 and that of votes was 2.111.127, because of the high number of plural votes (Van Impe, *op. cit.*, p. 31).

[21] Although being one of the Victors of the War, Italy suffered the impact of the end of the conflict and of the Treaty of peace in a form not dissimilar from the defeated States: see V.R. Scotti, T. Groppi and M. Olivetti, *Looking for the traces of the 1921*

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did not succeed[22] – the "constitutional" reform took two main forms, both without formally changing the Albertine Statute and through ordinary legislation: differently from the Belgian case, this was not in contrast with the Constitution, that was believed to be flexible.

The amendment of the electoral law led to the full implementation of universal male suffrage, removing the few limitations to that principle still existing in the legislation adopted in 1913.

At the same time, proportional representation was introduced by law n. 1401 of 15.8.1919 and the Parliaments elected in 1919 and in 1921 were formed on the base of it, with a sharp increase of the force of the socialist and of the popular (catholic) party. The new Chamber was composed of party members and its internal regulations were modified to recognize the role of committees and of party caucuses, thus adapting the Chamber to a party/proportional democratic system. Yet, the system proved to be unworkable because of the rise of political extremism (initially of the left and then of the right) and of the inability of moderate parties and groups to form viable and stable coalition governments.

Further topics of debate on constitutional reform concerned the Senate and the decentralization.

The Senate, that according to the Albertine Statute was composed of members appointed for life by the King (in the practice on the proposal of the Prime minister). In 1919 a special parliamentary commission was appointed with the task of proposing a solution for the modernization of the upper Chamber, but its report – in which the popular election of senators was proposed[23] – did not produce legislative results.

Territorial governance in Italy had been structured in 1865 replicating the French model of centralized government, with the provinces as an administrative entity strictly subordinated to the ministry of Interior and this model had been questioned before the war by political forces (Catholics, republicans and socialists) that in that period were at the margin of the political system. As those forces acquired a central political position in the Parliaments elected after the war, territorial reform became a subject of discussion and the creation of Regions was proposed, mainly – but not only – by the Popular party. At the same time, the incorporation in the Italian State of the territories annexed after the War (Trento, Southern Tyrol, Trieste, Istria, Zara), that had enjoyed until 1918 a form of regional autonomy under the Austro-Hungarian Empire, suggested to recognize them a position of special autonomy within the State. But the projects elaborated to face these problems were not transformed in legislative acts.

Turkish Constitution in Italian legal studies, Special Issue *100 Yilinda Teşkilat-I esasiye kanunu ve anayasal mirasi 1921-2021*, Anayasa Hukuku Araştirmalari Derneği Yayinlari, 3, 2021, par. 3.

[22] See a synthesis of the debate in P. Pombeni, *La costituente. Un problema storico-politico*, Bologna, 1995, 32-37. The demand for a Constituent assembly was supported, for example, by the newly created Fascist party, founded in 1919, in its Sansepolcro programme of June 1919.

[23] Si v. *Relazioni della Commissione speciale per la riforma del Senato*, Tipografia delle Mantellate, Roma, 1919.

After the rise to power of Benito Mussolini – who became Prime minister, initially at the head of a coalition ministry, on October 31st, 1922 – the reform agenda of the immediate post-war years was abandoned and the abovementioned legal changes were reversed, specially by the new electoral law of 18.11.1923, that added a majority bonus in the electoral system. After the 1924, the fascist domination on the Chamber, together with the use of political violence, led rapidly to the suppression of opposition parties and to the establishment of a single-party system.

4.4 Switzerland

The reform of the electoral system prospered also in Switzerland, where the substitution of the pre-existing multiple-members majoritarian system with a proportional representation system, that had been unsuccessfully attempted before the war, was successfully adopted through constitutional referendum on October 13th, 1918.

The reform changed the political equilibrium, putting an end to the single-party cabinets dominated by the Radical party since the 1870s and opening the way to coalition governments[24], that would have become a stable feature of XX century Swiss politics. In the same context, also social legislation was strengthened and this required constitutional amendment to enable the federal government to adopt laws in this field.

The fact that even Switzerland, notwithstanding its neutrality and the autonomous pace of its very peculiar constitutional history, was influenced by the general trends of the post-war period is a confirmation of the pervasive nature of the trends described here.

4.5 Britain

Also the unwritten and traditional/evolutionary British constitution underwent a process of modification, first of all through the adoption of a series of important acts of Parliament that widened its written dimension.

These acts were based on a clear trend toward the strengthening of the democratic principle: some extremely important acts had already been adopted in the years before the Great war, mainly the Parliament Act 1911 – that had recognized the prevalence to the House of Commons in relations to the House of Lords and had reduced from 7 to 5 years the term of the elective House – and the Home Rule for Ireland, whose implementation had been suspended for the outbreak of the war in August 1914. Therefore, the fourth *Representation of the People act* adopted in 1918, that introduced the universal male suffrage[25] and recognized the right to vote to a substantial part of the women, may be situated in this line of continuity, that the war further increased, culminating in 1928 with the full recognition of the right to vote of the women.

[24] J.F. Aubert, *Petite histoire constitutionnelle de la Suisse*, Berne, 1974, 52.

[25] On this reform see D. Marquand, *Britain since 1918. The strange career of British democracy*, London, 2008, 9 ss.

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In Britain, differently from the other European countries, the pre-existing electoral system was not changed. The bill that originated the *Representation of the People Act 1918* included in its initial draft the introduction of the Single Transferable Vote in some districts and the adoption of the alternative vote in place of the First Past The Post system, but these reforms were not retained in the final text of the Act, nor did the debate that took place in this period on Proportional representation[26] produce a legislative outcome.

Therefore, the most relevant change in the British constitution of the interwar period may be said to be the strengthening of the democratic element also in the constitutional practice, which became visible when, in face of the need to choose suddenly a new conservative Prime Minister in 1923 after the resignation of Andrew Bonar Law, King George V passed over the most prestigious tory leader, Lord Curzon, with the argument that he was a peer and that the new times required a Prime minister sitting in the House of Commons, that was found in the relatively unknown Stanley Baldwin[27]. Also the gradual but irresistible modification of the party system, with the substitution of the Liberal party with the Labour party as second national party, able to alternate in power with the Conservatives, may be read as a form of democratization, if the social basis of the party is believed to be relevant from the point of view of democracy.

At the same time, the role of the monarch was gradually reduced before and after the war both under King Edward VII (1901-1910) and under King George V (1910-1936)[28], both of whom, nevertheless, still played an important role of arbitration of party conflicts in the constitutional crisis of 1909-10 and of 1931, and were still distant from the almost total political irrelevance to which the monarch would have been confined after WW2.

4.6 Portugal

Portugal, in this context, was a very peculiar case. At the end of the war, the republican Constitution of 1911 had been in force only for 7 years, but it was affected by two set of reforms were followed in this period.

In 1918 an extraconstitutional decree adopted under the dictatorship of Sidonio Pais tried to strengthen the position of the president, introducing the popular election of the head of State and enlarging his powers, reforming the Senate in a corporative direction and recognizing universal male suffrage: it was a strange mix of authoritarian and democratic elements that in any case were derogated in December 1918 after the murder of Sidonio Pais.

In the following years (1919-1921), this time respecting the constitutional rules for constitutional amendments, some reforms were actually adopted, retaking some elements of the decree of Sidonio Pais, but in a more moderate form and in a pluralistic context: the reforms included

[26] For the debate see D.E. Butler, *The electoral system in Britain since 1918*, Oxford, 1963.
[27] G.B. Adams, *Constitutional history of England*, V ed., London, 1935, 530; H. Nicolson, *George the Fifth. His life and reign*, London, 1952, 375-377.
[28] On the role played by the two monarchs see D.L. Keir, *Constitutional History of Modern Britain 1485-1937*, IV ed., London, 1950, 478 ss and 488 ss.

the power of the President to dissolve the Chambers, the creation of a parliamentary council where parties were to be represented and a more timid openness to interest organizations, foreseeing special sessions of the Chamber for discussion with such organizations[29].

4.7 Ireland

The end of the war gave the final push to the settlement of the Irish question, that had become one of the main chapters of British politics since the second half of the XIX century and had come very close to a solution in the summer of 1914, when – at the outbreak of WW1 and as a consequence of it – all parties decided to set aside the issue till the end of the conflict. The Irish Easter rebellion of 1916 had given a dramatic demonstration that a solution should have been found rapidly, but the Ulster question allowed to the British government to keep the control of six counties of the northern part of Ireland, four of which had a protestant majority.

The Government of Ireland act 1920 adopted by the UK parliament created an autonomous regional government for Ulster and for Southern Ireland, but was refused by the Irish nationalist movement *Sinn Fein*, who demanded full independence and unity of Ireland.

Only in 1921 a provisional solution was found also for Southern Ireland[30]. The Anglo-Irish treaty of 1921 created the Irish Free State, enabling it to elaborate an Irish constitution and keeping some links with the British crown. The Irish parliament adopted a (semi-free) constitution that entered in force in December 1922. Yet, the 1922 Irish constitution was adopted in the context of a deep split between the two wings of *Sinn Fein*, the one that accepted and the one that refused the compromise solution of the Treaty, from which the two great modern Irish parties – *Fine Gael* and *Fianna Fail* – would have taken origin. When, in the 1930s, this latter group, led by Eamon De Valera, won the parliamentary election and seized power, the 1922 Constitution was derogated and a brand new – fully Irish – fundamental law was adopted in 1937.

Nevertheless, the 1922 Constitution was significant in itself and corresponded to the general spirit of post-war constitutionalism as it put for the first time in writing in the era of the former British empire the principle of responsible government[31], that had been practiced, but not written, in the dominions of the British Empire during the previous century. But for the

[29] J. Miranda, *Manual de direito constitucional*, Coimbra, 1990, 290-292.

[30] A.J. Ward, *The Irish constitutional tradition. Responsible government and Modern Ireland 1782-1992*, Washington 1992, 167 ss.

[31] Responsible government is the formulation adopted in the British empire for parliamentary government. In the self-governing British colonies, it included the principle according to which the direction of the polity is conferred to a Cabinet, led by a prime minister, expressed by the majority of the popularly elected Chamber. Responsible government also had another dimension: it confirmed the connection with Britain, as the King or Queen of Britain was the head of State of the dominion, where it was represented by a Governor or by a Governor-General, but the actual powers of the Viceregal authority was gradually reduced to dimensions similar to those of the British monarch in Britain, and therefore to almost total political irrelevance.

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rest, this constitutional document lacked a Charter of freedoms and was still overburdened of a series of questions concerning the relations with the British Empire, who had just begun its transition towards the "Commonwealth", that would have taken shape during the 1920s and the 1930s.

4.8 Spain

It has been said that while Spain had not entered in World War I, World War I entered in Spain[32]: if the Kingdom of Spain had remained neutral, it was not spared by the upheaval that was uprooting European political institutions; on the contrary, this phenomenon began to appear already before the end of the war.

The armistice found the Spanish society and its constitutional system in a situation of disarray, where a revolutionary crisis had exploded in Barcelona in November 1917, opening a period of violence and unrest that has been defined "trienio bolchevique"[33], that ended only with the failure of a general strike in the summer of 1920. In this context, the demands for a reform of the 1876 Constitution or even for a constitutional assembly were widespread, as they came not only from the anti-monarchical forces, but also from some fringes of the party system created after the Bourbon restoration in 1874. The parliamentary assembly organized by Francesc Cambò in 1917 while the Cortes where kept shut by the government actually asked the convocation of *Cortes constituyentes* [34].

While before 1914 the alternation in office of liberal and conservative governments and Prime ministers, though lacking a democratic base, had allowed peaceful government changes (thus avoiding the continuous coups d'état of the central years of the XIX century), it lacked a really democratic foundation, as the elections were manipulated by the government and by local officers (*caciques*). After 1914, this system was weakened by the fragmentation of the two parties in various groups, with the consequence of a continuous government instability. In this context, the main parties were unable to face the huge problems of the war and post-war period[35], and only some reforms were adopted, like the reduction to eight hours of the duration of working day, approved under the short Conde de Romanones' government in power between December 1918 and January 1919.

The resistance of the monarch and of the conservative forces to changes aimed to democratize the political system, together with

[32] This phrase is quoted by M. Suárez Cortina, *La España liberal (1868-1917). Política y sociedad*, Madrid, 2006, 185.

[33] A. Delgado, *¿Problema agrario andaluz o cuestión nacional? El mito del 'trienio blochevique' en Andalusía 1918-1920*, in *Cuadernos de Historia contemporánea* (1991) 97-124; , in C.J. Esdaile, *Spain in the Liberal age. From Constitution to civil war, 1808-1939*, Oxford, 2000, sp. Tr. *La quiebra del liberalismo*, Barcelona, 2001, 237 ss.

[34] On the relevance of these events for the history of the 1876 Spanish constitution see L. Sánchez Agesta, *Historia del Constitucionalismo español 1808-1836*, IV ed., Madrid, 1984.

[35] F. Romero, *Spain and the First world war: the structural crisis of liberal monarchy*, in *European History Quarterly* (1995) 555-582.

regionalists demands, social tensions and with foreign policy difficulties (mainly the Moroccan question)[36] led to the crisis of 1923 and to the appointment of the General Captain of Catalonia, Miguel Primo de Rivera as new Prime minister, at the head of a Directorate.

The 1876 Constitution was suspended by the Directorate set up by Primo de Rivera, opening the way to a 7-year period of dictatorship[37], that weakened the legitimacy of the Spanish monarchy, leading to its breakdown in 1931.

4.9 Northern Europe

Leaving aside newly independent Finland[38], the three northern countries were moving in the same direction of the other European States (parliamentarisation, democratization and social policy principles), but with different rhythms and forms. The recognition of the principles of parliamentary government was adopted mainly through a change in the practice, while the other trends required legal and sometimes also constitutional amendments.

Norway had been the first of these monarchies to introduce the principle of political responsibility of the cabinet before Parliament in 1884 (in a moment in which it was still united to the Swedish crown) and Denmark had followed in 1901. Universal suffrage came in both cases more than a decade later: in 1898 in Norway and in 1915 in Denmark.

In Sweden, the biggest Scandinavian country, both reforms may be regarded as a chapter of the moment we are analyzing in this short essay: while a reform in 1909 had substantially extended the right to vote, full-scale universal suffrage was introduced only with a constitutional reform adopted in 1921 by the first *Riksdag* elected after the war. In 1917, with the crisis that brought down the Hammarskjold government and that had ended with the formation of the Eden Cabinet, the principle of parliamentary government may be said to have been accepted by the monarch. Both reforms were influenced by the context of the final period of the war and of the post-war era.

4.10 The States of the Balkan peninsula

In 1923 **Romania** – a State whose territory had been significantly enlarged after the war (creating the so-called Greater Romania) – adopted a brand new Constitution, that kept the basic structure of the 1866 Charter, that had been regarded as an almost literal translation of the Belgian constitution of 1931. The Charter of 1923 followed a series of political and social reforms

[36] J. Chandler, *Spain and her Moroccan protectorate, 1808-1927*, in *Journal of contemporary history* (1975) 301-322; Id., *The responsibilities for Annual*, in *Iberian Studies* (1977) 68-75; R. Penneli, *The responsibility for Annual: the failure of Spanish policy in the Moroccan Protectorate, 1912-21*, in *European Studies Review* (1982) 67-86.

[37] See the syntesis of M. Martinez Cuadrado, *La burguesía conservadora (1874-1931)*, VIII ed., Madrid, 1983, 375 ss.

[38] See further, par. 5.

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that had introduced – through a constitutional amendment – universal male suffrage (19.2.1917) and – through ordinary legislation – agrarian reform, full political rights for the Jews and the right to strike.

The 1923 constituent process was put in motion *extra ordinem*, derogating the rules of the 1866 Constitution on constitutional amendment and without calling a special constituent assembly: the Parliament elected in 1922 assumed unilaterally constituent functions, under the leadership of the King and of the Liberal-nationals, the governing party. The draft Constitution was prepared by a Constitutional commission of the bicameral Parliament and was approved by the National Assembly on March 26th, 1923, by the Senate the following day and sanctioned by the King on March 28th, 1923.

The new Constitution was in continuity with the 1866 Charter and amended it in 46 of its 138 articles, while only 7 were entirely new and a total of 76 reproduced literally the previous Charter. The new fundamental law confirmed the constitutional monarchical system without formalizing the vote of confidence of Parliament in the government; it also enriched the catalogue of rights in the same spirit that forged the other constitutions of this period; and it reserved to the Supreme Court the power to judge on the constitutionality of ordinary law that had been assumed unilaterally by the judges in 1912[39].

The constitutional organization of **Albania** – independent since 1912 – was still undefined at the moment of the outbreak of WW1 and had to be restarted almost anew after the end of the War. The process was troubled and uncertain and led to a series of constitutional documents, adopted in 1921, 1925 and in 1928.

Greece had built a significant constitutional tradition before the war, but the political conflicts between the King and the Government that had exploded at the moment of the entry of that State into World War I led to the fall of the monarchy in 1924 and to the adoption of a new republican constitution in 1925, that was put finally in force in 1927. But this document did not end constitutional instability as it was derogated in 1935 when the monarchy was restored through a royalist coup d'état and the 1911 monarchical constitution was recalled in force.

Of the Balkan States, only **Bulgaria** – notwithstanding its defeat in the war – kept its pre-war Constitution (dating back to 1879 and similar to other European constitutional monarchies) totally unchanged[40].

The constitutional reforms of the following years[41] will not be taken in consideration here, but of course they contributed to characterize the constitutional culture of the interwar period, together with the doctrinal debates, that flourished above all – but not only – in the German-speaking

[39] See P. Costanzo, *Una Carta in bilico tra il costituzionalismo di due secoli (la Costituzione romena del 1923)*, in www.giurcost.it, 28.3.2023 (*Consulta online*, 2023-II). See also the essays published in *Gionale di storia costituzionale*, n. 42 (2021).

[40] See C.E. Black, *The Establishment of constitutional government in Bulgaria*, Princeton, 1943.

[41] For example, the Greek constitution of 1927, the Lithuanian charter of 1928, the Polish constitutional reform of 1926 and the constitution of 1935, the Austrian reforms of 1929 and 1933, the Spanish constitution of 1931, and so on.

area, influencing or even molding the constitutional debate in the rest of Europe.

The constitutional evolution also involved four areas outside Europe: the Middle East, the British colonies (gradually moving toward independence), the Far East and Latin America. But the developments that took place specially in this latter area are in many cases connected if not similar to the European cases, not only in the key area of "social" constitutionalism. Just to mention and example, the Chilean constitution of 1925 may be regarded as an example of the social-liberal democratic constitutionalism that had appeared in Europe after the end of the war.

5. State-building and constitution-making in the new States

Already before the end of World War I, as a consequence of the Treaty of Brest-Litovsk, the building of new States in central-eastern Europe had become a necessity. The final defeat of Germany, Austria-Hungary, Bulgaria and Turkey, together with the proclamation of the principle of nationality included in Wilson's 14 points, opened the way to the birth, first on the paper and later in the actual political reality, of six brand new States: Poland, Czechoslovakia, Estonia, Latvia, Lithuania and Finland were created totally anew as a consequence of the fragmentation of the Russian, German, Austrian and Ottoman empires. The annexations of the lands inhabited by the southern Slave peoples led to the formation of the Kingdom of Serbs, Croats and Slovenes, while Austria and Hungary became independent states, deprived of their dependencies in the former Habsburg Empire. Turkey – the object of this special issue – may be added to these three States, that had to be totally reorganized starting from pre-existing States. Also Germany – where the war ended also because a revolution begun in November 1918 – entered a process of constitution-making after the proclamation of Republic, as it has been reminded above.

In total, ten new constituent processes had to be put in motion (without considering the already quoted case of Ireland[42], that followed totally different paths).

In general, the procedure for State-building and Constitution-making included a unilateral proclamation of independence or of sovereignty, supported or recognized by the victorious Allied powers and the assumption of political power by a provisional body, who adopted a provisional constitution (Czechoslovakia and Austria 1918, Poland 1919[43], Estonia 1919, Turkey 1921) and called the election of a Constituent assembly. In some cases, the constitution-drafting process begun before the end of the war, as a consequence of the Russian Revolution of February 1917 and of the Treaty of Brest-Litovsk and was interrupted and re-started after German defeat (this is the case of Finland and of the Baltic States).

[42] See above par. 4.7.

[43] In Poland the provisional Charter adopted on February 20th, 1919 by the newly elected *Sejm* was known as "Small Constitution", a denomination that was used also in 1992, in post-communist times.

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Elections for a Constituent assembly took place in almost all the new States: Germany (19.1.1919), Poland (26.1.1919), Austria (19.2.1919), Estonia (5-7.4.1919), Lithuania (14-15.4.1920), Latvia (17-18.4.1920), Kingdom of Serbs, Croats and Slovenes (28.11.1920). There are some exceptions: in Czechoslovakia the Constituent assembly was not popularly elected but was composed of the Czech members of the last Austrian imperial parliament, integrated with appointed members, between whom "representatives" of the Slovak nationality were included but not representative of the substantial German minority of the Sudeten area. In Finland the Constitution was approved by the ordinary Parliament elected on March 1st and 3rd, 1919.

All these assemblies had a plural political composition, in which political parties played the decisive role. But in multinational States – it is the case not only of Czechoslovakia, but also of Yugoslavia and for certain aspects of Poland and of Turkey – minorities were not adequately represented or their voice was not fairly heard. The case of the Kingdom of Serbs, Croats and Slovenes was the most striking example of this: the parties representing the Croat nationality, that wanted a federal or confederal system of government, decided to boycott the constituent assembly, where the constitution-drafting process was dominated by the two national parties who were hegemonized by the Serbs and had the support of the monarchy. Therefore the 1921 Constitution was approved by a small majority of 223 MPs, against the contrary vote of 35 and with the absence of 158 representatives (among whom almost all the representatives of the Croat nationality)[44], thus lacking democratic legitimacy in a multinational context. But beyond the Southern Slave example, it is the lack of spirit of compromise in these constitutions that has to be underlined, as it is maybe the common general trend in these Constituent bodies.

Each Constitutional assembly approved a new constitution in a span of time that went from a minimum of four (Finland) to a maximum of 22 months (Latvia), while in Turkey the period was even longer because of the Greek-Turkish war, of the civil war and of the substitution of the Treaty of Sevres with the Treaty of Lausanne. The Constitution, once voted by the Assembly, was in general swiftly promulgated, but also when its validity had to be postponed for some months (like in Poland), the new Constitution was based only on the assembly's deliberation: none of the new constitutions was submitted to a referendum for popular confirmation. Given the fact that the States quoted here were either vanquished States or new States (born from the dissolution of the vanquished States), the Constituent Assemblies were obliged to observe some international obligations, established in the Treaties

[44] On the constituent process in the Kingdom see I. Pellicciari, *Tre Nazioni, una Costituzione. Storia costituzionale del Regno dei Serbi, Croati e Sloveni (1917-1921)*, Soveria Mannelli, 2004, 101 ff.; N. Ksrljanin, *The parliament of the kingdom of Serbs, Croats and Slovenes: projects, the constitution, and reality (1918–29)*, in 40 *Parliaments, estates and representation* (2020) 1-15; B. Milosavljevic, *Drafting the constitution of the Kingdom of Serbs, Croats and Slovenes (1920)*, in *Balcanica* (2019) 225 and ff.

that formalized the conclusion of the war. An example is the obligation of the Czechoslovak State to recognize the autonomy of Subcarpathian Ruthenia, that suggested, among other things, to introduce in the constitution a Constitutional Court.

Ten new constitutions saw the light in the five years following the end of the war in Finland (17.7.1919), Germany (19.8.1919), Czechoslovakia (29.2.1920), Estonia (15.6.1920), Austria (1.10.1920), Poland (17.3.1921), the Kingdom of Serbs, Croats and Slovenes (28.6.1921), Lithuania (1.8.1922), Latvia (15.2.1922) and in Turkey (20.4.1924). The only exception was Hungary, where – after the failed communist revolution of 1920-21 – there was not a fully-fledged constituent process and the power was seized by a regent, who exercised the traditional powers of the Hungarian crown: it was a strange Monarchy without a king, with some parliamentary-democratic elements and strong right-wing authoritarian pressures[45].

But the process of State-building was almost everywhere cumbersome and troubled and included conflicts and international conditions for the definition of borders and for the status of minorities.

6. General trends in the democratic constitutions of the post-war period

The variety of the States that underwent a process of constitutional change after World War I – varieties of political history, constitutional and democratic maturity, but above all of social, economic and geopolitical conditions – suggests to avoid oversimplifications in looking for common elements between the constitutions adopted or reformed between 1918 and 1924 (and even more in the constitutional documents or reforms of the subsequent interwar period). Nevertheless, this "wave" of constitution-making and of constitutional reforms was characterized by some common trends that were underlined already by the students of constitutional law and of political science that were active in the 1920s and in the 1930s.

In this short essay, these trends will be mentioned without entering in the details, according to the function of this special issue, whose aim is not to give a full description of interwar constitutionalism, but to place the Turkish constitution of 1924 in its historical context.

6.1 Fundamental rights

In the field of fundamental rights, the Weimar Constitution was the main novelty and it became rapidly a model of Constitution, destined to survive beyond the short period of its validity. Even though some constitutional documents of the French revolutionary period as well as the French constitution of 1848 had already recognized some social principles if not some social rights, the constitutionalisation of this kind of rights is basically a product of this phase of the European and global constitutional history,

[45] See E. Polgar, *Les institutions hongroises actuelles de droit public*, in *Revue du Droit public*, 1926, 118 ff.

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notwithstanding the fact that it would have been necessary to wait for the period after the Second World War to see the most important consequences of this phenomenon. Yet this element must be underlined, also because the "social" turn is common not only to democratic States – at constitutional or ordinary legislation level – but also to authoritarian States, like fascist Italy (and later Francoist Spain). The Weimar formula is the regulation of social rights and of principles of social policy without the marginalization of fundamental freedoms, that were confirmed in the new Constitution. The only bourgeois rights that were compressed – but not eliminated from the fundamental law – were the right of property (qualified as a source of obligations) and the freedom of economic activity.

The second new element in the field of fundamental rights is the change of perspective on the rights to vote, that tends to be transformed from a function in an individual right. The constitutional right to vote is also connected to the extension of the suffrage and to the full adoption of universal suffrage, even though female suffrage continued to be an exception in this period. Among other things it is interesting that in some countries (France and Belgium) the demand for full voting rights for women came from moderate and catholic parties and was resisted by the self-styled progressives, who feared that the feminine vote would have been a weapon in the hands of the clergy.

6.2 Universal suffrage and rationalized parliamentarism

Universal suffrage, in turn is related to the democratization of the political system, that took at least two directions: the adoption in many countries of proportional representation (with all the consequences for the role of political parties that derive from this choice) and the formal adoption of the parliamentary principle in the written constitutions.

On the first point, the adoption of the proportional representation through ordinary legislation was maybe the main common feature of the political reforms in the States that did not change their constitution, while in many of the new constitutions the principle of proportional representation was formally constitutionalized[46].

For what deals with the principle of parliamentary government, it is somewhat surprising that, notwithstanding the diffusion of the parliamentary system of government during the second half of the XIX century, the principles of parliamentary government (the vote of confidence, the role of the prime minister) had remained totally absent from all the constitutions adopted before World War I. In none of the countries that had practiced parliamentary government – in its monistic, as well as in its dualistic form – the obligation for the government and for the Prime minister to be supported by a majority in the lower Chamber had been written in the Constitution. Nor it had been written in a piece of ordinary legislation or in the standing orders of Parliament. The base remained – not

[46] Art. 22 of the German Const. (and art. 17 for the Parliaments of the member States); art. 26.1 of the Austrian Const.; art. 8 of the Czechoslovak Const.; art. 36 of the Estonian Const.; art. 6 of the Latvian Const.; art. 23 of the Lithuanian Const.; art. 64 of the Rumanian Const.

only in Britain – in the practice, while the nature of that practice (custom, convention, simple practice) was discussed in the constitutional literature. And this was true also of the first stable republican and constitution adopted in Europe – the French constitutional laws of 1875 – while the second republican parliamentary constitution – the Portuguese of 1911 – did actually mention the Prime minister ("Presidente do conselho"), but did not regulate the vote of confidence.

Therefore "rationalized parliamentarism" appeared only with the post-war Constitutions, the first case being maybe the Weimar document of 1919 (if we don't consider some provisional constitutions adopted some months before). Rationalized parliamentarism was actually one of the most discussed constitutional novelties of the post-war era[47], as it was interpreted both in a strict and in a wide sense.

A) In a strict sense, it concerned mainly the writing of the rules on the relation between Parliament and government and on the role of the Prime minister: the debate – moving from the very different way of working of the British and of the French parliamentary systems before and after the First World War – had at the center the appropriate form of parliamentary government, that, according to Robert Redslob, had its "pure" form only when a series of counterbalancing element were present in the (written or unwritten constitution) to check the dependency of Cabinet from the elective Chamber[48], while Mirkine Guétzévich denied that the principle of equilibrium characterized parliamentary government in its democratic form.

One of the key problems, in this context, was the regulation of the Head of State[49]. The solutions adopted by the post-war constitutions cover a wide range of options, going from the traditional constitutional monarchical options (Kingdom of Serbs, Croats and Slovenes) to the absence of a Head of State (Estonia, German member States). In the middle we find the attempt to reproduce in republican form the position and the power of the monarch (Weimar, Finland[50], Czechoslovakia) and the option for a weaker President, similar to the President of the French third Republic (Poland, Austria[51], Latvia). In many cases, the constitutional reforms of the late 1920s would have been centered around the strengthening of the position of the President, or, in the case of Germany, on the actual use of the

[47] See above all B. Mirkine Guétzevich, *Nouvelles tendances du Droit constitutionnel*, in *Rev. Dr. Pub.* (1928) 5 and ff.

[48] R. Redslob, *Le régime parlementaire*, Paris, 1922. On this problem see also G. Burdeau, *Il Governo parlamentare nelle costituzioni europee del dopoguerra* (1932), tr. it., Comunità, Milano, 1950; G.M. De Francesco, *Sulla nomina e la revoca dei ministri nelle Costituzioni del dopoguerra*, in *Rivista di Diritto pubblico*, june 1932.

[49] G.M. De Francesco, *La posizione giuridica del capo dello Stato nelle vecchie e nelle nuove Costituzioni*, in *Studi in onore di Federico Cammeo*,vol. I, Cedam, Padova, 1933, p. 336 ff.

[50] On the continuity between the powers of the Finnish president under the "Form of Government" (constitution) of 1919 and the head of State under the Swedish and the Russian period see J. Husa, *The Constitution of Finland. A contextual analysis*, Oxford, 2011, 22, while J. Nousiainen, *The Finnish political system*, Cambridge-Mass., 1971, p. 147 underlines more in general the continuity of Finnish constitutional order with that of pre-independent Finland.

[51] L. Adamovich, *Grundriss des österreichischen Staatsrechts*, Wien, 1927, 190.

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emergency powers that had remained mainly on the papers in the first decade of the republican life.

Rationalization also affected the structure of Parliament. Here the alternative was between single-Chambers parliaments[52], that developed more fully the democratic principle and the central position of the representative assembly in the Constitution, and bicameral parliaments, where a second Chamber was supposed to be a check on the will of the first[53].

B) In a wider sense, rationalized parliamentarism included all the forms of correction to the central role of the "axis" between Parliament and government, of which the new constitutions of these years offer many examples. This wider sense of "rationalized parliamentarism" (in which what was rationalized was not only the form of government – the relation Parliament-government – but more generally the form of State – the general structure of the democratic system) included three broad fields: direct democracy, constitutional justice and federalism and/or autonomous regions.

6.3 Referendums

While the constitutional provision and the actual operation of the referendum and of other forms of "direct" (or "semi-direct") democracy was already known in the Swiss experience, as well as in that of some North American member States, its diffusion was remarkable in various constitutions of the post-war era. The new States had avoided the recourse to referendum in the constituent process, but they included it in the mechanisms of ordinary constitutional life.

The new Constitutions included bottom-up as well as top-down referendums and forms of popular arbitration of the controversies between the political organs. The German example was maybe the most remarkable, both at the federal and at the member-State level[54]: these devices were actually used in the constitutional practice, even though they became in some cases instruments of extremist parties or of demagogues. Also the Latvian constitution of 1922 included a referendum that should have allowed to settle conflicts between the President and Parliament[55], while the Lithuanian 1922 Constitution regulated both popular initiative and three forms of referendum (advisory, veto and ratification)[56]. The recourse to referendum was discussed also in Britain – with Dicey participating to the debate – and in Italy, for the local level.

[52] Single-chamber parliaments were the Finnish *Eduskunta*, the Lithuanian Seimas, the Latvian *Saeima*, the Estonian *Riigikogu* and the *Skupskina* of the Kingdom of Serbs, Croats and Slovenes.

[53] The bicameral option was adopted by the Constitutions of Germany, Austria, Czechoslovakia and Poland.

[54] R. Schiffers, *Elemente direkter Demokratie im Weimarer Regierungssystem*, Duesseldorf, 1971.

[55] Art. 48 of the Constitution permitted to the president to propose the dissolution of the single-Chamber Parliament and reserved the decision to the voters.

[56] A. Rouzier, *La Constitution de la Lithuanie et le statut de Memel*, Toulouse, 1926, 178 ss.

The openness to the direct democratic procedure was still situated in an ingenuous culture of trust toward "the people", without seeing the distortions that could come from a demagogic use of these procedures by parties, organized groups and lobbies. Direct democracy was, in any case, perceived as the consequence of the adoption of the democratic principle as the basic constitutional principle in many Constitutions of the post-WWI era.

6.4 Constitutional justice

All new constitutions adopted between 1919 and 1924 could be defined as rigid, adopting the categories elaborated by Bryce at the beginning of the century, as all foresaw a specific procedure for constitutional change that was different from the procedure to be followed for the adoption of ordinary legislation. Rigidity took the forms of qualified majorities in the representative assembly (or assemblies in case of bicameral parliaments), sometimes followed by the need of a popular confirmation.

A consequence of constitutional rigidity was constitutional justice, which is usually regarded as one of the most important new elements of the post-war constitutions, with the main examples represented by the Czechoslovak and by the Austrian constitutional courts and by the jurisprudence of the German Supreme Court, that in 1925 recognized the principle of judicial review of legislation. Other less relevant examples – like the Romanian constitution of 1923 – could also be mentioned.

Yet, the birth of Constitutional justice – and of the so called "European model" – must surely be underlined[57], but without anticipating to this period its impact on the constitutional systems. Constitutional justice remained actually a marginal phenomenon in the interwar period in Europe (very differently from the imperious development of judicial review in the United States during the same years) and its contribution to the stabilization of the constitutional systems was almost non-existent, even though there is a certain variation between the relative success of the Austrian constitutional court and the actual irrelevance of its Czechoslovakian counterpart.

The most relevant heritage for constitutional justice and/or of judicial review of legislation in the interwar period is the fact itself of its provision in some constitutions and of its spontaneous appearance in some systems where it was not expressly foreseen. And above all the doctrinal debate in various European states – with the leading role played by Hans Kelsen – prepared in a certain way the adoption of constitutional justice after World War II, paving the way to the successive evolution and modification of what Cappelletti would have called in the 1960s the "Austrian model" of constitutional justice.

[57] T. Groppi, *Introduzione. Alla ricerca di un modello europeo di giustizia costituzionale*, in M. Olivetti, T. Groppi (eds.), *La giustizia costituzionale in Europa*, Milano, 2003, 3 rightly speaks for the post-WW1 period of a "first wave" of development of constitutional justice in Europe, followed by three successive waves (post-WW2, the 1970s, the 1990s).

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6.5 Federalism and asymmetric regional autonomy

Federalism remained marginal in the post-World War I constitutionalism. Two countries (Germany and Austria) adopted a centralized version of the federal arrangement, both confirming and at the same time modifying preexisting decentralized systems (Austria reshaped in federal forms the Austro-Hungarian system that could not be qualified as such in a strict sense).

In both countries, federalism played a remarkable role not only as a decentralizing factor, but also in a political perspective, given the fact that the conflict between parties took a territorial dimension (Social-democratic Prussia *versus* the *Reich* in Germany; Red Vienna *versus* the conservative rest of the country in Austria).

On the contrary, the Yugoslav constitutional assembly failed to adopt a real and working federal system, notwithstanding the ethnic diversity of the new Kingdom of Serbs, Croats and Slovenes and the federalist dynamic that led to the union of the southern Slave peoples in a single State. In the Assembly, the politics of abstention from voting practiced by the Croat leader Radic favored the centralistic solution desired by the Serb parties and by the Serb monarchy.

But the interwar period is relevant in the history of federalism because of the extensive use of semi-federal forms to recognize ethnical or regional autonomies[58] in places like Subcarpathian Ruthenia within Czechoslovakia, Memel within Lithuania, the City of Dantzig in its relations with Poland and the Aaland Islands within Finland, besides the already quoted case of Northern Ireland within the United Kingdom. Later, similar techniques would have found a place in the Constitution of the Spanish second Republic.

7. Democracies without democrats?

Notwithstanding the various elements of novelty that were introduced in the new constitutions and the democratization of the pre-existing Charters, the interwar period remains as a sort of unfulfilled promise in the history of European constitutionalism. The complex devices elaborated in Weimar and in other constitutional assemblies were not enough strong to channel the democratic process and failed in configurating a civic architecture for the common life of persons, groups and peoples.

In some countries, constitutional democracy failed already in the mid-1920s, Italy being the first example of this phenomenon. In other States the failure came later, after a period in which a fragile process of consolidation had unfolded: this is the case of Germany and Austria, among others.

The failure of the attempt to organize an efficient representative and democratic political system was surely one of the causes of the breakdown of constitutional democracies in the 1920s and in the 1930s. The lessons

[58] For a general overview see J.L. Kunz, *Die Staatenverbindungen*, Stuttgart, 1929, 193 and ff.

deriving from these failures were later assumed by some Post-World War II Constitutions, like the German fundamental law of 1949[59].

But, without diminishing the specific responsibilities of constitutional engineering in the failure of the new democracies, the main causes was probably to be found in non-legal factors, of political as well as of socio-economic nature.

Between the latter, the failure in reorganizing post-war disorder and post-war economy contributed to the breakdown of the democratic structures, specially in countries where democratic culture lacked solid foundations (Italy, Germany, Spain, central-eastern Europe, but also France in face of the big chock of the summer of 1940, in which all the contradictions of French history exploded simultaneously). The great crisis of 1929 had a crushing effect on European democratic institutions, even though they were not so evident like in Latin America, where 1930 saw the breakdown of representative institutions through a series of coups d'état in Argentina, Uruguay, Brazil and Perù.

But probably the main factor in the breakdown of democratic institutions was even more prosaic and consisted in the fact that these democracies where not supported by a strong democratic tradition and by a democratic culture. For many politicians and intellectuals, democracy was not the only possible game in town and its procedures were regarded more as an instrument than as a finality in itself, as the only possible form of organization of a pluralistic society, that in those years was finally meeting modernity, with all its thriving but also debilitating complexity.

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[59] Three examples may be given: the further rationalization of parliamentary government (with the introduction of the constructive no confidence vote and with the 5 per cent "Sperrklausel" limiting the access of minor parties in Parliament, thus reducing fragmentation), the exclusion of direct democracy at federal level and the de-constitutionalization of social rights, notwithstanding the formalization of the principle of the Social state.