

POLITICS

CAN CONSTITUTIONAL REFORM BOOST THE LEGITIMACY OF THE POLITICAL SYSTEM?

WHY TRUST IN GOVERNMENT IS DECLINING

The Romanian Government has done remarkably well in terms of preserving popular trust in 2001. Despite predictions to the contrary, popular support for the Government has remained at a high level until the end of last year. Over last winter, however, there has been a decline in popular confidence that the Government can handle the economic and social problems.

Why has this happened, since Romania's situation has neither worsened during this period, nor has the winter been particularly difficult?

To solve this riddle, we hypothesized the following:

- the decline of the trust in Government is due to disenchantment of 'opportunistic' supporters, in other words, of those who did not vote for PSD, but were ready throughout 2001 to credit it. In this case, we should find a correlation between the vote for PSD and the trust in Government.
- the decline is due to increasing popular perception that the Government is not doing enough to curb corruption and reform the political class. In this

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case, we should find an association between dissatisfaction on how the Government is handling corruption, and the level of trust in Government.

- the decline is due to the worsening of the economic situation of the respondents. In this case, we should find a correlation between those who perceive themselves as faring worse than one year ago and lower trust in the Government.

Our surveys have confirmed all the above hypotheses, with each of them representing a possible explanation for the decline of the trust in Government.

Fig. 1. Explanatory model for trust in Government

Predictors	Regression Coefficients (Standard Error)
Subjective well-being	-0.670 (0.140) ***
Evaluation of the Government's fight against corruption	-1.190 (0.150) ***
Vote PSD	1.476 (0.151) ***
Secondary education	-0.679 (0.299) *
High school, vocational	- 0.888 (0.259) ***
College	- 0.423 (0.233)
Age	- 0.283 (0.207)
Rural	0.058 (0.154)
Income	0.000 (0.000)
Adjusted R ²	0.27

*, **, *** degree of significance (***) = strongest correlation).

The model shows four categories of people more likely to show discontent with the Government's performance:

- more educated people in comparison to the less educated, at similar levels of age, residence and income.
- people who perceive that they fare less well than they did a year ago.
- people who did not vote for the governing party, as compared to those who did.
- people who are not convinced of the Government's anti-corruption campaign (according to polls, 37% of the Romanians do not believe that the Government is doing enough, 37% are more indulgent, but not

altogether convinced, and 20 % believe that the Government is taking the necessary steps to fight corruption).

Fig. 2. Perception of political corruption

How spread corruption is among politicians?	%
Almost all politicians are involved	40
Most politicians are involved	46
Few politicians are involved	8.7
Scarcely any politician is involved	0.4

Any government in Romania is prone to become a scapegoat for the overall discontent with the political class. The perception of politicians as corrupt, inefficient and not devoted to the public interest has increased. No adequate policy has addressed this problem so far, and the discontent with the political class as a whole fuels the support for the radical Greater Romania Party.

Fig. 3. Perception of political conflict

Conflict between elected and electors	September 2001 (%) -urban	March 2002 (%) -national
Yes	51	50
No	34	30
No answer	15	20

Levels of general frustration remain high. As a general rule, there is social resentment towards the better off and the employers. About half of the population is also perceiving a conflict between Romanian and ethnic minorities such as the Roma or the Hungarians. Subjective conflict is higher amongst poorer people residing in small towns and villages.

ROMANIAN CONSTITUTIONAL REFORM REVISITED

Alina Mungiu-Pippidi

One solution to ease the public discontent with the political class, but which has been discussed in a wildly unsystematic manner, is the envisaged reform of the Constitution. Prompted by indispensable changes in view of Romania's EU and NATO accession, the reform of the Constitution was embraced by almost every political party – except Greater Romania – as an opportunity for self-advertising. This article discusses the proposals that have been made for constitutional reform, with a particular focus on the reform of the Executive and of the Legislative. In the next EWR, a section will be dedicated to the reform of the Judiciary.

Over the last years, there has been an increasing debate on Constitutional reforms across the region. Prompted by ethnic conflicts such as Macedonia's, this debate has been based on the assumption, not thoroughly tested, that Constitutions matter. This assumption should be considered with some caution, as there is an emerging consensus amongst experts on the Balkans and post-Soviet countries that informal rules and practices may still be the main factor that shapes public life in this region, and that the replacement of old formal rules with new ones may pass unnoticed by societies used to guiding themselves on signals and habits, rather than on political statements and institutions. Having this reservation in mind, there should be two guiding principles in proposing or analyzing a Constitutional Reform.

A political system can be seen as a functional ensemble of different parts. For the whole system to function, these parts must be connected through functional links. When it comes to operate changes in the political system, each part can be reformed in a variety of ways, however, not all such changes to different parts of the system can function together. Parliamentary systems are associated with proportional vote systems, for instance, and proposing at the same time to adopt a parliamentary system whilst giving up proportional vote, as some Romanian

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parties did, is purely nonsensical. 'Reforms' of this kind have the potential of producing more damage than good.

A Constitution is a mere framework of government, no more. As a classic author put it, whenever a Constitution tries to regulate more than government, e.g. the society, the culture, and so on, such attempts only indicate the underdevelopment of the respective state. The least developed countries in the world have lengthy Constitutions; advanced democracies do with more modest documents. This is not a matter of what a Constitution *should* do, but rather of what it *can* do to achieve the goal of constitutionalists. Romania's 1991 Constitution is closer to the Third World type of Constitution: it includes mentions of temporary organizations (such as the Regies Autonomies), and is provided with a strong mechanism to prevent its revision, whilst doing an extremely poor job in terms of establishing the framework for an independent and strong judiciary, one of the essentials of any Constitution.

By and large, the 1991 Constitution has had remarkably little effect on the Romanian political life. The *partitocrazia* established since the first 1995 government coalition (left) was consolidated during the 1996-2000 coalition (centre-right). The media labelled this division of all public positions amongst political parties, combined with the extensive recruitment of everybody with a position by parties holding office, with various anecdotic names (such as *pedeserizare*), but none of it was an effect of some constitutional arrangement. This combination gathering the worse of both worlds (political cleansing after each swing of government, combined with and followed by *lotizzazione* – division of the pie – during coalition governments) is unusual, and its explanations should be searched elsewhere than in the Constitution.

The second example regards presidential powers. Driven by the desire to gain social peace and to achieve legitimacy with the international community, the Constitutional Assembly designed a semi-presidential system, although at the time there were no political parties to speak of, but only a President with important popular legitimacy (voted by 82% of the voters). This President, however, subsequently proved to be a 'weak' President on all counts, very much in line with his Constitutional status. It should be highlighted that the public would have preferred a presidential republic, and has repeatedly voted with the hope that the President can make a difference. There was little to stop the President to play a greater role; yet, Ion Iliescu chose not to do so. Therefore, a personality factor overrode an institutional factor at the time.

Or take property: did the ambiguous formulation in the Constitution prevented private property from being restored in Romania? Or was it rather specific pieces of legislation, such as Law 18/1991 (land restitution), which was passed before the Constitution, granting ownership to some people on others people's lands? Throughout the past decade, under post-Communist governments, the General Attorney made use of his constitutional right to cancel final decisions of the Supreme Court of Justice, which had ruled in favour of property restitution, thus disfavoured tenants, one of the main client groups of post-Communists. Would this development have been prevented if the Constitution was phrased differently? The answer is no. Even under the current phrasing of the Constitution, a really autonomous Constitutional Court would have declared such interventions by the General Attorney as unconstitutional. The change of a word in the paragraph regarding private property is futile, whilst the right of the General Attorney to put pressure on the Supreme Court of Justice remains unchallenged.

What becomes then important, in order to surpass such fallacies, is to set *achievable, clear and limited* objectives for the Constitutional reform. These must be further adjusted by a check of the popular support for one or the other of the reforms proposed, since, according to the 1991 Constitution, any constitutional change should pass through a referendum.

One of the weakest spots of reform packages proposed is that their objectives are not at all explicitly stated, but are at best implicit. One can only speculate on what the authors wish to accomplish by one or another proposed change. Synthesizing some of the proposals, we identified two main objectives, which shall be discussed together with potential solutions to achieve them, and the public support for such solutions.

1. Empowering the Government

The division of power between two uneven halves of the Executive in Romania's semi-parliamentary system was challenged only twice in the last decade. In both instances, Presidents acted to change Prime Ministers of their own party and replace them with others. However, both Ion Iliescu in 1991, as well as Emil Constantinescu in 1999, were far from being the only actors of such changes, not even their initiators. Iliescu sacrificed Roman during a violent riot by miners; Constantinescu would have stood little chance in pushing Vasile out of office, had not Vasile's own party championed for it. In any of the two instances, the Presidents would not have succeeded by themselves. Can one therefore make

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the argument that, due to their powers entrusted by the Constitution, they managed to get rid of Prime Ministers that they disliked? Hardly so. On the contrary, one could argue that the direct vote for the President (and the legitimacy that derives from it), of little use most of the time, makes sense only in crises such as those mentioned above. Iliescu could afford to let Roman fall because he was the leader directly elected by people who could manage the interim. Constantinescu also had a direct mandate from voters, and he used it to sanction what he considered was at fault in his own camp. Both Prime Ministers might have deserved better fates: they were reformers with a fair score of achievements. But what would have been the alternative, once their popularity started to decline?

If we examine crises such as these, and look merely at organizations, not specific actors, we can hardly say the President can be a threat to the Government. The Republic of Moldova, Romania's neighbour, has moved last year to cripple the powers of the President and make Moldova a pure parliamentary Republic. What subsequently emerged is in no way better, as the main reasons distorting Moldovan political life (a majority of authoritarian voters preferring a single political party system – and therefore voting Communist, plus an overlap between democrats and nationalists) have remained unchanged. In fact, what followed was an aggravation rather than an appeasing of the political conflict. Still, Moldova's reformers were certain of having solved it with their constitutional reform.

The Romanian Government is in many ways weak. This is proven by its poor tax collection, for instance, or by its even weaker capacity of implementing policies and decisions. But none of these problems is due to the distribution of power between President and Prime Minister. The President may be redundant most of the time, which would not justify his direct election, but he is necessary during crises. The Parliament and the political parties are the least trusted institutions. Romanians who believe that MPs work for the public interest make less than 10% of the population. How then to entrust the Parliament with the election of the President? How could the Prime Minister, who would emerge as the sole executive leader after such a reform, handle crisis situations? Iliescu sacrificed Roman; Constantinescu sent Vasile to dialogue with the miners before parting with him. In both cases, it was better for Romania to have two leaders, not one. The Government should be empowered and made more effective and able to enforce its programs, once adopted; but making Romania a parliamentary Republic does not seem to be the best way for doing this, and indeed it does not seem to be a way at all.

Furthermore, the public is committed to the direct election of the President. One can blame it on remnants from authoritarian times, but the fact is that the best side to democracy, as perceived by the public, is the right to directly elect a President. There is an overwhelming majority who supports this system, and a considerable majority considers that the way of electing a President matters. We are dealing here with strong attitudes: there is little hope that a communication campaign can change this situation.

Fig. 4. The election of the President

Should be the President elected directly by the citizens or indirectly by the members of the Parliament?	%
Directly, by the citizens	92.4
Indirectly, by the members of the Parliament	4.1
No answer	3.5

2. Streamlining the legislative process

As bad as it may sound, there is evidence that the Romanian Parliament has done a rather sloppy job over the last decade. Too many drafts were rejected either by the Legislative Council (showing that legislators do now know the legislation) or by the Constitutional Court (showing that their knowledge of the Constitution is also limited). The change of internal rules in January 2001 improved the effectiveness of the Parliament (which was also helped by the fact that there is a one party Government in the current legislature), but did not improve quality. By and large, a considerable number of laws pass through the Parliament (on average, between one third and half of the laws passed in any given year, Government ordinances excepted), which are at odds with either domestic legislation, or with international conventions or with the Constitution. This situation shows that there still is considerable amateurism, after ten years of democracy. It should be highlighted that the present analysis focuses only on the formal aspects of the legislation, and does not discuss at all the adequacy of the laws passed; content may be disputable, but bad form is not. Governments, which have to interact directly with donors assisting the reform process, have always tried to go round Parliaments by passing emergency ordinances, whose effect starts before being discussed by the Parliament. The Parliaments have taken revenge by modifying ordinances when they were finally presented, even if this meant the reversal of decisions already applied, which in some cases generated conflict (e.g. the display of bilingual signs

in Hungarian-Romanian towns in 1997). All governments dreamt of preventing the Parliaments to do so, and all Parliaments objected with good reason that emergency ordinances are unconstitutional in their essence. If Parliament does not check on government, who does? And if MPs are corrupt and ineffective, how to govern well? Is there a constitutional answer to this riddle?

Actually, there are some possible options to address this problem, but none can really solve it for good. No constitutional engineering can cope with the corruption of the political class, for instance. In corrupt societies, vertical accountability is essential: one must rely on voters to remember corrupt MPs and stop voting for them, but if voters fail to do so, no miracle can work. Putting some pressure on MPs and on political parties may help, however, to some extent, and one of the solutions proposed by the Government has a large popular endorsement.

Fig. 5. Public opinion on the number of MPs

Currently you think that the number of MPs is...	%
Too few MP	1.3
Too many MP	84.0
Just about right	7.5
No answer	7.2

Is reducing the number of MPs an option? What prevents the big and the most corrupt to cleanse party lists of the younger and less corrupt? If the power to decide over the party list remains confined with the oligarchy of the party, there may be even fewer new politicians emerging in the near future. On the other hand, it is true that Romania has one of the largest number of MPs as compared to population, and definitely more than it can afford with its current GDP. Furthermore, fewer MPs means larger constituencies, which would help voters know candidates better, allow more media coverage for each of them and so forth. It may also diminish 'pork barrel', that is to say, the favors that a MP provides to his constituency (and which are relatively bigger if constituencies are smaller and more homogenous). Having fewer candidates also means a decrease in the importance of the party list and more stress on individual virtues (and resources). Both are good for politics.

The alternative move (some would say complementary) would have been to change the electoral system. Both the Government party and the Liberals have announced their intention of supporting such a reform, through passing to a mixed

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plurality (MPP) election system. The main advantage of this system would be to remove the decision from the hands of the party leaders, who would somehow be compelled to propose only competitive candidates (assuming these are somewhere to be found). Both theoretical and empirical arguments plead for important reservations, though. A simple exercise with different variants of majority systems shows that the 2000 elections would have produced a Parliament with only PSD, UDMR and Greater Romania Party in all the variants¹. MPP is harder to model, but its effect on reducing political minorities even further, decreasing party discipline and bringing overall unpredictability (by producing many independents) is obvious. This system, which Russia tried after 1993, produced poor results. For better and for worse, Romania's current electoral system produced at least a stable party system.

Voters may want representatives to be more accountable, but judging on their level of political information, they would take little advantage of the uninominal vote². Accountability should be increased by further decentralization of power to mayors (who are directly elected) and local governments, and by a build-up of horizontal accountability mechanisms, shielded from political intervention and cronyism.

However, Romanians are in favour of a pure majority system: they do not like the current system, and see little use of mixed systems. Of course, they know little on the consequences of a pure majority system. Its only advantage, i.e. producing a strong and stable government by a manufactured majority, is certain only in the 'pure' variant (as in Britain). In other variants of plurality (Germany, France, Italy, Hungary) governments need to draw on coalitions as frequently as in proportional systems. And skilful coalition management or informal arrangements in proportional systems, such as currently seen in Romania, do work, despite the terrible example of the 1996-2000 coalition and its frequent deadlocks.

¹ Alina Mungiu-Pippidi et al. 2001. "Reforma electorala – un panaceu?". Crisis Alert Series. No 2, Societatea Academica din Romania

² see Alina Mungiu-Pippidi. 2002. *Politica dupa comunism*. Chapter V "Votantul roman". Bucuresti: Humanitas

Fig. 6. Constitutional arrangements in post-Communist Europe

Country	Number of Chambers	Members of Parliament	Voting System	Polity	State type
Romania	2	467	Proportional	Semi-presidential	unitary
Poland	2	550	Proportional	Semi-presidential	unitary
Slovak Republic	1	150	Proportional	Parliamentary	unitary
Bulgaria	1	240	Proportional	Semi-presidential	unitary
Russia	2	628	Semi-proportional	Presidential	federal
Ukraine	1	450	Mixed	Semi-presidential	unitary
Lithuania	1	141	Semi-proportional	Semi-presidential	unitary
Latvia	1	100	Proportional	Semi-presidential	unitary
Czech Republic	2	243	Proportional	Parliamentary	unitary
Estonia	1	101	Proportional	Semi-presidential	unitary
Hungary	1	386	Mixed	Parliamentary	unitary
Moldavia	1	101	Proportional	Parliamentary	unitary
Slovenia	1	51	Proportional	Semi-presidential	unitary

Source: Freedom House, Nations in Transit. 2001

The next important issue, specially given the Government's claim that Parliament should be more effective, is the distribution of tasks between the two Chambers. Preferably, but not absolutely, one should seek a correlation between the way in which a Chamber is elected and the tasks it performs. However, this is not always the rule: even in Europe, superior un-elected Chambers play considerable roles. One thing is clear, though: that effectiveness increases when the two Chambers have similar roles and compositions (the current Romanian situation), and decreases as these change (in favor of more checking by one Chamber on another, such as the Senate's veto)³. Or, the purpose of the reform is to increase effectiveness. Would the solutions advanced achieve that? Hardly so, at least without producing other imbalances. Having two Chambers with nearly similar roles is not uncommon in the democratic world. Whilst there is little point in adjusting competencies of the two Chambers, it may be better in the end just giving up one of them altogether. Some frontrunner EU applicant countries have done quite well with just one Chamber (see Fig. 6). However, this, neither, is a panacea. To terminate the Senate would remove a legislative check, which has worked in practice a few times: many laws passed in the Chamber were corrected after public debate when they reached Senate, or the other way around.

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Legislating swiftly is not always legislating well; and by the time such a reform would be implemented, Romania would have adopted the *acquis communautaire* and would be more in need of a quality legislative process than of an expeditious one.

To summarize this brief review, here are a few conclusions:

- The 'real Constitution' is as important as the formal Constitution when planning constitutional engineering. Reforms must be analyzed from this perspective as well, and reformers should leave aside illusions that formal modifications will necessarily uproot embedded practices.
- Empowering the Government can better be realized through an internal reform of its administrative structures (see EWR 1/2001) than by a readjustment of power between the two parts of the executive power, or between legislative and executive.
- The reform of the political class is the task of party leaders. Reduction in the number of MPs will help voters know better their elected representatives and is comparable in effect with, and preferable to, the adoption of the uninominal system. Risks are, however, that parties will continue to remain oligarchic even after that, since only party reform, not Constitutional reform, can change the current situation.
- A reduction in the number of MPs by actually giving up one Chamber altogether should also be considered. Some of the more advanced EU applicant countries are doing very well with such systems. Equally, such a move would have popular support.
- The system of electing the President should not be an issue, as the public has a strong opinion on this and favours the current arrangement.
- The change of the electoral system to 'mixed plurality' (MPP) or other forms is not recommended. The current compromise between a directly elected President and MPs elected on party lists is a fair one and should be kept as such. Open lists (preferential vote) are always an option to

³ See Sartori, G. 1994; *Constitutional Engineering*, NY:NYU Press.

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satisfy public demand, although in practice (Estonia) they have failed to produce any difference from closed lists.

- The participation in a referendum on the Constitutional reform is likely to be low. Proposals, therefore, should be few, clear and short to keep participation at a decent level.
- Alternative ways to improve the quality of the political debate and governance should be explored, given that Constitutional reform cannot achieve much on this. The greatest potential is in the reform of the judiciary and of its' positioning in relation to other powers, which will discuss in the next EWR.