

Luigi Lacchè

# History & Constitution

Developments in European Constitutionalism:  
the comparative experience of Italy, France,  
Switzerland and Belgium (19<sup>th</sup>–20<sup>th</sup> centuries)





Vittorio Klostermann  
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To my sons Giulio, Alessandro and Francesco



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## When history meets the constitution

### 1. A journey across twenty years and twenty-five essays

This volume contains a selection of twenty-five essays published during the last twenty years (1995–2013). It is therefore the result of a personal journey across the continent – or, more modestly, in certain areas – of modern constitutionalism traversed and seen through the lens of constitutional history. In the guise of the modern *flâneur* invented by Charles Baudelaire and conceptualised by Walter Benjamin, I wandered through the ruins of the past and anticipations of the future. It has been a voyage of exploration unhampered by any excessively burdensome programmes.

This journey is in turn the outcome of a mixture of chance and necessity. I started in Switzerland and made my way through France, Belgium and Italy. What in fact connects these four different constitutional experiments, which I observed above all in a most unusual *Sattelzeit*, between the nineteenth and the twentieth centuries? At the beginning my interest in a European liberal jurist and politician, Pellegrino Rossi,<sup>1</sup> born in Italy, then a Swiss citizen in Geneva, a naturalised Frenchman in 1834 (he was the first to teach a university course in constitutional law), finally murdered in Rome in 1848 when he was the premier of the “constitutional” government of the Pope, led me to study constitutionalism and liberalism, constitution and freedom, as one of the most important issues of the nineteenth century. That was the element of chance, following the adventurous life of Rossi around Europe after the Restoration and the age of reform and revolution. But this journey was also a necessity,

1 P. Rossi, *Per la Patria comune. Rapporto della Commissione della Dieta ai ventidue Cantoni sul progetto d'Atto federale da essa deliberato a Lucerna il 15 dicembre 1832*, edited and with an introduction by L. Lacchè, Manduria 1997; L. Lacchè (ed.), *Un liberale europeo: Pellegrino Rossi (1787–1848)*, Milan 2001; L. Lacchè, “*All’antica sua patria?*” *Pellegrino Rossi e Simonde de Sismondi: relazioni intellettuali fra Ginevra e la Toscana*, in *Sismondi e la civiltà toscana*, ed. by F. Sofia, Florence 2001, 51–91; L. Lacchè, *Pellegrino Rossi*, in *Il contributo italiano alla storia del pensiero*, ottava appendice, *Diritto, Enciclopedia italiana di scienze, lettere ed arti*, ed. by P. Cappellini, P. Costa, M. Fioravanti, B. Sordi, Rome 2012, 302–306.

prompted as it was by an awareness of the epochal significance of the modern language of the constitution, considered as a crucial framework ordering the complex social life of men.

Constitutions and constitutionalism were at the center of a scientific project which has taken shape in my own University in the years since 1992.<sup>2</sup> In perfect continuity with this experience, in 2001 we founded the *Journal of Constitutional History*,<sup>3</sup> which, in fifteen years, has become a reference point for research into constitutional history and the methodological issues involved – a journal known for its international perspective, its multilingual approach, its pronounced interdisciplinary orientation, and its interest in comparison. Gathering together a collection of individual essays published over the years also offers an opportunity to ascertain what has been achieved. The objectives pursued by the *Journal of Constitutional History* have been by and large my own. Only by combining “History” and “Constitution”, the two terms of my title, can we hope to address the complexity of the constitutional issue, and thereby tackle the major challenges that we now face.

## 2. Looking at the present: protean constitution and fragmented constitutionalism

At the (provisional) end of my journey I observe that the concept of constitution and the borders of constitutionalism have never been so blurred. Scholarly debate suffers at times from imprecise and disparate definitions; the concept of constitution bears a striking resemblance to the Greek God Proteus.

The third generation of constitutions after the Second World War had announced a new era. These constitutions have confirmed the original vocation for mutual self-restraint between democracy and constitutionalism. They have embraced the idea of the constitution as an act of national and democratic

2 I refer to the “Laboratorio di storia costituzionale A. Barnave” founded by Roberto Martucci. This Centre organised many conferences, seminars, editorial series, a PhD Programme, a highly specialised library. See R. Martucci, *Laboratorio di storia costituzionale “Antoine Barnave” dell’Università di Macerata, 1992–2001*, in *Historia Constitucional* (revista electrónica), 2, 2001, <http://hc.rediris.es/02/index.html>.

3 The *Giornale di storia costituzionale / Journal of Constitutional History*, six-monthly review, is directed by Luigi Lacchè, Roberto Martucci and Luca Scuccimarra (edizioni università di Macerata). It is indexed in Scopus and in the other main international databases. See L. Lacchè, *Un nuova rivista italiana ed europea: il “Giornale di storia costituzionale”*, in *Historia Constitucional* (revista electrónica), 3, 2002, <http://hc.rediris.es/03/index.html>; L. Lacchè, R. Martucci, L. Scuccimarra, *For constitutional history, ten years later*, in *Journal of Constitutional History*, 19, 1, 2010, 9–14.

foundation, according to a strong concept of constituent power generating political power.<sup>4</sup> In this context, the constitution emerges “as a symbolic marker of a great transition in the political life of a nation.”<sup>5</sup> This idea of constitution remained anchored to the State, its territory and political sovereignty. But it had to work now within a pattern of “welfare state constitution” that emphasised functional complexity. Within the democratic “interventionist” states, constitutions contain basic principles and values serving to orient the principal societal challenges (fundamental rights, pluralism, multiculturalism, etc.). Outwardly, constitutions have had to deal increasingly with at least two major “external” phenomena. On the one hand, I have in mind here Europe’s transformation within Community coordinates. Multilevel constitutionalism, treaties and Bills of Rights, common constitutional traditions, the jurisprudence of the European Courts, the European *demos*, and European constitution-making are some of the topics that have dominated the debate during the last two decades.

On the other hand, modern territorial sovereignty and its legitimacy<sup>6</sup> no longer meets the challenges of the post-national constellation. With the advent of a global society perspective, the traditional paradigms of the constitution have entered into crisis. The European Union has been seen as presaging a post-national “constitution,” and has led scholars to ponder the utility of the conceptual tools and operating practices of “national” constitutional theory.

But while constitutionalism was attaining a high level of legitimacy, this period of maturation “coincides with the erosion of some of the basic conditions on which those achievements have rested”. Whatever name is attached to this erosion, “constitutionalism can be understood to be entering a twilight zone.”<sup>7</sup> We can see – as has been correctly observed<sup>8</sup> – a singular blend of triumph and decline.

In fact, most scholars agree as to the extent of the gap between the state and the forms of politics and constitutionalism evident in the new global order.

4 M. Loughlin, N. Walker (eds.), *The Paradox of Constitutionalism. Constituent Power and Constitutional Form*, Oxford 2007. “We sought to demonstrate that what connects our constitutional past, present and future, and what links the state as the traditional site of constitutional government to new subnational and transnational sites, is a constant preoccupation with the question of the relationship between authorization and authority, politics and law, *pouvoir constituant* and *pouvoir constitué*” (V). See also M. Loughlin, *The idea of Public Law*, Oxford 2003, 113.

5 B. Ackerman, *The Rise of World Constitutionalism*, 1996, *Occasional Papers*. Paper 4, [http://digitalcommons.law.yale.edu/ylsop\\_papers/4](http://digitalcommons.law.yale.edu/ylsop_papers/4).

6 N. Walker (ed.), *Sovereignty in Transition*, Oxford 2003.

7 P. Dobner, M. Loughlin, *Introduction*, in *The Twilight of Constitutionalism?*, ed. by P. Dobner and M. Loughlin, Oxford 2010, XI.

8 *Ibidem*.

Constitutionalism beyond the state is the central issue. On one side, the constitutional law developed in states is increasingly “open” and concerned to take account of global phenomena. Distant events can produce practical effects within states. The intention is now to subject the relevant causes and effects to the law by resorting to a sort of common/global constitutional law composed of different elements. Europe’s experience and European constitutionalism beyond the state<sup>9</sup> have been seen as very important but controversial “construction sites”. Constitutionalism “in an age of diversity”<sup>10</sup> should make us more aware of the limits of nominalism under “common labels” but “we should [also] resist the temptation of a provincial particularism”.<sup>11</sup> The new “global constitutionalism” cannot respond on a global level to the “canonical” chain state/sovereignty/constitution. Constitutionalism was born from the internal conflicts in the processes of building modern states, and yet there does exist a platform based on principles common to the written and unwritten constitutions, universal declarations, conventions and treaties, constitutional courts jurisprudence, and the constitutional theory of law. These phenomena can be observed from different points of view. The acknowledgement and construction of an essential core for a cosmopolitan constitutional law<sup>12</sup> based on the protection of fundamental rights can be seen as the major goal of the worldwide academic community and of the judges in the courts. But, at the same time, this gave rise to concerns and criticisms relating to the supranational transfer of power from representative institutions to judiciaries by dint of a more extensive and active judicial review in a global perspective.<sup>13</sup>

It is true: “Constitutionalism is changing – that is beyond question. But the direction of change remains an open issue”.<sup>14</sup> Global constitutionalism is ever more attached to international law and global governance.<sup>15</sup> The age of globalisation has posed the problem of the efficacy of constitutional theory centred on the nation-state. Can it really be useful? Global law without a state<sup>16</sup> points to

9 J. H. H. Weiler, M. Wind (eds.), *European Constitutionalism Beyond the State*, Cambridge 2003.

10 J. Tully, *Strange multiplicity. Constitutionalism in an age of diversity*, Cambridge 1995.

11 B. Ackerman, *The Rise of World Constitutionalism* cit.

12 Q. Camerlengo, *Contributo ad una teoria del diritto costituzionale cosmopolitico*, Milan 2007.

13 R. Hirschl, *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*, Cambridge 2004; Id., *The New Constitution and the Judicialization of Pure Politics Worldwide*, in *Fordham Law Review*, 75, 2, 2006, 721–753.

14 P. Dobner, M. Loughlin, *Introduction* cit., XVI.

15 J. L. Dunoff, J. P. Trachtman (eds.), *Ruling the Word? Constitutionalism, international law and global governance*, Cambridge 2009.

16 G. Teubner (ed.), *Global Law without a State*, Aldershot 1997.

the pulling down of the traditional pillars of the theory of the state: territory, people, sovereignty. In the transnational perspective there are new and fragmented “social constitutions”, “private regimes”, “constitutional actors” who take part in the social constitutionalisation of the world.<sup>17</sup> This means that in a transnational world constitutional problems arise beyond the limits of the nation-state, often in the ‘private’ sectors of global society. Transnational constitutionalism requires new “constitutional” regulatory regimes, a global constitutional law based on the governance of fragmentation and of collisions between plural regimes and systems. According to this vision,<sup>18</sup> collisions between the diverse regime constitutions might be coped with by a selective process of networking that normatively strengthens already existing empirical networks between the regime constitutions: the linkage of regime constitutions with autonomous social sectors; and, more importantly in this context, the linkage of regime constitutions with one another.

So, if constitutionalism is changing, and in unforeseen directions, one thing is certain: the complexity of the new landscape requires a science that is fully aware of its task and able to govern the systemic complexity of the new “constitutional” processes and structures. When we speak of a need for a worldwide jurist, we are invariably referring to this dimension. Pluralism, coexistence / tension between unity and diversity, and constant comparison must be handled with the appropriate sensitivity, with a critical spirit and with a readiness to explore less well-worn paths.

- 17 For a critical survey see B. Clavero, *Globalización del Constitucionalismo? Transnacionalidad de empresas entre poderes y derechos por tiempos postcoloniales (1947–2011)*, in *Quaderni fiorentini per la storia del pensiero giuridico*, 41, 2012, 483–580.
- 18 On this position see G. Teubner, *Global Private Regimes: Neo-spontaneous Law and Dual Constitution of Autonomous Sectors?*, in K.-H. Ladeur (ed.), *Globalization and Public Governance*, Oxford 2003, 71–87; G. Teubner, A. Fischer-Lescano, *Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law*, in *Michigan Journal of International Law*, 25, 4, 2004, 999–1046; Ch. Joerges, I.-J. Sand, G. Teubner (eds.), *Transnational Governance and Constitutionalism*, Oxford and Portland Oregon 2004; G. Teubner, A. Fischer-Lescano, *Regime-Kollisionen. Zur Fragmentierung des globalen Rechts*, Frankfurt am Main 2006; G. Teubner, *Verfassungsfragmente. Gesellschaftlicher Konstitutionalismus in der Globalisierung*, Frankfurt am Main 2012. On Teubner’s perspective see A. Febbrajo, F. Gambino (eds.), *Il diritto frammentato*, Milan 2013.

### 3. Making a polyptych: a comparative constitutional history in a global perspective

These new and controversial constitutional horizons adumbrate a very complex landscape. How are we to deal with these issues? Constitutionalism, as I noted above, seems to have two grand frameworks in mind. The first is the idea of a *ius commune europaeum* based on «constitutional traditions that are common to member States», thus generating a series of decisions focused on the protection of fundamental rights. It was in the ambit of principles and “common constitutional traditions” that it was possible to develop a “new *ius commune*”, and this on two levels: on the one hand, a “heritage” that consolidated the past and which was therefore rooted primarily in national traditions, and on the other a *space of communication*, which made it possible to look to the future independently of the evolution of law as defined by treaties or, from another perspective, by a Constitution-Treaty. The second framework concerns worldwide constitutionalism, seen from different points of view, oriented to the building of a *ius cosmopolitanum* characterised by uncertain boundaries. In our attempts to address such matters, we probably need a multidisciplinary and integrated approach. In this context, constitutional history, understood as a discipline situated at a crossroads and therefore requiring a wide range of different tools, may be able to offer a useful contribution. Constitutionalism can be seen as a new *ius commune*<sup>19</sup> built during the last few centuries. In 2008 the European Parliament, the European Council and the European Commission have pointed out the need for interaction between constitutional process and public debate as a crucial prerequisite for democratic participation in the Union. Faced with the weakening of the integrative power of constitutions, constitutional history may well have considerable heuristic potential. If this history is, in some respects, yet to be written,<sup>20</sup> it is also true that in the last two decades, coinciding with the European and global metamorphoses, constitutional history has fostered a number of different initiatives. I refer here to certain dedicated journals, websites and book series.<sup>21</sup>

19 F. Tomás y Valiente, *El «ius commune europaeum» de ayer y de hoy*, in *Glossae. Revista de Historia del derecho europeo*, 5–6, 1993–1994, 13–14.

20 H. Dippel, *Modern Constitutionalism. An introduction to a history in need of writing*, in *Tijdschrift voor Rechtsgeschiedenis*, 1–2, 2005, 153–169.

21 I refer above all to some series of works published between Germany and Italy, for example P. Schiera and M. Kirsch (eds.), *Denken und Umsetzung des Konstitutionalismus in Deutschland und anderen europäischen Ländern in der ersten Hälfte des 19. Jahrhunderts*, Berlin 1999; H. Dippel, *Executive and Legislative Powers in the Constitutions of 1848–49*, Berlin 1999; P. Schiera and M. Kirsch (eds.), *Verfassungswandel um 1848 im europäischen Vergleich*, Berlin 2001; G. Manca, W. Brauneder (eds.), *L’istituzione parlamentare nel XIX secolo. Una prospettiva*

One of the major challenges faced by constitutional history is that of putting at the heart of its concerns the idea of a common ground connecting different research perspectives and scholars using different tools and languages. Constitutional history is a set of routes leading to one and the same territory. Each follows a particular path.<sup>22</sup> There is no such thing as a single, “true” constitutional history. Each feels that his specialism is essential but at the same time he needs to enter into dialogue, to engage with other scholars coming from other disciplines. Constitutional history is like a river with an estuary delta formed by the debris carried downstream by its various branches. Constitutional history is a *quid pluris*,<sup>23</sup> composed of different ingredients, although but the set is greater than the sum of its component parts. Constitutional history should serve to “open up” and to connect the individual research fields. Its “autonomy” is the result of a critical process.<sup>24</sup> This “autonomy” is a point of view, *un certain regard*. The metaphor of the polyptych comes to mind here.<sup>25</sup> Our “constitutional” painting is just like a huge polyptych. At the centre the “ancona” may portray the *Maestà* or the crucifixion of Jesus Christ, but polyptychs are ambitious works and so are enriched with predellas, *cimase*, cusps, panels with lives of the Saints, angels, miniature landscapes, the whole enclosed by massive gold frames. Those who cultivate constitutional history resemble art historians trying to reconstitute polyptychs whose parts have been scattered across different sites and museums.

*comparata*, Bononia, Berlin 2000; M. Kirsch, A. G. Kosfeld, P. Schiera (eds.), *Der Verfassungsstaat vor der Herausforderung der Massengesellschaft. Konstitutionalismus um 1900 im europäischen Vergleich*, Berlin 2002; G. Manca, L. Lacchè (eds.), *Parlamento e costituzione nei sistemi costituzionali europei ottocenteschi*, Bononia, Berlin 2003. Regarding the European constitutional history we have to remember at least two handbooks: P. Brandt, M. Kirsch, A. Schlegelmilch (eds.), *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel*, vol. 1: *Um 1800*, Bonn 2006; W. Daum, P. Brandt, M. Kirsch, A. Schlegelmilch (eds.), *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel*, vol. 2: *1815–1847*, Bonn 2012; and the four volumes of the *Handbuch Ius Publicum Europaeum* (2007–2011), ed. by A. von Bogdandy and P.M. Huber. Among the relevant Journals, see *Historia Constitucional*, open Journal founded by J. Varela Suanzes-Carpegna, published in Oviedo since 2000 and the already mentioned *Journal of Constitutional History* (see *supra* nt. 3).

- 22 J. Varela Suanzes-Carpegna (ed.), *Historia e historiografía constitucionales. Entrevistas con Ernst-Wolfgang Böckenförde, Michel Troper, Maurice J. C. Vile, Maurizio Fioravanti*, Madrid 2015.
- 23 M. Fioravanti, *Sulla storia costituzionale*, in *Journal of Constitutional History*, 19, 1, 2010, 29–32.
- 24 M. Troper, *L'autonomie de l'histoire constitutionnelle*, Ibidem, 33–43.
- 25 L. Lacchè, *Tra storia e comparazione*, in *Giornale di storia costituzionale*, 1,1, 2001, 5–6; Id., *Ripensare vecchi temi con nuove idee*, in *Giornale di storia costituzionale*, 14, 2, 2007, 5–6.



Each “part” makes “sense”, has *value*, and can be looked at in its own right, but the “constitutional frameworks” and the “constitutional factors” are the continuous composition and decomposition of the parts in the whole, between past, present and future. We can observe each predella as if it had a certain autonomy, but everything changes once our gaze takes in the polyptych as a whole. Now we can see the internal dialogue, the cross-references, the multiplicity of perspectives. The ancona of our polyptych is what we call constitution (our *Maestà*) and all around there are the forms of society, politics, the economy, anthropology, culture and so on. For reading the “constitutional polyptych” we need, today more than ever, an integrated interdisciplinary approach, new perspectives and an ever vigilant self-criticism.<sup>26</sup>

The historicity of constitutions is an integral part of the new cultural history.<sup>27</sup> Constitutional culture can be grasped through a vision transcending institutional devices<sup>28</sup> and a merely formal idea of constitution.<sup>29</sup> The concept of constitution seeks to identify the constitutional factors that continuously interact in order to define a principle of social and political unity. Constitution is always process, conflict, movement,<sup>30</sup> change. It finds equilibrium points but lives between reform and revolution, chance and grand design.<sup>31</sup> Every *Verfassungsbedarf* is historically determined.

Today we need a comparative constitutional history approach<sup>32</sup> in a global perspective.<sup>33</sup> “... we definitely can say that the times of national constitutional histories are over.”<sup>34</sup>

- 26 B. Clavero, *Constitución europea e historia constitucional: el rapto de los poderes*, in *Historia constitucional*, revista electrónica, <http://www.historiaconstitucional.com>, 6, 2005.
- 27 P. Häberle, *Verfassung als öffentlicher Prozess: Materialien zu einer Verfassungstheorie der offenen Gesellschaft*, Berlin 1978; Id., *Verfassungslehre als Kulturwissenschaft*, Berlin 1982.
- 28 R. Blänkner, *La storia costituzionale come storia culturale*, in *Memoria e Ricerca*, 35, 2010, 13–30.
- 29 P. Schiera, *Dall'amministrazione alla comunicazione. Profili di storia costituzionale europea*, in *Scienza & Politica*, 41, 2009, 35–47.
- 30 See the interesting project, funded by the European Research Council, *Reconsidering Constitutional Formation* (Advanced Grant 2013), directed by Ulrike Müßig, University of Passau.
- 31 R. C. van Caenegem, *Constitutional History: Chance or Grand Design?*, in *European Constitutional Law Review*, 5, 2009, 447–463.
- 32 K. Å. Modéer, *Is European Comparative Legal History Running Wild? From Function and Texts to Perspectives and Contexts*, in K. Å. Modéer, P. Nilsen (eds.), *How to teach European comparative legal history*, Lund 2011, 16–18.
- 33 Th. Duve, *European Legal History – Global Perspectives*, Working paper for the Colloquium ‘European Normativity – Global Historical Perspectives’ (Max Planck Institute, September, 2nd–4th, 2013), n. 2013–06, <http://ssrn.com/abstract=2292666>; M. Vec, *National and transnational Legal Evolutions – Teaching History*



#### 4. History & constitution

The articles published in this collection are not designed to give a systematic account of European constitutional history. They can hope to do no more than represent one particular way, one path allowing the reader to attain a deeper understanding of a series of different profiles studied over the years. They share a common inspiration but they cannot provide a comprehensive framework. In fact they concern above all four constitutional areas: France, Belgium, Switzerland and Italy. This is thus the history of four important constitutional experiments, but it does not neglect crossroads, contaminations, transfers. What comparative constitutional history offers us is precisely the possibility of subjecting already established positions and perspectives to critical review. This approach can serve to shed new light on familiar themes, and to help us to jettison stereotypes and unduly schematic interpretations. We need to be aware of the fact that myths and traditions are part and parcel of constitutional history building. Demystification and critique of the excessive and ahistorical use of “constitutional” models are important elements in the fashioning of a renewed history. In this way constitutional history can enhance other research outlooks, for example comparative constitutional law and political science.

One of the issues of constitutional history is about the “making” of constitutional texts. Not infrequently this history has been reduced to a sort of history of mere genealogies. The use of “models” as prescriptive frameworks suggests that there are “original” and “derivative” constitutions. Sometimes we chance to read that in a constitution a significant proportion of its articles are copied from texts or principles coming from other nations. But what does it mean to transpose or copy some articles? It is evident that to copy really means to invent or to reinvent. Texts move, they are compared and also “copied” and yet every text becomes specific and “original” once again, because contexts, circumstances, times, places, authors, factors change every time. A constitution is at one and the same time a factor of sharing and of separation, of identity and of difference. A constitution is always a *patchwork* composed of different elements. A constitution is not a fixed design because it always lives through discourses, languages, the transnational exchange of ideas, and the interplay of constitutional stakeholders. A constitution has long been a means of communication between State and society, institutions and social classes. For this reason constitutional history needs different and integrated research approaches able to combine or at least to take account of the history of public law, legal scholarship about the State,

*of International Law*, in K. Å. Modéer, P. Nilsen (eds.), *How to teach European comparative legal history*, cit., 37.

- 34 M. Stolleis, *Concepts, models and traditions of a comparative European constitutional history*, in *Journal of Constitutional History*, 19, 1, 2010, 53.

political doctrines and institutions, the science of administration, political and social conditions.<sup>35</sup> This approach can serve to avert the ever-present risk of anachronism.

The articles published in this volume study four constitutional experiments, but in reality they had a wider purview. The myth of the English constitution pervades the discourses and languages of the French liberals, especially during certain moments in the nineteenth-century constitutional history. In Italy Belgium is known as “Little England”. The *Modell Deutschland* is more and more an object of fascination to Italian public law scholars. In the 1830s Alexis de Tocqueville analyses the situation in Switzerland, comparing the different kind of federalism in America and in Europe. These and many other intersections show how complex the attempt to study national experiments in terms of *Sonderwege* may prove to be.

The twenty-five essays here published in Italian, French, English, Spanish and German, consider above all some developments in European constitutionalism in the nineteenth and twentieth centuries. But I should emphasise that the focus is upon the experiments and developments of the nineteenth century. I refer to a *Sattelzeit* – associated with Reinhart Koselleck’s concept – extending from 1814 to the outbreak of the First World War. This volume takes the Restoration seriously, not least the pivotal role played by the category of granted constitution in European constitutional history. This kind of constitution is something more than simply a transitional phenomenon, or an ‘interval’ (albeit an important one) between the novel and strategic idea of the eighteenth-century constitution based upon the constituent power of the people and the full realisation of democratic constitutionalism in the course of the twentieth century. The intrinsic interest of this approach lies in its capacity to portray granted constitutions as instruments serving to preserve ancient forms of sovereignty alongside post-revolutionary innovations. ‘Monarchical constitutionalism’ established an important and long-enduring workshop in which we can observe ‘old’ and ‘new’, tradition and change, reform and revolution, conflicts and mediations, ancient words and new concepts, the ideology of *octroi* and parliamentary experiments. Constitutions and parliamentary processes are by no means as linear as they have been made out to be. Nation-building, popular sovereignty, constitutional monarchy, parliament, science and public opinion are the fundamental concepts of our point of view.

The monarchical constitution was, for a century, common ground for developments and applications which were far from predictable. The deliberate vagueness and flexibility of the constitutional formula, which was an intrinsic

35 J. Varela Suanzes-Carpegna, *L’histoire constitutionnelle: quelques réflexions de méthode*, in *Revue française de droit constitutionnel*, 68, 2006, 676.

feature of the constitutionalism of the Restoration, was in fact a *programme*, to interpret and flesh out at will. The political theology elaborated by the reactionary writers of the Restoration was undoubtedly a powerful tool in the analysis of the *undecided* constitution, a constitution shaped by the contradictions of a liberal constitutionalism which accepted the *octroi* and the idea of the autonomous will of the monarch and, at the same time, sought to limit, if not annul, the originally personal dimension. As a consequence the difficult separation of *régner* from *gouverner* was destined to be one of the greatest political-constitutional problems of the nineteenth century. Constitutionalism was for a long time a key factor of composition and synthesis between Revolution and Restoration.<sup>36</sup> At the same time we cannot underestimate the administrative dimension of the constitution. Administration is the *lebendige Verfassung* that accompanies the social developments of the State.

A European comparative constitutional history, in a global perspective, can help us to better decipher two very important issues in our times: first of all assessing the identity and the constitutional substance of a European living common core of the constitutional traditions; then considering constitutional history as a useful tool to address different levels of global constitutionalism and new trends of governance.

*History & Constitution* will, I trust, offer not only insights into the past, but also some guidelines for the future.

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36 P. Schiera, *El constitucionalismo como discurso político*, Madrid 2012, 18.

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