

Teaching Constitutional History in Contemporary Romania

MANUEL GUȚAN

Teaching Constitutional History in contemporary Romania seems to be a redundant and unwitting academic endeavour rather than a meaningful and purposive one. This is neither an accident nor a striking exception. Like the research and teaching of Legal History, the research and, especially, the teaching of Constitutional History are highly peripheral to the Romanian legal academic community. After the fall of communism, Legal History had a very small space in the Romanian legal scholarship dominated by legal practitioners. A strong academic pragmatism made of Legal History a Cinderella exiled in a dark and unhealthy back room. Unlike Legal History, there is no Romanian tradition of teaching Constitutional History as an autonomous academic discipline in Romanian universities (see *infra*). Nevertheless, the little interest in Legal History has inevitable negative consequences on Constitutional History's chances of growing as an academic subject of its own.

Unfortunately, in contemporary Romania there are no serious debates about the uses, misuses and purposes of Constitutional History, generally, and its teaching, particularly. This is why the theoretical-methodological inquiry proposed by the *Journal of Constitutional History* has not only a broader, comparative relevance but also it could be a starting point to a fruitful dialogue between Romanian legal scholars. Considering 'the silence' of the Romanian legal scholars about the pedagogical-methodological background of Romanian Constitutional History, I have tried to obtain some relevant answers in the frame of a survey I have conducted amongst the Romanian scholars/professors of Constitutional Law. Its qualitative (not quantitative) results are enshrined in the sections of this article.

Who Teaches Constitutional History?

Constitutional history is not an autonomous academic discipline in contemporary Romania. Setting aside the courses of Romanian modern and contemporary political history taught in the Romanian faculties of history using particular methodological tools and aiming at specific educational purposes, Romanian constitutional history is regularly taught in the law faculties by professors of Legal History and Constitutional Law in the frame of their courses of Romanian Legal History and Constitutional Law. Nevertheless, a couple of courses specialized in [Romanian] constitutional history may be exceptionally discovered in the curricula of some political sciences and public administration departments¹, taught by historians of constitutional law.

Is There A Romanian Tradition of Teaching Constitutional History?

Unfortunately, there is no Romanian tradition of teaching constitutional history as an autonomous discipline, and there are small chances to see one developed in the next future. Instead, since the establishment of the modern Romanian universities in the mid-19th century, elements of foreign and Romanian constitutional history were taught by Romanian professors of Legal History² and Constitutional Law³. Strongly influenced by the French legal culture, they approached constitutional history like their French counterparts did. The Romanian Legal History professors during the communist period (1948-1989) naturally kept their interest in the Romanian mod-

ern constitutional history⁴, while the textbooks of Constitutional Law approached only sporadically the Romanian pre-communist constitutional past when they did not wholly overlook it⁵. Instead, the latter were highly interested in the beginning and development of the socialist constitutions abroad and at home. After the fall of communism, the courses of Constitutional Law resumed the pre-communist interest in teaching constitutional history. Nevertheless, after 41 years of the communist regime, the French influence on Romanian legal scholarship diminished, and the Romanian interest in constitutional history is far from being as strong as the French one was in the last decades.

The Textbooks of Constitutional History

In the absence of any tradition of teaching constitutional history as an autonomous discipline, the textbooks of constitutional history are missing from contemporary Romanian legal-historical literature⁶. This gap is partially filled by the textbooks of Legal History and Constitutional Law. The former naturally integrate the Romanian constitutional evolution into the Romanian general legal history using typical periodisation. Following the French tradition, most of the latter reserve at least one chapter for the Romanian constitutional evolution⁷. Few others, interested in constitutional-institutional history, are making a short historical introduction to relevant institutions like the citizenship, the president (chief of state), the parliament, and the constitutional review⁸. The great majority of the authors of the Constitutional Law

textbooks in my survey emphasized that not only do they have no intention of eliminating the chapter reserved for constitutional history, but are planning to extend it in the next future. The textbooks of Constitutional Law manifesting no interest in constitutional history are pretty rare⁹.

The Students of Constitutional History

Having said this, the students of Constitutional History in Romania are mainly undergraduate law students attending the courses of Legal History and Constitutional Law. Unfortunately, Legal History is merely optional in the curricula of many Romanian law faculties, so the number of its attendees is not very high. There are no courses in Constitutional History at the Master's and PhD levels in the law faculties.

Besides, much more intriguing is the silence of both Legal History and Constitutional Law textbooks about the purpose of teaching elements of Romanian constitutional history to law students. It is not clear why the latter should apprehend constitutional history. The Legal History textbooks usually make general references to the relevance of the discipline for understanding the dynamic of law in space and time¹⁰, for discovering the roots of contemporary Romanian law and their continuity in time, for profiling the Romanian legal identity against its natural historical dimension¹¹ or they are simply emphasizing its educational, formative, role for the future legal professionals¹². Exceptionally, some textbooks of Romanian Legal History expressly link the study of modern Romanian constitutional history to particular challenges

of contemporaneity, i.e. the meeting of the Romanian constitutional traditions / identity with global constitutionalism; the management of the constitutional integration in the European Union¹³.

Most Romanian Constitutional Law textbooks lack any clarification regarding the purposes of their historical chapter. It is not intelligible why undergraduate law students should learn about the succession of the legal acts that have constitutional value and constitutions in the Romanian past, about the evolution of some constitutional institutions or about different forms of government present in modern Romanian history. Rarely is only the informative purpose mentioned¹⁴. Even so, the lack of any substantial connection between the historical chapter and the other chapters analysing the general theory of constitutional law and the provisions of the constitution in force is obvious in almost all Constitutional Law textbooks. Strikingly, some textbooks interested in an institutional historical approach are not critically analysing the contemporary constitutional institution from a historical perspective. However, important counter-examples exist¹⁵, even if the purpose of the historical analyses is not clearly stated.

The insulation of the historical chapters is even more puzzling in the Romanian Constitutional Law textbooks published after the amendment of the Romanian post-communist constitution. In 2003, Article 1, paragraph 3, of the 1991 Constitution was completed with several words that considerably changed its meaning. The old Article 1, paragraph 3 stating that

Romania is a democratic and social state governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free devel-

opment of human personality, justice and political pluralism represent supreme values and shall be guaranteed

was amended as follows:

Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizen's rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values *in the spirit of the democratic traditions of the Romanian people* and the ideals of the Revolution of December 1989, and shall be guaranteed. [my emphasis]

It seems that the new provision reflected rather the irrational national pride of the Romanian legislators in the context of European integration than the sincere desire to make the Romanian constitution clearer¹⁶. However, some constitutional law scholars saw in the new provision a compulsory historical interpretation of the most important constitutional values enshrined in the Romanian constitution¹⁷. Remarkably, the great majority of the Romanian Constitutional Law textbooks not only ignore entirely any historical insight into the Romanian constitutional text but also do not mention at all the syntagm 'democratic traditions'. The Constitutional Law scholars are not interested in giving normative value to the new constitutional provision or in addressing the Romanian democratic traditions as a didactical exercise. Thus, teaching constitutional history becomes even more purposeless and the gap between the historical chapter and the rest of the Constitutional Law textbook is even more noticeable¹⁸.

When questioned, the Romanian authors of Constitutional Law textbooks do not have a different and much more complex perspective. Understanding the in-

fluence of the past upon the present seems to be the major reason for teaching constitutional history, either to discover the Romanian constitutional evolution or traditions or to pinpoint the remnants of the past Romanian constitutions and possibly explain the reasons they are present in the post-communist one.

Chronology

Chronology is not a matter of particular debate and, even less, of dispute among the Romanian constitutional historians as long the Romanian constitutional timeline seems self-evident. The post-communist Romanian scholarship of Constitutional Law and Legal History inherited from the communist period the interest in establishing which legal act should bear the title of 'first Romanian constitution', i.e. the *Organic Regulations* imposed by the Russians in 1831-1832, the *Paris Convention of 1858* imposed by the European powers, the *Statute developing the Paris Convention* accorded by the Romanian authoritarian prince Al. I. Cuza at 1859 or the *Constitution of 1866*, the first one discussed and voted by a Romanian constituent assembly. A slide from the communist patriotic-nationalistic approach towards a 'scientific' critical one may be noticed right after the fall of communism. Still, this issue seems to be somewhat forgotten nowadays.

The birth of the Romanian written constitution and constitutionalism is considered a modern socio-political and legal phenomenon with a certain impact upon contemporaneity. Most Romanian legal historians and Constitutional Law scholars

start their historical inquiry at the end of the 18th century and finish it with 'the constitutional moment' of 1989. 'Condemned' to periodisation, legal historians are more interested in positioning the major constitutional events in their specific social, political and economic contexts. Focused on the birth and consolidation of the Romanian national unitary state, they are placing the crucial external and internal political developments and their constitutional outcomes at the very core of the Romanian significant steps of legal development. Naturally, this periodisation is not unconditionally interested in making the succession of the forms of governments the core of Romanian legal history.

Regarding Constitutional Law courses, the chronological approach is much more diverse. To many professors of Constitutional Law, the historical chapter is only a positivist chronological accounting of the constitutional projects, constitutional acts and constitutions from the beginning of the 19th century until the fall of communism (1989). Few others are rather interested in focusing on the particular succession of the forms of government: i.e. the parliamentary democracy (1857-1938), the authoritarian regimes (1938-1944), and the communist totalitarian regime (1947-1989)¹⁹.

Some Constitutional Law scholars are interested in discussing periodisation, but not without some degree of sophistication. The concept of 'constitutional cycle' was advanced²⁰ to overcome the simplistic positivistic accounting of the Romanian past constitutional projects and constitutions and clearly distinguish between the great historical cycles of Romanian history and constitutional history per se. This approach has the advantage of extracting the consti-

tutional evolution from Romanian legal history, which is too inclined to confound itself with the periods/cycles of the Romanian general history. At the same time, it offers the Romanian constitutional history the attention and complexity it deserves. 'The constitutional cycles' are strongly related to the birth/making and death/abrogation of the constitutional customs and/or the constitutions, but they are much more. Besides the constitutional customs and texts, a constitutional cycle contains a specific ideology and constitutional institutions, specific constitutional values and principles, specific regulation/limitation of political power, a particular relationship between the state and its citizens, the whole bunch of social, economic and political relationships governed by the constitution, the subsequent legislation and case-law, the populace's attitudes and feeling towards the constitution. One may say a constitutional cycle has its 'spirit' of its own identity. The constitutional cycles are succeeding one after another in close relation to internal and external factors.

Several Romanian constitutional cycles have been established according to this approach: a multi-secular cycle based on the Romanian old constitutional customs, which lasted between the 14th and the end of the 18th century; next one, between 1831 and 1858, related to the Organic Regulations imposed by the Russian empire during the occupation of the Romanian Principalities of Moldova and Wallachia (1828-1834); the cycle of the Paris Convention (1858) followed until 1866; the Constitution of 1866, considered by many the first Romanian constitution *stricto sensu*, opened a long constitutional cycle replaced only at 1938 by a short one, linked to the Constitution

of 1938 and authoritarian ruling of the King Carol II (1938-1940); after a constitutional intermezzo (1944-1947), the Constitution of 1948 was the beginning point of the socialist/communist constitutional cycle (1948-1989)²¹. This kind of periodization does not simply equate the constitutional cycles with only one constitutional act or constitution; it makes a chronological arch over two or more constitutions sharing the same constitutional spirit, like in the case of the 1866 and 1923 liberal-democratic constitutions or the case of the communist constitutions of 1948, 1952 and 1965. Despite its epistemological advantages, this chronological approach lacks a clear reference point. By covering the medieval ages also, the term 'constitutional' becomes too fuzzy and it would need more clarification to not undermine the whole analytical background.

What does Constitutional History Teach and How?

The Romanian textbooks of Romanian Legal History and Constitutional Law mainly focus on constitutional texts, norms and institutions. Sometimes, constitutional values and principles are also considered. Basically, the professors of Legal History and Constitutional Law inform the law students about the succession in time of the constitutional projects and constitutions elaborated, respectively made and applied, in the Romanian state(s) either by external actors, like the European powers or by internal ones, i.e. the Romanian political elites.

In these circumstances, the methodological approach lacks any complexity. With scarce exceptions²², it is a descriptive exercise. The structure of the constitutions, the human and citizen rights, the organization of political power (the separation of powers), the state organs, their composition, powers and relationships, constitutional principles like national sovereignty, representative government, the rule of law, governmental responsibility or judicial independence, sometimes the amendment procedure are usually described to the students. In too many cases, all these are not addressed against ideas like evolution, involution, modernization, and modernity. In other words, a properly speaking historical approach is missing. Some authors reference the previous constitutions while describing a particular one, but an overall analysis of the Romanian legal history's traits is regularly absent. Against this backdrop, there is no wonder a feeble interest exists in addressing the concept of 'democratic traditions' or constitutional traditions'.

The most obvious consequence of this very positivistic approach is the lack of interest in constitutional ideology, on the one hand, and constitutional practice, on the other hand. With few exceptions, the concept of constitution is not historically analysed against its ideological-theoretical background, either Romanian or foreign. Puzzling enough, the concepts of 'constitutionalism', 'liberal constitutionalism' and 'democratic-liberal' constitutionalism are not historically situated and explained to the students in the majority of the Constitutional Law textbooks, although the birth and evolution of the Romanian modern constitutionalism were situated at the crossroad of

many political-legal ideas. Modern Romanian constitutionalism began as a mixture of conservative-feudal, illuminist-rational and liberal influences. Political liberalism made its particular way through the Romanian political elites during the 19th century, but it was far from being the only ideological-theoretical approach. The ideas of French Caesarism were also present, influencing the authoritarian ruling of the Romanian princes. Besides, Herder strongly inspired the proponents of the Romanian conservatives and the birth of the strong Romanian ethnocentric constitutionalism. The interwar period also knew a variety of ideological currents, from liberalism to Legionarism, Orthodoxism and Fascism, all of which strongly impacted constitutional development. In turn, constitutional history during the communist-socialist period was not only a succession of constitutional texts but also a very important ideological swift that determined a specific architecture of constitutional institutions and principles. Only a few Legal History and Constitutional Law textbooks consider all these mainly superficially. Unfortunately, even Romanian scholars interested in constitutional cycles or the evolution of forms of government disregard the ideological background of Romanian constitutional history.

The other side of the positivistic approach to constitutional history is the lack of interest in constitutional practice. Many Romanian scholars consider describing the constitutional texts of the past sufficient for a general historical survey. Some professors of Constitutional Law blame the vast amount of information that must be processed and the lack of proper space in Constitutional Law textbooks for the past constitutional-political Romanian life.

Regularly, the links between the constitutional ideology / aspirations, constitutional texts and constitutional practice are ignored, even if many Romanian scholars know the difference between the formal constitution and the material constitution. Even those interested in the Romanian constitutional history as a history of the forms of government are focusing on the provisions of the constitutional texts, not on the political realities.

Complex methodological approaches, like comparative constitutional history, are generally missing. Sometimes, a surface comparison of the past Romanian constitutional texts occurs to emphasize the constitutional changes. Another time, a normative-institutional comparison with the foreign constitutional texts is present, especially to establish foreign influences on the Romanian constitutions. Nevertheless, much more rewarding comparative methodological approaches are present. The foreign influences are analysed in the complex theoretical background of the constitutional transplants, whose effects on Romanian constitutions and society are discussed in broader social-cultural contexts²³.

My survey proves that the methodological paucity in the Constitutional Law textbooks differs from many Constitutional Law professors' actual perspectives. Some of them agree that the brief description of the past legal acts bearing constitutional value and constitutions is sufficient for their didactical purposes. Many others instead have a much more complex view, even if they do not use it in their textbooks. Thus, they agree that teaching Constitutional History needs a much more exhaustive approach, capable of explaining the making of the constitutions in (geo)politi-

cal, social, economic, and cultural contexts and emphasizing the role and effects of the constitutional transplants. Moreover, they agree that Romanian political life should be clearly considered, in addition to the constitutional texts, and a critical assessment of the gap between the constitutional goals and constitutional realities should be envisaged.

Conclusions: What Future for the Teaching of Constitutional History in Romania?

The future of teaching Constitutional History in Romania depends, most and foremost, on its degree of autonomy over other academic disciplines. The courses in Legal History and Constitutional Law could do an excellent job of promoting the teaching of constitutional history, but they have inner limits. Their primary focus is on the constitutional norms and institutions in force, so they never will become a complex didactical platform for teaching the Romanian constitutional evolution. Some Constitutional Law professors are advocating the introduction of optional Romanian Constitutional History courses in the academic (undergraduate) curricula, but there seems to be a real gap between intentions and reality. The very positivistic mentality in Romanian legal research and teaching hardly makes room for effective changes in the next future.

Nevertheless, autonomous or not, the teaching of Constitutional History in Romania is unlikely to have a complex didactical impact in the future without methodological recalibration and clarification of its goals. If the primary purpose of Roma-

nian legal historians and constitutional law scholars is to inform law students about the succession in time of some particular constitutional acts/constitutions, constitutional norms and institutions, the teaching of Constitutional History will remain a simple record of the past. The following teaching topics and approaches may be considered:

a. As D. Baranger correctly puts it²⁴, the constitutions are not simply about legal norms and institutions, they are (also) about political power. The students of Romanian Constitutional History should be aware that the encounter between the constitutional provisions and day-to-day politics may follow unpredictable paths and have undesired outcomes. Everywhere history has witnessed a gap between the founders' constitutional projections and goals and constitutional-political realities, and Romania is no exception. On the contrary, the particular cultural, religious, (geo)political, economic and social contexts usually turned every democratic-liberal constitutional experiment into an authoritarian nightmare. Beyond the hopes related to the values and principles of the liberal-democratic constitutionalism and their institutional constitutional expression, the Romanian constitutional history was, de facto or de jure, a succession of more or less authoritarian regimes backed by powerful heads of state: the Russians imposed at 1831-1832 (the Organic Regulations) a type of 'monarchical constitutionalism' that succeeded only to give modern written shapes to the Phanariot despotism of the 18th century; the Paris Convention of 1858 introduced an authoritarian regime with a powerful prince by mixing provisions of the Organic Regulations and the Frech authoritarian Constitution of 1852; at 1864, Prince

Al. I. Cuza accorded the Statute developing the Paris Convention and turned its reign into a copycat of the Napoleon III's authoritarian regime; the Constitutions of 1866 and 1923 should have been an institutional platform for liberal-democracy and human rights; instead the prince (king since 1883) Carol I (1866-1914) proved to be a benign manager of the Romanian political system-ic authoritarianism, while the King Carol II (1930-1940) was a malign one; the Romanian liberal-democratic constitutionalism actually died long before the same King Carol II gave its coup and accorded, at 1938, his authoritarian constitution; his abdication made room for worse – during the Second World War the Machall I. Antonescu, formally proclaimed 'the Leader of the state', abrogated the Constitution of 1938 and ruled arbitrarily by decrees-laws; the communist constitutions of 1948, 1952 and 1965 were supposed to launch and consolidate the working people's democracy; instead they were only a formal shield for the authoritarian ruling of general-secretary Gheorghe Gheorghiu-Dej (1948-1965) and the dictatorial (or sultanistic) ruling of the president Nicolae Ceaușescu (1965-1989)²⁵. Only a textual-normative historical record of the Romanian past constitutions offers law students a completely distorted perspective. A country with such a bad political-constitutional record should teach its law students what exactly authoritarianism was in the past, which were its external and internal triggers and its political consequences in the Romanian society, e.g. above all, the political corruption, extreme parliamentary instability, and the pauperization of the population invariably favoured the Romanian head of state's authoritarianism.

b. The professors of Constitutional Law (especially) should address the concept of 'democratic traditions' or 'constitutional traditions' in the classrooms and their textbooks, but they should do so critically. If the constitutional syntagm 'the democratic traditions of the Romanian people' must have a normative value, establishing the past most cherished constitutional values, principles, and institutions would be necessary. *Stricto sensu*, it would be essential to recover the ideological and institutional background underpinning the Romanian past sense of 'democracy' or 'representative government'. Building contemporary democracy on acknowledged 'traditions' could be very motivational in the eyes of Romanian law students. However, some should avoid transforming the quest for 'the democratic traditions' into a chase for constitutional myths, no matter how useful they could be. For example, right after the fall of communism, the interwar period and the Constitution of 1923 have been considered 'the golden age' of the Romanian liberal democracy. This approach filled the identitarian axiological void and encouraged the post-communist transition towards democracy and the rule of law. Many acknowledge today that the Romanian interwar period was far from any idea of a functional democracy. The teaching of constitutional history should assume its critical function by returning to the past's political realities. Since the 1830s, when a primitive form of parliamentarianism was launched in the Romanian principalities of Wallachia and Moldova, the Romanians almost never had free elections and truly representative assemblies / parliaments. During the era of the Organic Regulations the princes succeeded in controlling the

elections to the unicameral parliaments by using the old feudal networks of solidarity, force and fear; the reign of Prince Al. I. Cuza (1859-1866) launched the complete control of the parliamentary elections using the local public administration; after 1866 was installed, with the direct involvement of the prince/king Carol I, the so-called 'governmental rotative', i.e. the rotation to the government of the two official political parties, Liberal and Conservative; each new government organized new parliamentary elections to provide a more than comfortable pro-governmental parliamentary majority by manipulation, fraud and fear; 'the governmental rotative' worked very well also in the interwar period, despite the multi-party system; during the communist period, the elections at all levels were strictly controlled by the Communist Party. All these negative records put the idea of 'the democratic traditions' into a different perspective. It could turn into a reversed projection of a different political future in Romania. The Romanian law students may understand that there are no democratic traditions to be continued, only their duty to launch a post-communist one.

c. Discussing the Romanian 'democratic traditions' should encourage the professors of Legal History and, especially, the professors of Constitutional Law to address a very challenging and fashionable topic: the Romanian constitutional identity. As everyone knows, the discussion burst years ago in the frame of European constitutional integration. Nevertheless, it is a perfect matter to approach in the Constitutional Law classrooms and a clear incentive to try contributing to this hot issue: what exactly does the Romanian constitutional identity mean? From my point of view, this question

cannot be answered using only a positivistic approach. Constitutional identity cannot be grasped without historical insight. The Romanian constitutional concept of 'democratic traditions' makes an identitarian standpoint and must be handled appropriately. In its turn, the so-called eternity clause enshrined in Article 152 of the 1991 (2003) Constitution cannot be understood outside history. The historical approach is much better positioned to identify and explain the constitutional markers of the Romanian constitutional identity. Article 152 says

1. The provisions of the present Constitution concerning the national, independent, unitary, and indivisible character of the Romanian state, the Republic as the form of government, territorial integrity, the independence of the judicial system, political pluralism, and the official language may not be the object of a constitutional amendment.
2. Similarly, no amendment shall be adopted if it would result in the elimination of citizens' fundamental rights and freedoms or of their guarantees.

Only from a historical perspective can Romanian law students discover and understand the bipolar character of the Romanian constitutional identity. The independence of the judicial system, political pluralism and human rights are elements of the Eurocentric liberal-democratic pole of the Romanian constitutional identity, while the national and unitary character of the state, the territorial integrity, the Romanian as an official language are elements of the ethnocentric illiberal pole of the Romanian constitutional identity. Both poles were born in the 19th century as complementary and, at the same time, conflicting parts of the Romanian constitutional identity. The Eurocentric identitarian pole always tried

to neutralize the ethnocentric pole somehow but never succeeded. The professors of Romanian Constitutional Law are teaching about the civic spirit of the Romanian 1991 Constitution. However, this is not entirely true. The post-communist constitution has a dominant ethnocentric ethos but cannot be detected and explained outside constitutional history²⁶.

d. Having said all these, it is essential to understand why the teaching of constitutional history must suffer a radical methodological turn. The positivistic description of the past constitutions is totally counterproductive; they merely notify the Romanian law students about the existence of some constitutional texts in the Romanian constitutional past. The focus on constitutional ideology and practice could be completed by methodological approaches borrowed from constitutional comparative history.

Overall, the comparison may highlight how peculiar Romanian constitutional history is, e.g. how far the Romanian so-called democratic traditions differ from the liberal-democratic constitutionalism embraced and practised by other European societies in the 19th and 20th centuries. A more sophisticated methodological approach centred on constitutional culture may help law students understand the relationship between culture and tradition. After all, the Romanian Constitution itself is 'speaking' about 'the spirit' of the Romanian democratic traditions. The students may assess in what measure the appetite for authoritarianism is consubstantial to the Romanian constitutional culture. The same 'culturalist' approach may emphasize the great difficulty of eradicating or, at least, taming the Romanian constitutional xenophobia and ethnocentrism.

Against the same backdrop, law students could discover that Romanians have an 'importing mentality' that has developed over the centuries. The constitutional text of 1991 and many other important codes and laws were made by importing / borrowing / transplanting from prestigious constitutional / legal models. Accordingly, 'the legal transplant' methodological approach would be more than helpful in understanding the origin of the Romanian constitutional texts and the effects of these constitutional transplants on Romanian society. The Organic Regulations (1831-1832) were imposed by the Russians but inspired by the French Constitutional Charter of 1814; the Paris Convention of 1858 was imposed by the European Powers but inspired by the French Constitution of 1852; Cuza's Statute developing the Paris Convention (1864) heavily borrowed from the same 1852 French Constitution; the fathers of the 1866 Constitutions were accused of having faithfully imitated the Belgian Constitution of 1831, while the Constitution of 1923 was a modified copy of the previous one; the authoritarian Constitution of 1938 accorded by Carol II was inspired by the constitutional reforms of Benito Mussolini, and the Romanian communist constitutions of 1948, 1952 and 1965 were strongly inspired by the Soviet Constitution of 1936. The Romanian constitutions, either imposed from abroad or fabricated by the political elites, were always applied top-to-bottom in inappropriate social and cultural contexts. The constitutional values and institutions have become merely 'forms' incapable of changing the Romanian (cultural) substance. The Romanian theory of 'forms without substance' developed in the second half of the 19th century and the beginning

of the 20th century clearly emphasized the negative effects of this cultural inadequacy. Law students may debate on what measure the failure of the Romanian liberal democracy at the end of the 1930s resulted from this unfitness between the borrowed Western constitutional values and institutions and the peculiar Romanian (constitutional) culture. More probable than not, the proponents of the theory of forms without substance are making clear to the Romanian law students that constitutional borrowing is possible and desirable but only in a ra-

tional manner, i.e. when necessary, from the suitable constitutional model, in the correct quantity, using the most adequate mechanisms and considering the local cultural context.

¹ An elective course of *History of the Constitution* is taught at Lucian Blaga University of Sibiu, department of Public Administration, while an elective course of *Romanian Constitutionalism* is taught at the political sciences department of the Bucharest University.

² See, for example, V. Onișor, *Curs de istoria dreptului român*, Cluj, 1921; I. Peretz, *Curs de istoria dreptului român*, București, 1926-1931, volumes 1-4.

³ See, for example, C.G. Dissescu, *Cursul de drept public roman*, București, 1890-1891, volumes 1-3; P. Negulescu, *Curs de drept constituțional*, București, 1927.

⁴ See P. Gogeanu, *Istoria dreptului românesc*, București, 1985, pp. 84-87; 119-127; 211-218.

⁵ T. Drăganu, in his textbook of Constitutional Law published in 1972 (București, Editura Didactică și Pedagogică), is encapsulating the whole Romanian pre-communist constitutional evolution in only one paragraph (p. 56-57). At his turn, N. Prisca, the reputed professor of Constitutional Law at the University of Bucharest, completely disregarded the pre-communist Romanian constitutional evolutions in his Constitutional

Law textbook published in 1977 (București, Editura Didactică și Pedagogică).

⁶ I. Stanomir's book *Libertate, Lege și Drept. O istorie a constituționalismului românesc*, Iași, Polirom, 2005, may be a noticeable exception, but it is rather structured and written as a monograph.

⁷ See, for example, T. Drăganu, *Drept constituțional și instituții politice*, București, Lumina Lex, 1998, vol. I, pp. 390-406; M. Bădescu, *Drept constituțional și instituții politice*, București, Lumina Lex, 2001, pp. 27-42; I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, XIth edition, București, Editura All Beck, 2003, vol. I, pp. 81-98; M. Balan, *Drept constituțional și instituții politice. Vol. 1: Teoria generală a statului și a constituției. Constituția română în context european*, București, Editura Hamangiu, 2015, pp. 197-270; Șt. Deaconu, *Drept constituțional*, 4th edition, București, Editura C.H. Beck, 2020, pp. 82-99; M. Safta, *Drept constituțional și instituții politice*, Vol. I. *Teoria generală a dreptului constituțional. Drepturi și libertăți*, Ediția a 8-a, revizuită, București, Editura Hamangiu, 2023, pp. 156-171.

⁸ C. Gilia, *Manual de drept constituțional și instituții politice. Sistemul constituțional românesc*, București, Editura Hamangiu, 2010, pp. 3ff, 21ff, 164ff, 245ff; D.C. Dănișor, *Modernitate, liberalism și drepturile omului. Drept constituțional și instituții politice*, Editura Simbol, Craiova, 2017, vol. 1, para. 302 ff.

⁹ See M. Criste, *Dreptul constituțional, un drept al statului*, București, Universul Juridic, 2017.

¹⁰ Cernea and Molcuș, cit., p. 5; L.P. Marcu, *Istoria dreptului românesc*, București, Lumina Lex, 1997, p. 3.

¹¹ See D.V. Firoiu, *Istoria statului și dreptului românesc*, vol. I, Cluj-Napoca, Editura Argonaut, 1998, p. 9; V. Hanga, *Istoria dreptului românesc – dreptul cutumiar*, Iași, Editura Fundației Chemarea, 1993, p. 5.

¹² I. Vasiliu, *Istoria vechiului drept românesc*, Cluj-Napoca, 1997, pp. 6-7; C. Dariescu, *Istoria statului și dreptului românesc din antichitate până la Marea Unire*, București, Editura C.H. Beck, 2008, p. XVI.

¹³ See M. Gușan, *Istoria dreptului românesc*, ediția 3, București, Editura Hamangiu, 2017, p. 3.

¹⁴ C. Ionescu, *Teoria generală a dreptului constituțional, Drept constituțional și instituții politice*, București,

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- Editura Hamangiu, 2017, pp. 323-324.
- ¹⁵ See Dănișor, *Modernitate, liberalism cit.*
- ¹⁶ See M. Guțan, *The Weaknesses of the Romanian Constitutional Tradition or a Constitutional Present in Quest for a Constitutional Past*, in «Romanian Journal of Comparative Law», n. 5 (2), 2014, pp. 281-298.
- ¹⁷ Dănișor, cit., para. 559 ff.
- ¹⁸ I must mention that my investigation is strictly limited to the Constitutional Law textbooks; I do not have information about the lectures per se, or about the applicative courses (the seminars).
- ¹⁹ Balan, *Drept constituțional și instituții politice cit.*, p. 215-282.
- ²⁰ See C. Ionescu, *Drept constituțional și instituții politice*, ediția 2, București, Editura All Beck, 2004, pp. 300-304; Ionescu, *Teoria generală a dreptului constituțional cit.*, pp. 328-332.
- ²¹ Ionescu, *Drept constituțional cit.*, p. 303.
- ²² See Guțan, *Istoria cit.*, pp. 222 ff.; B. Selejan-Guțan, M. Guțan, *Drept constituțional și instituții politice*, vol. 1, ediția a 4-a, București, Editura Hamangiu, 2020, pp. 60-110.
- ²³ See Selejan-Guțan, M. Guțan, *Drept constituțional cit.*, pp. 53-59.
- ²⁴ D. Baranger, *L'histoire constitutionnelle et la science du droit constitutionnel*, in C.M. Herrera, A. le Pillouer (sous la direction de), *Comment écrit-on l'histoire constitutionnelle?*, Paris, Editions Kimé, 2012, pp. 117-118.
- ²⁵ See, for details, M. Guțan, O. Rîzescu, B. Iancu, C. Cercel, B. Dima, *Șefii de stat: dinamica autoritară a puterii politice în istoria constituțională românească*, București, Universul Juridic, 2020.
- ²⁶ See, for details, M. Guțan, *Romanian Constitutional Identity in Historical Context*, in L. Csink, L. Trócsányi (eds.), *Comparative Constitutionalism in Central Europe*, Miskolc-Budapest, Central European Academic Publishing, 2022, pp. 109-128.