

Constitutional History Teaching in Italy: problems, challenges, opportunities

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1. *The teaching of constitutional history in Italy through an empirical analysis*

In Italy, the teaching of Constitutional history is often divided up among historians with various different specializations and lawyers. So far, there are only a limited number of chairs, located in just a handful of universities. However, it is difficult to determine exactly how many constitutional history courses are taught in Italian universities. There are several reasons for this, which we will try to explain.

First of all, there is the problem of nomenclature. Indeed, there are different names for the subject, some of which reflect different approaches and methodologies. Thus, alongside the name Constitutional History, there are variously named subjects such as 'History of Modern Constitutions', 'History of Codification and Constitutions', 'Introductions to national and/or comparative public law', 'Parliamentary History', and so on. A cursory survey of Italian uni-

versity websites reveals that courses on this subject are offered at Naples Federico II, Ferrara, Florence, Bergamo, Turin, Macerata, Rome "La Sapienza", Rome Tor Vergata, Lecce, Milan, and Pisa. For the above reasons, the list should be considered as indicative and not exhaustive since it will change from year to year as demands upon teaching staff vary.

This number is likely to increase if we focus on the content of the courses rather than on their formal titles. Constitutional history has lost its autonomy and has become an adjunct to other subjects. Constitutional history sometimes forms part of the teaching of contemporary history, enabling students to understand major global transformations (political, economic, social). In the field of legal history, constitutional history is relegated to illustrating the regulatory framework added to codification processes or to describing the political-constitutional transformations that have shaped the institutions in each

historical period. In constitutional law, it serves primarily to provide a context for the current republican constitution, highlighting similarities and differences with the past. In courses on the history of political institutions, constitutional history is an indispensable component, where the political-constitutional framework is the starting point.

Thus, constitutional history tends to be included in courses with a broader title, which generally correspond to the academic disciplines (SSD), recently termed 'academy-disciplinary groups' (GSD), that the Ministry of University and Research (Mur) has formally recognized.

While constitutional history struggles at the teaching level, it thrives in research, with significant increases in publications, conferences, research projects, and doctoral theses. This is also a negative reflection of the low esteem in which teaching is held in terms of career advancement (National Scientific Qualification (ASN) ex art.16 of the law 30 December 2010, n. 240). University professors are also subject to a cyclical evaluation system for scientific production (VQR-ANVUR), but there is no system that measures and evaluates the teaching performance of individual professors.

2. *Constitutional history as a 'bridge' between different academic subjects*

Constitutional history represents an interweaving of various disciplinary paths and must relate not only to the various historiographical families that approach constitutional issues head-on or at a tangent, but

also to the methodologies of other social sciences, such as public law, economics, political science and sociology, which also analyse and study constitutional phenomena. It is therefore necessary to answer the following questions: What are the relationships between disciplines and academic boundaries? What are the 'outer boundaries' of constitutional history?

Roberto Bin, a Constitutional law professor who was teaching in Macerata, presenting the founding of the *Laboratorio "Antoine Barnave"* and its Constitutional library, which contained about 2000 volumes, expressed his appreciation of the initiative, which strengthened the study of constitutional law through historical experience². He argued for investment in these «areas of convergence» to prevent researchers from becoming isolated within their specialized fields³.

In 1993, the *Centro studio per la storia del pensiero giuridico moderno*, founded in Florence in 1971 by Paolo Grossi, published the proceedings of a conference dedicated to the teaching of Legal History. During this conference, a historian and a lawyer explored their respective disciplinary boundaries and sought a dialogue that is very often lacking between subjects taught on the same course.

For Pierangelo Schiera, constitutional history has thus become a «bridge» between different types of knowledge, between theory and practice, between the past and the present⁴. This author sees constitutional history not only as a narrative of normative and legal developments, but as a field of study that seeks to integrate a global vision into the study and interpretation of human political phenomena. Schiera maintains that this branch of history positions

law and its essential constitutive function at the core of diverse historical structures which, at different moments in history, form the basis of an organised political reality. Thus, constitutional history does not study law alone, but includes and analyses all the constituent elements that define different historical realities. Law occupies a central position not only for linguistic reasons – since political language is permeated by dogmas, concepts and specific terms – but also for substantive reasons, since decision-making and organisational processes often have a strong legal imprint that has influenced European political solutions to the various problems of coexistence.

On the other hand, Gustavo Zagrebelsky reflected on the greater integration between historical and constitutional law, suggesting that a deeper understanding of the historical context can significantly enrich current legal practice⁵. He stressed that without an effective historical sensitivity, constitutional law risks being reduced to a purely theoretical exercise, disconnected from contemporary realities and challenges. Constitutional history might not only strengthen the study of constitutional norms, but could also foster a reflection on society that recognises and incorporates the lessons of the past in the formulation of its future laws and policies.

This approach, which sees constitutional history as a meeting point between different disciplines, its interdisciplinarity and interconnectedness, is certainly a strength in terms of teaching, providing students with a holistic view of constitutional principles and their impact on modern society.

3. *From the pitch to the players*

Livio Paladin (1933–2000), professor and constitutional judge, died before he could complete his book on Constitutional History. His numerous historical essays have been collected in two volumes: *Per una storia costituzionale dell'Italia Repubblicana*⁶ and *Saggi di storia costituzionale*⁷. The author explicitly posed the question: Who teaches Constitutional history? To which category of scholars should constitutional history be entrusted? To historians or to lawyers?⁸

He takes a clear position in favour of the jurists. Although history itself does not lend itself to the study of a legal method, he considers it indispensable to have a specific sensitivity and in-depth knowledge of the objects and subjects to be treated, which only those with legal expertise can master. Paladin criticizes general historians who have previously addressed the Republican period for their significant and systematic neglect of key institutional aspects, such as the drafting of the Constitutional Charter, its implementation, and the Constitutional Court's activities.

The question raised by Paladin deserves careful consideration, given the complexity and importance of the issue. While this author rightly points to the gaps that historians may have in addressing legal and institutional issues, one cannot ignore the fundamental contribution that historians can make to understanding the social, political, biographical, and cultural contexts and dynamics that influence the evolution of institutions. Historians, with their broad understanding of historical processes and causality leading to institutional changes, provide a perspective that significantly enriches the strictly legal narrative.

Only an integrated methodology could provide a richer and more multidimensional analysis of constitutional history. Such an interdisciplinary approach would promote a more comprehensive understanding, allowing for the elucidation of historical forces and legal interpretations, both of which are crucial to the understanding of republican institutions and their evolution.

In conclusion, although Paladin raises pertinent questions about the guardianship of constitutional history, the solution may perhaps not be to choose one professional group over another. Instead, fostering synergy between historians and legal experts could lead to a more comprehensive and nuanced narrative of Italian constitutional history.

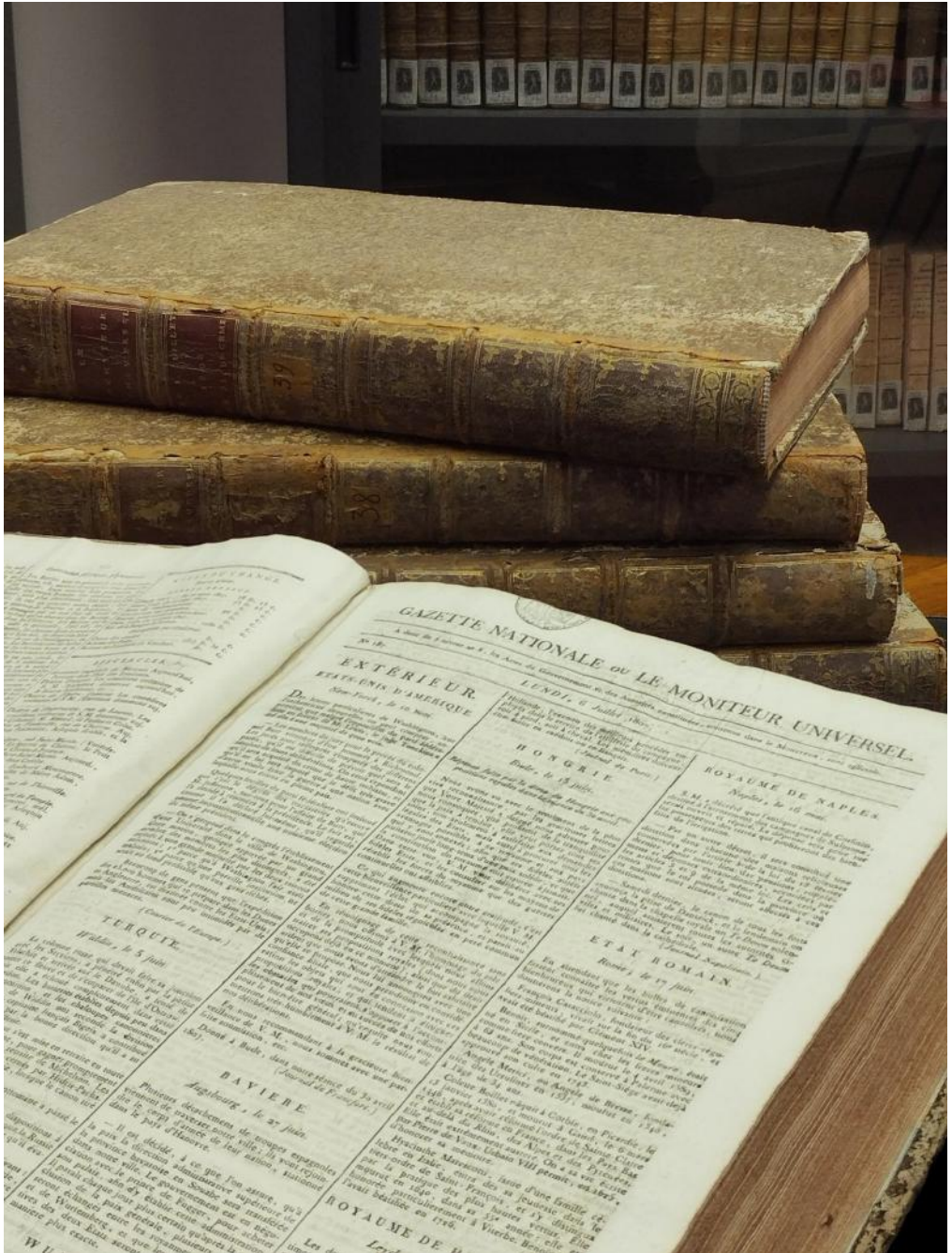
4. *Crossroads of teaching and research: textbooks*

The current literature on constitutional history is very rich. Among the most influential works are constitutional history books that go from the founding of the Italian state to the most recent reforms, offering reconstructions of constitutional aspects and institutions, in-depth studies of the legal thought of important constitutionalists, and contributions that, from a historical perspective, offer further insights and contemporary debates that are essential for scholars and legal practitioners. Compared to the French or English experience, however, the general reconstructions of Italian constitutional history are few.

The first Italian constitutional history, written fifty years after the entry into force of the *Statuto Albertino*, was written by the

jurist Gaetano Arangio Ruiz, who explained that constitutional history should be understood neither as parliamentary history nor as the history of legislative texts⁹. The former would be confined to the internal vicissitudes of Parliament, diluted in the news that had little to do with the actual development of the State and the government, and nothing to do with social movements. The latter would come under the heading of political science, aimed at making judgements about the current constitutional system on the basis of historical facts. Constitutional history, on the other hand, is civil and political in the broadest sense. It must therefore deal with the formation of the State; political facts, even those indirectly related to the parliamentary regime; the main laws, constitutional in the broad sense; constitutional issues, political parties, social conditions.

Before the method promoted by Vittorio Emanuele Orlando in *I criteri tecnici per la ricostruzione giuridica del diritto pubblico* (Technical Criteria for the Legal Reconstruction of Public Law) became established, many other jurists tried their hand at historical reconstructions and recognised a privileged role for history in their treatment of constitutional law. For a particularly telling illustration, we need only think of the reflections of Giorgio Arcoleo, who based his entire analysis on the relationship between constitutional law and other sciences¹⁰. The Constitution – this scholar declared – is «both system and history». Constitutional law is linked not only to the legal and political sciences, but also to the social sciences. But the discourse did not stop there. In fact, to quote Luigi Palma, Constitutional law is «determined by its history»¹¹.



Biblioteca Antoine Barnave, Università di Macerata

After Arangio Ruiz's volume, there was a long silence in Italian historiography. We had to wait until the 1970s for another general work, this time by Carlo Ghisalberti. The notion of writing a history of such vast proportions did itself reflect the author's didactic preoccupations. Ghisalberti noted that both legal scholars and historians had remained insensitive to the study of constitutional history and, more generally, to the whole question of the organisation of the modern state and the evolution of political institutions. In a review, Isabella Zanni Rosiello reproached Ghisalberti for «tracing schemes and periodisations of political history», for failing to overcome the old formalistic methodological approach and for not achieving the goal of writing a synthesis of Italian constitutional history¹².

Other general reconstructions followed Carlo Ghisalberti's volume: from *Profilo di storia costituzionale italiana* by Umberto Allegretti¹³ to *Storia della Costituzione italiana* by Silvano Labriola¹⁴ and Giuseppe Volpe's *Storia costituzionale degli Italiani*¹⁵. To date, in addition to Francesco Bonini's book¹⁶, there are other volumes dedicated to the period of the republican constitution, in particular Pombeni's volume¹⁷ and the recent work by Raffaele Romanelli¹⁸.

Constitutional history studies both constitutionalism (a philosophical-political movement aimed at limiting public power) and its normative product: the constitution. This reconstruction completely overlooks the vast literature that has approached the subject from the perspective of political thought and the history of concepts. I will limit myself to mentioning, by way of example, Nicola Matteucci's *Breve storia del costituzionalismo*¹⁹ and the Italian translation of Heinz Mohnhaupt and Dieter Grimm's work²⁰.

Before concluding this brief overview, it is necessary to mention two other works which, like Ghisalberti's, were written for specific didactic reasons, that is, as a result of the authors' teaching activities. The first text is Maurizio Fioravanti's *Appunti di storia delle costituzioni moderne*²¹, published in 1991 and now one of the three parts of the larger *Lezioni di Storia costituzionale*²², divided into Fundamental Freedoms, Forms of Government and Constitutions of the 20th Century. Fioravanti stated that constitutional history «is never the history of a single constitution, formally understood, and of its strength, but rather the history of a country or territory from the point of view of doctrines and institutions, that is, of the codified elements, both theoretical and practical, that give life and identity to that country or territory».

The other volume is Martucci's textbook²³. In comparison with the other histories, the author points out that, by leafing through the pages of the book, students can see the reduced space devoted to doctrinal reflection between the 19th and 20th centuries. Excessive recourse to the jurists' reflections is defined by the author as «hermeneutic *maquillage*» in that, while it restores the system of conceptual coordinates of the Italian constitutional nineteenth century, it inevitably leads away from an understanding of the constitutional dynamics of the Italian state.

5. *Research experience and teaching at the University of Macerata*

In this general context we think that the teaching experience at the Law Faculty of the University of Macerata may well repre-

sent an interesting case. Luigi Lacchè began teaching "History of Modern Constitutions" (*Storia delle costituzioni moderne*) in the 1995-96 academic year. Before, this "discipline" had never been taught autonomously. "History of Modern Constitutions" was (and is still) the main label used in the law Faculties. This academic framework is based on the idea that "Constitutional History" was the label to be used in the Political Sciences Faculties, and "History of Modern Constitutions" the appropriate name for Legal studies curricula. The idea, influenced by legal positivism and bolstered by other doctrinal and pragmatic concerns, was dominant that Legal Studies had to focus on the formal dimension of constitutional phenomena, the Constitutional texts and first and foremost the modern Constitutions, thus also identifying the chronological axis. In this sense, History of Modern Constitutions would be a branch of Legal History. Constitutional History for its part would be primarily concerned with the "material" constitutional structures, social and political developments, conflicts and compromises.

This *actio finium regundorum* appeared as a way to emphasize a field of study that actually allows for a range of points of view. In any case the establishment in 1995 of the chair at the Law Faculty was the "effect" and the achievement of a specific path opened up in 1992 when the "Laboratorio di storia costituzionale A. Barnave" was founded by Roberto Martucci. This Centre organised many conferences, seminars, editorial series, a PhD Programme, a highly specialised library²⁴. In continuity with this experience, in 2001 the *Journal of Constitutional History (Giornale di storia costituzionale)*²⁵, was founded, becoming over time 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.

Teaching constitutional history became part and parcel of the same "strategy". The inaugural course was devoted to "Constitutions and constitutionalism in France and Switzerland in the 19th century". Every two years the course changed topic, according to the teacher's interests, so in 1998 it dealt with the Italian constitutional history from the liberal period to the transformations under the fascist regime; then with developments within the British Constitution; the form of government in Italian history; the Weimar political regime and its Constitution; the origins and features of the republican Constitution of 1948. Teaching and research proceeded together, creating a positive osmosis between courses and scientific publications²⁶. The methodology used has been based above all on active teaching, encouraging those students attending to take their first steps in research activity, reading texts and presenting their papers to each other. Non-attending students studied Maurizio Fioravanti's *Appunti di storia delle costituzioni moderne. Le libertà fondamentali*²⁷, complemented by other texts variously added from year to year.

6. *Teaching comparative constitutional history. Some problems, challenges, opportunities*

Two years ago the chair was renamed, being known henceforth as the Chair of "Constitutional history". This lexical change was

intended to record the substance of teaching activity, even if labels – certainly for our field of study – no longer seem to be decisive. We can say that a comparative constitutional history approach has been privileged in Macerata since the beginning and that it remains central. Today comparative constitutional history seems useful also for the demystifying the excessively simplified use of “general” typologies, models and clichés. We need to transcend the disciplinary divide between comparative constitutional history and other disciplines in social sciences studying the same set of phenomena²⁸. This vision may prove to be helpful also in dealing with the notions of “constitutional heritage” and “common constitutional traditions”.

In this direction, comparative constitutional history²⁹ can help us to show and valorize the complexity of the constitutional phenomenon. 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 addressed by constitutional history concerns 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.

Thanks to this perspective students can understand better that 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, political doctrines and institutions, the science of administration, political and social conditions³⁰. This approach can serve to avert the ever-present risk of anachronism.

Among the problems related to teaching constitutional law we have to consider the existing gap between research practice and teaching activity. In recent years constitutional history has lost academic space, “autonomy” (specific chairs) and interlocutors. The wide range of approaches and methodological viewpoints is a richness but does also risk rendering the common elements less recognizable.

At the same time constitutional history can be useful for the training of students and the transmission of a culture of citizenship, offering the possibility of understanding better the past in order to build a more solid future. Moreover, various pub-

lic actors (judges, members of representative assemblies and civil servants) could find it a useful tool. By adopting a historical perspective, those who are called to govern public institutions can benefit from it in order to better fulfil their role and interpret the constitutional transformations of their time.

Teaching constitutional history provides a unique opportunity to reflect on the historical and legal developments that have shaped modern Italian society. By addressing the problems and challenges in this field, educators can seize the opportunity to foster informed citizens who understand their constitutional heritage. Constitutional history in Italy confronts several challenges in the modern academic landscape, especially as the social sciences

grapple with educational systems that prioritize practical and applicable skills. Despite these challenges, a renewed interest in democratic governance and civil rights has rejuvenated the in-depth study of the Constitution and its historical evolution.

Finally, the comparative constitutional history approach can be, in the global perspective, a tool helping students and future professionals 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 constitutional traditions; then considering constitutional history as a way to address different levels of global constitutionalism and new trends of governance.

¹ The ideas expressed in this article are shared by both authors. Materially, the first part (paragraphs 1, 2, 3 and 4) was written by Giuseppe Mecca, while Luigi Lacchè wrote paragraphs 5 and 6.

² R. Bin, *Il laboratorio «Antoine Barnave» e la Biblioteca di storia costituzionale*, in «Storia Amministrazione Costituzione. Annale dell'Istituto per la Scienza dell'Amministrazione Pubblica», 1/1993, pp. 281-284.

³ On the notion of field, see also *Costituzionalismo e storia del pensiero giuridico. Intervista al professor Maurizio Fioravanti, del professor Joaquin Varela Suanzes-Carpegna/ Constitutionalism and history of legal thought. Interview to professor Maurizio Fioravanti, by professor joaquin Varela Suanzes-Carpegna*, in «Historia Constitucional», n. 14, 2013 pp. 583-610, <https://www.historiaconstitucional.com/>

index.php/historiaconstitucional/article/view/384/347.

⁴ In P. Grossi (ed.), *L'insegnamento della storia del diritto medievale e moderno. Strumenti, destinatari, prospettive. Atti dell'Incontro di studio - Firenze, 6-7 novembre 1992*, Milan, Giuffrè, 1993, pp. 253-265. See also P. Schiera, *Per la storia costituzionale*, in «Giornale di Storia Costituzionale / Journal of Constitutional History», 19, I, 2010, pp. 17-27.

⁵ Ivi, pp. 177-227.

⁶ Bologna, il Mulino, 2004.

⁷ Bologna, il Mulino, 2008.

⁸ In particular, see Paladin, *La questione di metodo nella storia costituzionale*, in *Saggi di storia costituzionale*, cit.

⁹ G. Arangio-Ruiz, *Storia costituzionale del Regno d'Italia*, Florence, C. Civelli editore, 1898.

¹⁰ G. Arcoleo, *Diritto costituzionale. Dottrina e storia*, Naples, Jovene,

1907, pp. 1, pp. 168-178.

¹¹ L. Palma, *Corso di diritto costituzionale*, Florence, Pellas, 1877, vol. 1, p. 53ff.

¹² I. Zanni Rosiello, *Una storia costituzionale d'Italia*, in «Italia contemporanea», 1975, pp. 132-134, for the replay see C. Ghisalberti, *Postilla ad una recensione*, in «Rivista di storia del Risorgimento», 1975, pp. 484 ff.

¹³ Bologna, il Mulino, 1989. Later, by the same author: *Storia costituzionale italiana (Popolo e istituzioni)*, Bologna, il Mulino, 2014.

¹⁴ Naples, Esi, 1995.

¹⁵ Turin, Giappichelli, Vol. 1: *L'italianetta (1861-1915)* and Turin, Giappichelli, 2015, Vol. 2: *Il popolo delle scimmie (1915-1945)*.

¹⁶ F. Bonini, *Storia costituzionale della Repubblica: un profilo dal 1945 ad oggi*, Bari, Carocci, 2007.

¹⁷ P. Pombeni, *La questione costituzionale in Italia*, Bologna, il Multi-

- no, 2016.
- ¹⁸ R. Romanelli, *L'Italia e la sua Costituzione*, Rome-Bari, Laterza, 2023.
- ¹⁹ Brescia, Morcelliana, 2010.
- ²⁰ *Costituzione. Storia di un concetto dall'antichità a oggi*, Bari, Carocci, 2008.
- ²¹ Turin, Giappichelli, 1991.
- ²² Turin, Giappichelli, 2021.
- ²³ R. Martucci, *Storia costituzionale italiana. Dallo Statuto albertino alla Repubblica (1848-2001)*, Bari, Carocci, 2001.
- ²⁴ 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>.
- ²⁵ 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>; Lacchè, Martucci, Scuccimarra, *For constitutional history, ten years later*, in «Giornale di Storia costituzionale / Journal of Constitutional History», 19, I, 2010, pp. 9-14; L. Lacchè, *Il "Giornale" e la sua storia costituzionale*, in «Giornale di Storia Costituzionale / Journal of Constitutional History», 41, I, 2021, pp. 11-17.
- ²⁶ I would venture to recall in particular two collections containing in all 31 articles: L. Lacchè, *History & Constitution. Developments in European Constitutionalism: the comparative experience of Italy, France, Switzerland and Belgium (19th-20th centuries)*, Frankfurt am Main, Vittorio Klostermann, 2016; Id., *La Costituzione nel Novecento. Percorsi storici e vicissitudini dello Stato di diritto*, Turin, Giappichelli, 2023.
- ²⁷ See L. Lacchè, *Il costituzionalismo liberale e la legge fondamentale*, in *Lo Stato costituzionale. Radici e prospettive*, Atti della Giornata di Studi in memoria di Maurizio Fioravanti, 10 marzo 2023, ed. by M. Gregorio and B. Sordi, Milan, Giuffrè Francis Lefebvre, 2023, pp. 135-155.
- ²⁸ See A. von Bogdandy, *National Legal Scholarship in the European Legal Area—A Manifesto*, in «International Journal of Constitutional Law», 10, 2012, p. 624; Ran Hirschl, *Comparative Matters. The Renaissance of Comparative Constitutional Law*, Oxford, Oxford University Press, 2014, pp. 191-192.
- ²⁹ See L. Lacchè, *Crossing boundaries. Comparative constitutional history as a space of communication*, in «Glossae. European Journal of Legal History», 15, 2018, pp. 126-139, <http://www.glossae.eu>.
- ³⁰ J. Varela Suanzes Carpegna, *L'histoire constitutionnelle: quelques réflexions de méthode*, in «Revue française de droit constitutionnel», 68, 2006, p. 676.