Teaching Nordic Constitutionalism? How to understand the histories of the Nordic constitutions

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1. *Introduction: The history of Nordic states in the 19th and 20th Century*

Given the obvious constitutional stability of the Nordic countries since the 19th century, one should have expected a massive interest in the teaching of constitutional history at Nordic universities and legal faculties. That seems however not to be the case[1]. Paradoxically, that may in fact exactly be the result of the constitutional and political stability itself, as the academic class does not quite find it necessary to explore constitutional law historically for the benefit of the political present. This picture is however again too simplistic – and for at least two reasons. Firstly, even though one may attempt to think of the Nordic region of Europe as one block, it is no surprise that there are many differences between the (now) five major countries: Denmark, Finland, Sweden, Norway and Iceland, comprising just under 30 million inhabitants. Behind the label of Norden (the Nordic catchword for the Nordic region and which I will use here), there are different histories stretching back to the High Middle Ages when the three kingdoms of Norway, Sweden and Denmark were formed, chiefly during the 12th and 13th Century[2]. Secondly, the constitutions of the Nordic countries have had different political, social and cultural functions and significances during the last two centuries making it more interesting for one country to study its constitutional history than that of another country. The best example in this respect is the rather stark differences between Norway and Sweden as Norway is a typical patriotic-constitutional society, whereas Sweden has had a much more distanced, almost a non-constitutional, interest it its constitutional past.

In this article, I will focus on modern constitutional history, meaning the histories arising from the constitutions that came about during the 19th and 20th century. It is a matter of definition where to start a constitutional history. The three medieval kingdoms of Denmark, Norway and Sweden

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had all legal codes comprising administrative law that functionally had constitutional character and lasted far into the early modern era. As Sweden and Denmark emerged as the two dominate powers of Norden after the Reformation, especially Denmark developed a constitutional political order reflected in one legal text (*King's Law* 1665) defining the absolutist rule in a systematic and exhausting fashion not common at the time[3]. Until around 1800, Norden was not at all a 'natural' entity as the region was divided, and controlled by, the two semi-empires Sweden and Denmark.

Norden as a plausible historical entity was the outcome of the Napoleonic wars. From 1815, Norden that had been dominated by Sweden and Denmark was transformed into four more or less nation state-defined entities: Denmark, Finland, Sweden and Norway. After the loss of Finland to Russia in 1808, Sweden reorganized its way of ruling and enacted a modern rather liberal constitution of 1809. Denmark, an ally of Napoleon, having lost Norway to the king of Sweden on that account, a loss that was confirmed at the Vienna settlement, continued as an un-constitutional absolutist state until 1849. Then Denmark enacted a modern liberal constitution that entailed the complicated issue of the Dukedoms of Schleswig and Holstein. Norway enacted its liberal constitution in May 1814, but the Great Powers demanded that Norway had to enter a personal union with the king of Sweden who then in November 1814 became king of Norway as well. The union-king then ruled constitutionally according to the Norwegian Constitution as Norwegian king and as king of Sweden according to the Swedish constitution. Thus, a typical 19th century version of 'united kingdoms' emerged in Norden[4]. The Vienna Congress indirectly sanctioned this constitutional order in 1815. As Russia took the eastern part of Sweden through warfare in 1808 and then created the archdukedom of Finland in a personal union with Russian Tsar, Finland as a new political entity so to speak emerged. Finland had limited autonomy during the 19th Century within the Tsar Russia. The Russian Revolution led Finland to declare itself an independent republic, with the ensuing civil war (1918), before the enacting of the new constitution in 1919[5]. Iceland remained part of the Kingdom of Denmark also after the Vienna settlement, eventually as late as 1944 Iceland declared its independence through a republican constitution in the middle of the Second World War. To sum up then, the first decades of the 19th Century saw the establishment of many of the essential features of modern Norden, including the region's outer borders and new internal constitutional arrangements. Out of this comes a fundamental observation, namely that the constitutions of the Nordic nation states were all closely connected to the modern geopolitical transformations of Norden.

As much research tells us, during the 19th century, the 'constitution' was a generic normative phenomenon based on what is often called the modern concept of a constitution coming about from around 1800[6]. The typical features were one written standardized document; the idea was that this constitutional text constituted and regulated the state and its fundamental organs in exhaustive ways; the constitution brought about normative political visions, in particular through insertions of the civil rights, and 'globally' the new constitutional concept conveyed universal principles to

ever-new societies. Eventually, any constitution belonged historically and structurally to a network of many hundreds of other constitutional texts[7]. These common features point to something central: Even though the many hundreds of constitutions were used in different states and cultures, and even though their political and historical conditions were different, the actors were very conscious about this standardization of the constitutions. This can be studied in the works of the three constitutions of 19th century, Sweden (1809), Norway (1814) and Denmark (1849). This dimension points to a central theme on the Nordic scene: The tensions between the internationalism of any modern constitution and the national embeddedness of the individual Nordic constitutions, reinforced by many layers of nationalism/internationalism through two hundred years. This theme is a recurring topic of contemporary constitutional history in the Nordic countries.

Thus, we are addressing the complicated role of the constitution as part of the forming of nation states in the Norden[8]. The new states of the first part of the 19th century also became the nation states of Norden in a modern sense. The transformation from the two semi-empires Sweden and Denmark into five nation states occurred with different speed, Norway having a very early national revival, due to the combination of a less stable statehood and a more democratic constitution than Sweden and Denmark. Overall, however, during the 19th century the result was a continuous nationalization of the Nordic states, involving language, processes of national identities of peoples and their pasts, all of which were typical patterns of nationalism in the modern age[9].

However, intertwined with the dimension of nationalism was the dimension of a new Scandinavism and eventually Nordism[10]. From the 1830s, there emerged a strong sense of cultural and political common understanding of being 'Scandinavian', and later during the 20th century, transformed into 'Nordic' (then including Finland): This double geography of 'Nation' and 'Norden' thus enlarged the limited defined nation state and set in motion imaginations of a more unified Nordic region, also in legal-constitutional terms. As is well known, this did not result in any concrete constitutional arrangements, but certainly, a vivid Nordic cooperation came about. This again resulted in an understanding of the Nordic nation states as historically and politically more complex than they otherwise would have been, just as states of a nation. This certainly spilled over to the understanding of the constitutional identities of the different Nordic constitutions to which we will return.

This dynamic between 'nation' and 'Norden' brings us to an important point in the history of constitutions in Norden, namely that of nation and union. From 1800, between Nordic states there were many internal legal interrelationships defined by international law[11]. Constitutions were at the same time both constitutional law, internal union law between two Nordic union states and in that respect functionally external international law. One example was the above-mentioned united kingdom of Sweden and Norway that from 1815 to 1905 had their own constitution, but at the same time, parts of these constitutions were prerequisites for the interstate-relationship between the two states defined as Swedish-Norwegian union based ulti-

KONGERIGET NORGES

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gjeven i Rigsforsamlingen paa Eidsvold den 17de Mai 1814.

og nu i Anledning af

Norges og Sverriges Rigers Forening

fastsat i Norges ovenbemeldte Storthing i Christiania, og antagen den 4de November 1814.

1814 Constitution of the Kingdom of Norway

mately on the central union-treaty of 1815. The legal construct of this unified kingdom then were two separate constitutions (1809, 1814) and the treaty of 1815 binding the two nation states together in a specific union: This inherit tension between nation and union certainly is a pedagogical challenge for a modern audience, and certainly this is case in Norway not being member of the European Union.

To conceptualize the close interactions between domestic constitutional-legal regimes and external international legal regimes the term 'international legal act', may be apt for any constitution having this double legal function of nation state and union law. The term seeks to grasp the normative legal acts connecting international treaties at the same time being constitutions. As there were so many blurring borders of constitutions existing both in national and union-related sense in the Nordic region, this dimension influenced the very understanding of these constitutions. In addition, it influenced how constitutional history was taught in different Nordic countries. As mentioned, from 1814-1815 until 1905 Norway and Sweden were tied to a personal union through a common king, resulting in rather aggressive Norwegian and Swedish nationalism, forming the way constitutional history was taught, then in highly nationalistic terms. During the 19th century, Denmark was structured by the difficult Schleswig/Holstein conflicts, especially from 1848 to 1864, that included two wars with Prussia. Then the political-pedagogical issue was 'what was Denmark'? In the north of the Nordic area there were the Sami issues resulting in a rather antagonistic Norwegian nationalism directed at the Sami autonomy, connected to ongoing prolonged border disputes with Sweden and Russia/Finland through a long periode (1751-1826-1852-1905). Between 1843 and 1944, Iceland and Denmark struggled over independence for Iceland. The emergence of Finnish identity came about during the first half of the 19th century. This was a difficult issue under the Tsar regime until the sudden enactment of the modern republican constitution for the new independent Finland became possible in 1919. In addition, all these issues resulted in many regional conflicts involving at the same time constitutional law and international law, as for example the Åland-question 1918-1921 [regarding sovereignty on that island between Sweden and Finland] and the Greenland conflict between Norway and Denmark in 1930-1932[12].

A central dimension of understanding the past constitutional law is to identify its actors, such as the professors of constitutional law. Their role in Nordic constitutional law have always been very prominent and some have almost personified the constitution itself at a certain time. These constitutional law professors were professor-politicians that related both to the ideals of the university and that of the interests of the state. This double approach shaped their accounts of the history of the constitutional law of different Nordic countries – *being the voice of the state* so to speak. Being a constitutional law professor then involved having the political tasks either as an active politician as members of Parliaments or as having elite bureaucratic functions. To understand this activity as a kind of operational legal research signifies the interconnections between legal expertise and the expertise related to political institutional activities. The operational character shaped

these professor-politicians in their plural public activities, being in Parliament, state administration, the close connections to executive power, often doing much judiciary work, and being expert in administrative reform processes. Their simultaneous account of constitutional history reflected these kinds of activities – it was the account of a 'statesmen', that contemporary political order quite not allows any more.

During the second part of the 20th century, the Nordic countries took different paths, first due to the different experiences of Second World War. The Nordic countries took a neutral stand during the First World War, and they all became active members of the League of Nation[13]. Then: Nazi-Germany occupied Denmark and Norway from 1940 to 1945, Sweden declared itself neutral during the whole war; the British-American occupation of Iceland enabled that country to declare independence of Denmark; Finland was attacked by Soviet and later during the war, Finland realign itself with Germany until very late. From 1945 to 1949, the international status of Norden changed dramatically. Norway, Iceland and Denmark became founding members of NATO, Sweden decided to remain formally neutral in the upcoming Cold War and Finland entered the Finno-Soviet Treaty of 1948 giving Soviet some authority to interfere in Finish politics, a treaty that lasted until 1992. The new international status of the Nordic states occurred formally within their respective constitutions, but with tensions. In Norway and Denmark there were pressures arising from the conflicts between traditional ideas of national sovereignty and the supra-national organization of NATO and later EU.

This also led to a new division in Norden that came about with the enlargement of the European Community/Union from the 1970s. In 1960, the Nordic countries (Finland from 1985) joined the British led European Free Trade Association (EFTA); in 1973, only Denmark became member of the EU as Norway rejected call for membership in a referendum. In 1995, Sweden and Finland joined EU whereas the non-members Norway and Iceland were tied to EU through the complicated and far-reaching treaty European Economic Area (EEA 1994). Legally defining has been the increased importance of European Convention on Human Rights (ECHR) on Nordic constitutions although with somewhat different impacts. Yet another war, the Russian attack on Ukraine in 2022, led to the inconceivable result of Finland and Sweden (2023-2024) becoming members of NATO. These historical particulars are important as to how constitutional law is historically interpreted now in Norden, with the different international dimensions structuring diverse constitutional historical self-understandings and narratives.

2. *The constitutions/constitutionalism of the Nordic countries' anno 2024*

Teaching constitutional history is a contextual activity. The point of departure is often the present-day constitution and out of that come constitutional histories that are more or less legal-dogmatic and doctrinal or more or less historical, political and cultural. Lawyers, legal historians, historians or political scientists may teach constitutional histories as part of their disciplines

and thus their professional quality will influence the outcome, their version or even vision of the constitutional past. Therefore, it is important to be aware of the contemporary premises for any mapping of the teaching of constitutional histories around at Nordic universities.

A central dimension of Nordic contemporary constitutional situation is that of continuity. Any teaching would have to deal with long lines of constitutional histories. Even during the volatile 20th century there were no devastating state of emergencies (except the Finnish civil war in 1918) or introduction of dictatorships. The three Scandinavian kingdoms remained unrestrained democratic and that is even the case for the more fragile Finland in that respect. As we have seen, the oldest still existing constitution in Norden is the Norwegian one. Enacted in 1814, it is in principle the same today even though there have been some substantial amendments, mostly in 1905 and in 2014. It goes without saying that a written constitution with such age leads to constitutional and political practices of different kind. At the same time the Norwegian constitution has become an integral part of the nation's DNA, thus it signalizes both the stability of the Norwegian statehood since 1814 and its shifting character, in particular the increased role of democracy. Since 1884, Norway has been a parliamentary monarchy and then through the 20th century it has acquired the identity of modern democracy (with the introduction of full women's voting right in 1913) and rule of law. Of particular importance is that the Supreme Court of Norway has practiced judicial review since the 1820s which strengthen the importance of the Constitution of 1814 considerably. Although this doctrine has had its ebbs and flows, it has remained a fundamental part of the Norwegian constitutional life[14]. Unavoidably, this narrative of increased democracy and rule of law has had its effects upon the writing of constitutional history that tends to celebrate liberal values and visions exposing itself to the dangers of self-congratulations. The problematic constitutional status of the Sami people are consequently often neglected in these histories[15].

To some extend Sweden has had the longest living constitutional story in Norden. During the so-called 'Age of Liberty' between 1719 and 1772 the Parliament was the centre of political power, not unlike the parallel in Britain. The extremely important *Freedom of the Press Act* from 1766 made Sweden to the least repressive state in Norden[16]. The 1809-Constitution mirrored the estate structure of the Swedish society with a strong aristocracy. This was liberalised in 1866 and later after 1919 with a functioning Parliamentarism; this constitutional tradition was then replaced with *The Instrument of Government* of 1974. To say that Sweden at times took its Constitution somewhat lightly is not wrong, and famously, large part of the 20th Century has been called 'the half century of non-constitution' in the sense that the constitution had little significance for the actual governing[17]. To Sweden the Constitution has not played the same significant role has to Norway and to some extend to Denmark. There is no surprise that there is only modest interest in a classical constitutional history in Sweden; rather then, a constitutional history seen from the point of view of political science.

The central constitutional year for Denmark was 1849 which both in form and much substance signalised the transition

from absolutism to liberal constitutionalism. Still, after 1866 a more conservative element again were introduced into the Constitution now favouring the King over the Parliament, again changed in the revised constitution of 1915 signalling the democratisation of the Danish politics and society. This continued with the Constitution of 1953, the current constitution, in many parts still building upon the 1849-constitution. In that sense we are dealing with a high degree of constitutional continuity in Denmark as well.

Finland's current constitution of 1999 (effective from 2000) has enshrined the earlier constitutional documents from 1919 and onwards into one single code and at the same time the 1999-constitution sums up the process of democratisation of Finnish constitutional life from the 1980s. The increased internationalisation of Finish constitutional life is also reflected in this very modern enviably constitution, e.g. through the enhanced role of civil rights.

Iceland's current constitution is of 1944, in connection with and as reaction to the Nazi-occupation of Denmark[18]. The Constitution was somewhat hastily written down and thus formed by the Danish model. The most exciting constitutional experiment in modern time in Norden is undoubtedly the Icelandic constitutional reform that was inaugurated in 2009, after the total collapse of the Icelandic banking system in October 2008, threating the very existence of the Icelandic state and society. The first phase of the reform process was carried out in an extremely innovative and democratic manner and lasted until 2017. Then a cross-party process will conclude with a new constitution, foreseeable in 2025[19]. Especially the broad societal involvement during the first phase should be viewed as a remarkable democratic all-embracing constitutional moment in Norden, and not least as a national pedagogical lesson in constitution-making involving historical reflections on the nature of Iceland's constitutional tradition.

During the last years, there has been a surge of research and literature on what is called 'Nordic model', welfare state, legal ideology and constitutionalism[20]. However, to presume a too coherent political and cultural Nordic identity would be wrong, as there are marked differences in these respects between the countries, in particular the last decades. On the other hand, there are numerous webs of interactions, based on shared history and common contemporary aims. To teach constitutional law in Norden is at the same time to reflect upon these many layers of Nordic history and the multitude of Nordic interactions. A last issue here is whether one could imagine a teaching of a historic Nordic constitutionalism as a separate discipline from that of the five individual countries. This is a difficult question, but so far, we may conclude that this has not yet happened. At the height of legal Scandinavism, at the end of the 19th Century, a famous book on the Nordic constitutions were published, also with pedagogical aims[21]. However, it is hard to imagine that this can become anything else but a comparative exercise, of great interest to the students. As I have shown the differences between the Nordic constitutions are considerable and as such the Nordism is one of several dimensions of the constitutional history.

3. *Teaching constitutional history: Competing fields of law, politics, and history*

To teach constitutional history is at the same time to reflect upon these historical given structures of law, institutions, culture and society. To what extend these reflections should be part of the actual teaching is another matter, but any teaching must be informed by this basic infrastructure, that includes the actual and current constitutional order of the given country. Now, this sentence may be too narrow and naturally presupposes a too specific legal outlook. Thus, it may be rephrased as any constitutional history targeting a legal audience, in particular law students, ought to be informed by current constitutional law. However, already this claim makes clear the problematic relationship between constitutional history as legal doctrinal history versus what I here would call contextual constitutional history, having other aims than contributing to the interpretation of constitutional law. Contextual constitutional history then acknowledges current constitutional law but moves on by defining 'constitution' as a diverse normative phenomenon in history without relevant legal-dogmatic purposes of interpretation. This enables a liberated constitutional historical research freed from the pressure of the actuality of current legal system.

The crucial methodological tool for distinguishing between constitutional law and constitutional history is historicization i.e. to understand sources to a past constitutional order as a constitutional historical phenomenon and thereby to distance oneself from constitutional law as a contemporary legal phenomenon. These reflections seem to deal with research, but without doubt has much to do with formulating a sufficiently complex and interesting form of public dissemination. In my view, any constitutional history must stress the dimension of historization in the sense that constitutional history is an historical scholarship based upon expertise in constitutional law and life. Historization is a comprehensive word, but it does imply a necessary methodological approach insofar as constitutional historical research possess historical epistemological purposes, not just legal dogmatic-doctrinal ones. Even where constitutional history is to be used with doctrinal purposes, as in the interpretation of specific constitutional provisions, the normative significance of historical data will be most obvious precisely where there is quality-assured historical knowledge that forms the basis for interpreting the current sources of law. As such, there will be both different purposes between constitutional history and constitutional law, but also much interdependence.

Given the fact that the Nordic countries, and especially the Scandinavian monarchies, have had long history of constitutional and constitutional lives, several professions have been interested in the constitutional history, although with some differences. As historical scholarship until quite recently was rather national and political in outlook, professing a methodological nationalism, constitutional history was taught as political history of the nation, often with conspicuous absence of international dimensions and with emphasis on the activities of the political class of the past. The rise of political science in Norden during the 20th century underlined this ap-

proach. A particular Swedish intellectual tradition during most of 20th Century was the political science specific focus on the history of Swedish constitutional and political life, a tradition that weakened a more precise legal constitutional historical discipline. Only lately this has changed[22].

If we turn to the current law faculties in Norden, the picture is full of varieties. The traditional law faculties in Norden have been Uppsala, Copenhagen, Lund, Oslo, Stockholm, Helsinki, Turku, Aarhus, Bergen, Tromsø and Reykjavik. Since 2000, there has been a massive increase in academic institutions for teaching law, now well counting over 50 locations in Norden. Even in more business-oriented law-institutions, there are courses in constitutional law, but not at all in legal history. The question is whether teaching in constitutional history is located within the discipline of constitutional law or within that of legal history. In general, out of this disciplinary difference comes two separate approaches, connected to what I just defined as the difference between doctrinal versus contextual constitutional history. Looking through the textbooks of constitutional law of the Nordic law faculties reveals a rather teleological and legal-narrow account of that history, often connecting the story close to the current task of interpreting particular articles of the constitutions. How could it be otherwise one may ask of course. In many instances, there is no historical narrative at all, or even specific arguments directed against the need for historical account of the constitutional history all together. In the discipline of legal history, the role of constitutional history is presented very varied, but the accounts are being placed as part of the general legal history of the nation, often with international background. The only contemporary textbook dealing solely with constitutional history is not surprisingly a Norwegian one that specifically aims to combine national and international constitutional history since 1750[23].

It is not always easy to draw the boundaries between the current constitutional law and the constitution understood as a constitutional-historical normative phenomenon. This is the issue of defining constitutional history with legal or historical purposes. Is it possible to give constitutional history an identity through special empirical resources and methodological characteristics? Researching the constitution as a constitutional historical phenomenon would then mean distancing oneself from the constitution as a contemporary legal document through historicization. In Norden, this is most obvious for Norway, as the 1814-constitution is still applicable law in Norway. Hence, there is a double historical argumentation going on here: Legally, the constitution as a contemporary legal text requires historical data of many kinds in order to be interpreted according to acceptable methods. One could ask if this kind of doctrinal constitutional history is the constitutional history we ought to teach as constitutional historians. Thus, when there should be model of some kind, we should acknowledge the difference between constitutional history as part of contemporary interpretation of the constitution and constitutional history as interpretive history, as part of political and social history. At the same time, it ought to be an aim for the teaching of constitutional history to make these two forms interpretations analytically and transparent. Experiences show that a constitutional history too bent on the de-

velopment of law and doctrines are more prone to teleological forms of interpretation[24].

So, teaching constitutional history must, in my view, be contextual. Constitutional history, whether as research or teaching, must view itself as historical scholarship[25]. This normative stance therefore has as its premise that teaching constitutional history cannot be cut from this research, rather the opposite. Only a research-informed constitutional history will be interesting to a contemporary audience, whatever that may be. The last decades there have been new forms of epistemological pressures on historical sciences, and to some extend law as well- This has been rewarding in the sense that it has produced pluralistic methodological programs, with the effect of historicizing the conceptions of the constitutional past. Also, in teaching one should not avoid confronting the audience with the complicated relationship between the represented past and the present historical representation. Often, for any student, there is almost a revelation that there is no one-to-one relationship between an historical legal source (text) and a past constitutional 'reality'. Thus, as part of teaching we must discuss pragmatically how we ought to organize our legal-historical representations, and not least to reflect upon the often value-burdened vocabulary that are ingrained in the historical and legal methods for reading historical sources[26].

This brings us to the methodological resources of any work on constitutional history that at the same time ought to be conveyed in teaching[27]. To teach constitutional history is to convey the fundamental fact that any constitution is at the same time both national *and* an expression of the historical given constitutional model and international practice that stretches back to the late 18th Century. To absolutize uniqueness is to succumb to the politics of identity of a nation and constitution which is historically more than questionable. So, I would stress the close connection between the modern concept of constitution as a foundation of modern constitutional history and that of historical understanding of the particular constitution as part of the history of a nation. This insight of modern scholarship brings us to the status of source criticism and general methods. To teach constitutional history is simultaneously to openly reflect upon the source-basis of the historical narrative, namely the historian's craft that include source criticism, hermeneutical historical interpretations and not least identifying the ideological terrain surrounding any constitutional history. Thus, an introduction to the historical sources, categories of historical and legal sources, the importance of archival methods and much more of this kind will bring about an enhanced historical awareness of that of teaching constitutional history. So, to teach constitutional history is to teach the contingency of the making of constitutions and the integrated geopolitics of any process of enactment. Equally it should bring about the manifold functions that any constitution manages to perform historically in a given society, dealing with territory, power sharing, citizens, and the fundamental task of enabling the predictability of politics.

4. *Targeting the Nation: Constitutional history and the Bicentennial jubilee of the Norwegian constitution 1814-2014*

A particular kind of 'teaching constitutional history' is the public forms of national memories, national anniversaries of the constitution, including 'sites of memory', parades and much more. Involving the public and involving somehow the connections of law, politics and emotions, are here at stake[28]. In Norway, this was very much the case in 2014, as a massive state-funded celebration of the bicentennial of the Norwegian constitution (1814-2014) took place. Historically, in 2014, the 1814-constitution was the eldest still current written constitution in Europe, and even though amended several times, the 1814-constitution was in principle the 'same' as the one enacted on May 17 in 1814. The following paragraph deals with some reflections about what came out of this national celebration[29]. In order to understand the bicentennial celebration a premise is that Norway is a 'constitutional country': The constitution constituted and constitutes Norway almost literally, thus connecting nation and constitution in a very direct manner. How then to proceed to grasp this as a constitutional historian and communicating this to the audience? Any celebration of a nation or constitution reflects the celebrating society and in addition the celebration itself is a cultural-political act directed towards some aims.

In Norway the prime site of memory where the residence of the national assembly in May 1814 took place, Eidsvoll manor house, some 70 kilometers north of Oslo. This has been a 'site of memory' since early 19th century. In order to involve the nation in 2014 in a direct and almost physical way, this manor house was renovated extensively and by ways of political-historical rituals this house attained almost sacred qualities as it expressed the corporal modality of the Constitution of 1814 itself. Now, there were also more conventional legal changes going on in 2014 as part of the celebration[30]. Through a complex procedure the Parliament (in its capacity as Constitutional assembly) revised the part of the constitution dealing with human rights that had hardly been changed since 1814. Thus, these articles were brought in harmony with the European Convention of Human Rights. The debate whether to include more welfare rights as constitutional rights led to a debate, also historical, about what kind of Constitution the Norwegian had been and ought to be. The result was that the Parliament retained the model of 19th Century, not including new welfare rights in the Constitution. In addition, the Constitution that had maintained its rather archaic Danish-Norwegian language of 1814 until then, also its modern amendments, was now so to speak translated into modern Norwegian. This was indeed an obvious act of enlightenment for a contemporary society. Paradoxally this modernization of the language also highlighted the historicity of the constitution itself.

The celebration in 2014 became a mass education. Surveys made in 2015 showed that almost 50 % of the whole population stated that they now knew much more about the Norwegian constitution than they had before. Almost the same amount had personally participated in some activity concerning the constitution. This is perhaps not surprising as the National Day in Norway, May 17, celebrated since the 1820s, is the day of the constitution, not of the nation

nor of the state or anything else, but the constitution: Thus, the dynamics of mass celebration and mass participation reminds us of Nussbaum's idea of how political emotions are being set loose: The question is of course what is being taught, what is set loose? This depends on where you look: The state financed a lot of new research. But most of the budget was allocated to public activities, restoration of buildings connected with constitutional narratives or engaging the schools to numerous activities. The dominant words of that celebration were 'democracy', 'nation' and 'human rights'. It goes without saying that there had to be much asymmetry between the language of the research and that of the public celebration. This difference was however not that stark as one would have expected partly due to the fact that there are competing interpretations of constitutional history that became part of the public debates. There can be no doubt that the celebration indeed was a mass education.

One backdrop of teaching constitutional history is to emphasize other stories than the dominant one, usually the national narrative. One such counter story is the role of Sami in the Nordic history – that was hardly part of the 2014-celebrations. In 1978, the Norwegian Parliament decided to develop an immense area for hydropower which included an artificial lake that would cover Sámi villages in Finmark in north of Norway. This led to a popular movement that fought against the Norwegian state with legal, non-legal and even violent means. The protesters were removed with force, the case went to the Supreme Court that ruled in favour of the government, and eventually the power plant was built, albeit on a smaller scale than originally planned. During the 1970s many European countries had more severe problems of civil disobedience and terror action than this story shows. But to Norway it was significant, and it was an interesting blow to liberal image of Norwegian nationalism that actually had been strengthened during the debate on membership in European Union in 1972, a membership that was rejected by a majority. As Norway had been a stabile state since 1814 without any coup d'état and characterized by a distinct liberal nationalism since the latter part of the 19th century, this sudden eruption of ethnic violence and a new kind of nationalism, namely the Sami one, came as a shock. However, the events stimulated an interesting and politically loaded legal historical research that eventually contributed to a certain de-nationalization of the constitutional history. The legal-political movement was structured in favour of making the Sámi legal world more constitutionally autonomous and this resulted in a specific article in the Constitution and the establishment of a Sámi Parliament in 1987. Norway that had looked upon itself as morally quite impeccable without the burden of a colonial past suddenly discovered itself in that very role.

5. *Conclusion*

It is hard to differ between the activity of research and that of teaching the constitutional history. At the same time, knowing your target groups and understanding the audience enables one to be flexible both as to research and teaching. As we have seen, for the Nordic countries generally, there are no specific legal-constitution-

al tradition of constitutional history, with the possible exception of Norway. As I suggested in the introduction, the stability of the Nordic democracies and their tendencies to take their constitutions for granted, does not stimulate research or encourages the writing of specific historical narratives. Even though there is much to say in favor of constitutional history as an integrated part of the current constitutional law, as e.g. doctrinal history, contextual constitutional history seems to be the dominant model we ought to pursue. That history then connects to constitutional law, legal history, political science and historical scholarship. To produce a distinct constitutional history requires a contextual understanding of what constitution is in society and history. And what we learnt from Norwegian 2014-celebration is that targeting the nation with a history of the Norwegian constitution unleashed a broad conception of constitutional history enabling the audience to understand the significance of the constitution itself. To teach constitutional history for the law students in particular means not just to focus on the constitution, but equally on what this constitution has made possible in history and what it did not made possible. This may be generalized as constitutions must be viewed as a certain kind of autonomous normative phenomena in history that several disciplines may address for the benefit of both the public and politics.

[1] For this article I have carried out an informal survey addressed to a number of academic institutions for legal education in all Nordic countries.

[2] See here Jørn Øyrehagen Sunde (edited by), *Constitutionalism before 1789*, Oslo, Pax, 2014 for Nordic and European comparisons. For background, Anders Winroth, *The Conversion of Scandinavia*, New Haven & London, Yale University Press, 2012, esp. ch. 9-12.

[3] See in general H. Pihlajamäki, *Scandinavian Law in Early Modern Period*, in H. Pihlajamäki, M.D. Godfery, M. Dubber (edited by), *Oxford Handbook in European Legal History*, Oxford, Oxford University Press, 2018, pp. 806-829.

[4] A. Jackson, *United Kingdoms. Multinational Unions States in Europe and Beyond, 1800-1925*, Oxford, Oxford University Press, 2023, in particular pp. 102-121.

[5] See comparative analysis P. Ihalainen, *The Springs of Democracy: National and Transnational Debates on Constitutional Reform in the British, German, Swedish and Finnish Parliaments, 1917-1919*, Helsinki, Finnish Literature Society, 2017.

[6] The most in-depth general study is D. Grimm, H. Mohnhaupt, *Verfassung: Zur Geschichte des Begriff von der Antike bis zur Gegenwart*, Berlin, Duncker & Humblot, 2. Auflage 2002. For the Nordic, see further in E. Holmøyvik, *The Changing Meaning of 'Constitution' in Norwegian Constitutional History*, in K. Gammelgaard, E. Holmøyvik (edited by), *Writing Democracy: The Norwegian Constitution 1814-2014*, New York, Berghahn, 2014 pp. 43-59.

[7] H. Dippel, *Constitutions of the World from the late 18th Century to the Middle of the 19th Century*, München, K.G. Saur Verlag, 2005. See in the same series, T. Riis, S. Loebert, D. Michalsen, M. Isberg (edited by), *Constitutional Documents of Denmark, Norway and Sweden 1809-1849*, München, K.G. Saur Verlag, 2008 for which I rely.

[8] See for a general observation Z. Elkins, T. Ginsburg, *The Endurance of National Constitutions*, Cambridge, Cambridge University Press, 2009.

[9] See historical-analytically still A.D. Smith, *National Identity*, Harmondsworth, Penguin Books, 1991, ch 2-3 and as to law in Norway Michalsen, *Law, Legal Science and the Norwegian Society*, Oslo, IOR-skriftserie, 1998 pp. 117-144.

[10] See now N. Græger, R. Hemstad, P. Nedergaard, P. Stadius (edited by), *Handbook on Nordic Cooperation*, London, Edward Elgar Publishing, 2024.

[11] For the next two paragraphs, see Michalsen, *From Union Law to International Law? Reflections on the*

relationships between constitutions, international law, and legal internationalism, in K. Brathagen, H. Ikonomou, M. Rasmussen (edited by), *Nordic jurists and International law and politics 1880s-1970s*, London, Routledge, 2024.

[12] M. Jonas, *Scandinavia and the Great Powers in the First World War*, London, Bloomsbury Academic 2019, pp. 111-129.

[13] P. Salmon, *Scandinavia and the Great Powers 1890-1940*, Cambridge, Cambridge University Press, 1997, pp. 169-205.

[14] A. Kierulf, *Judicial Review in Norway. A Bicentennial Debate*, Cambridge, Cambridge University Press, 2018.

[15] Norwegian and Nordic perspectives, J. B. Henriksen, *The continuous process of recognition and implementation of the Sami people's right to self-determination*, in «Cambridge Review of International Affairs», 1, 2008, pp. 27-40.

[16] J- Nordin, *The Monarchy in the Swedish Age of Liberty, (1719-1772)*, in P. Ihalainen, M. Bregnsbo, K. Sennefelt, P. Winton (edited by), *Scandinavia in the Age of Revolution*, Farnham, Ashgate, 2011 pp. 29-40.

[17] M. Sunnqvist, *Konstitutionellt kritiskt dömande*, Stockholm, Institutet för rättshistorisk forskning, 2014, vol. II, p. 722.

[18] See in particular Ragnhildur Helgadóttir, *Iceland: Lawyers, Politics, and Liberalism*, in M. Feeley, M. Langford (edited by), *The Limits of the Legal Complex*, Oxford, Oxford University Press, 2021, pp. 235-261.

[19] See the most interesting book Ágúst þór Árnason/ Catherine Dupré (edited by), *Icelandic constitutional reform. People, processes, politics*, London, Routledge, 2020.

[20] H. Krunke, B. Thorarensen (edited by), *Nordic Constitutions. A Comparative and Contextual Study*, London, Bloomsbury Publishing, 2018, and in particular Feeley, Langford, *The Limits of the Legal Complex*, cit., 2021.

[21] T.H. Aschehoug, *Den nordiske Statsret*, Kjøbenhavn, Gyldendal, 1885.

[22] See Martin Sunnqvist, *Konstitutionellt kritiskt dömande*, cit.

[23] E. Holmøyvik, D. Michalsen, *Lærebok i forfatningshistorie* [Textbook on constitutional history], Oslo, Pax, 2015.

[24] On these and other aspects of 19th century histories of constitutions in several countries, see, K.L. Grotke, M.J. Prutsch (edited by), *Constitutionalism, Legitimacy, and Power: Nineteenth-Century Experiences*, Oxford, Oxford University Press, 2014, esp. Part IV.

[25] See M. Stolleis, *Verfassungs- und Verwaltungsgeschichte. Materialien, Methodik, Fragestellungen*, Berlin, de Gruyter GmbH, 2017, pp. 4-15.

[26] Martti Koskenniemi, *To the Uttermost Parts of the Earth. Legal Imagination and the International Power 1300-1870*, Cambridge, Cambridge University Press, 2021, ch 1, esp. pp. 4-12.

[27] For the next paragraph, see more extensive E. Holmøyvik/D. Michalsen, *Constitutional History*, in D. Law, M. Langford (edited by), *Research Methods in Constitutional Law: A Handbook*, London, Edward Elgar, 2024.

[28] For the following theme, se for the general approach, P. Boyer, J. V. Wertsch (edited by), *Memory in Mind and Culture*, Cambridge, Cambridge University Press, 2009; G. Elgenius, *Symbols of Nations and Nationalism. Celebrating nationhood*, London, Palgrave, 2011 and M. Nussbaum, *Political Emotions. Why Love Matters for Justice*, Cambridge MA, Harvard, 2013.

[29] It was sponsored by the Parliament ('Storting') with considerable funding. I must add that the present author took active part in this celebration, as researcher, communicator and organizer. One legal constitutional historical outcome, somewhat bending to doctrinal history, was O. Mestad, D. Michalsen (edited by). *Grunnloven. Historisk kommentarutgave 1814-2020* [A Historical Commentary to the Norwegian Constitution], Oslo, Universitetsforlaget, 2021. Research on the celebrations themselves, see O. Aagedal, P.K. Botvar, A. Brottveit (edited by), *Kunsten å jubilere. Grunnlovsfeiring og minnepolitikk* [The Art of Commemorating. Constitutional Celebration and Politics of Memory], Oslo, Pax, 2017.

[30] For what follows, see O. Mestad, "Noreg som grunnlovsland" [Norway as a country of constitution], in *Kunsten å jubilere*, cit., ch 12.