Teaching constitutional history in France: challenges and prospects

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Introduction

Who teaches constitutional history? Why is that subject important? What chronology should be chosen? What should constitutional history teach? To which students? More generally, to which audience? How is the knowledge built up by that topic organised in textbooks? *In fine*, what must be the role of the discipline in 21st-century universities? Those were the questions asked for the special issue of the *Journal of Constitutional History*, I, 47, 2024, on the topic of '*At the crossroads of constitutional history: teaching experiences, disciplinary articulations, target audiences*'. None of them must obviously be tackled less seriously than the others. For the sake of conciseness, they will be dealt with from the general angle of 'challenges and prospects of teaching constitutional history in France'.

This contribution was born of the cooperation of a professor and one of his former students, who is now a top civil servant. Such an association has appeared appropriate for an essential reason. To be dealt with efficiently, the issue of pedagogy presupposes taking into account the addressee's point of view. Not including it would amount to concealing an essential point which is that of the impact of teaching, its *raison d'être*. That is why, beyond the diversity of their careers, the authors of that article have chosen a common and concrete approach to the pedagogical stakes of constitutional history[3].

'History is not only a discourse on past forms. The special place it still has today, in the culture of politicians, amply shows it. Politics is not made from day to day. It is part of an evolution which determines it to a great extent. In that sense, history reveals geneses and highlights connections. However, being necessary to understand current affairs, it is also a component of the latter. It supports the building of the present time. To measure how important it is, one only needs to read the work of the members of the Constitutional Assembly

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which, since 1789 have from time to time tried to write the lasting rules that govern the relations among the superior bodies of the State into a solemn text. In that respect, France is a privileged field of investigation given its many and diverse experiments. Since 1789, our country has been governed by no fewer than sixteen constitutions[4], a number which is below that of our political regimes, for several transition regimes have operated in the absence of a constitution. To make that inventory complete, one should add that five completely drafted constitutions never came into force[5]. That succession of monarchical, Caesarean and republican experiences obviously needs to be rationalised.'

Those first lines of *Histoire constitutionnelle de la France de 1789 à nos jours*[6] recall, if need be, how important the historical approach to constitutional law is. Because it reveals ruptures and deciphers permanent features, history is necessary both for the understanding of the past and the building of the future. It is a fundamental element, not only of the training of our students, but also of the transmission of a culture of citizenship. Beyond the academic framework, the teaching of constitutional history is designed to give citizens the tools they need to know the institutions, which will enhance their capacity to reflect and act. From that point of view, France is quite a wealthy laboratory in which political tensions and chronic instability combine with legal creativity and international influence. The size of the field of study requires that its pedagogical limits be defined from the very beginning.

How is the teaching of constitutional history connected to research? What framework does it belong to? Let us focus for a while on those points which shape the reality of our project, which are its concrete side.

It is undeniable that the will to establish a tight relation between teaching and research, which was clearly set in the Law of 26 January 1984 and the birth of the professor-researcher status, is quite legitimate. High-quality teaching logically means high-quality research. Has that will produced the hoped for consequences? This question refers to the assessment of research and teaching. While the rules are quite clear for the former – despite increasing bureaucracy, the virtues of which are hardly convincing – the assessment of classes is rare, and, when it does happen, only exceptionally produces the expected effects. Therefore, in fact, research and pedagogy tend to work separately, and the needs of the many often come second to the power game among insiders.

If one only takes into consideration strictly pedagogical aspects, they are not devoid of complexity. The most visible is due to the multidisciplinary anchorage of constitutional history in constitutional law, but also in the history of law and political science. The institution in which teaching is done may also be a source of variations. On that point, the culture of law schools, where contents in constitutional law seem quite stable, is often opposed to that of political science institutes where strategic directions fluctuate more. Last, and above all, constitutional history is faced with doctrinal evolutions in constitutional law, especially with the ramping up of judicialisation, which tends to leave the history of political power in the background[7]. Those uncertainties unavoidably refer back to funda-

mental issues – which content should be favoured and to whom should it be taught?

At the risk of making trivial remarks, let us recall that the challenges and prospects of any teaching presume that the question of the latter's usefulness be put at the forefront. That conviction, which is widely shared in the domains of science and technology[8], is nonetheless not so well established in the domain of the law where the issue of social usefulness is hardly raised in debates, which do not focus on societal expectations but method issues[9]. Even though that choice may seem paradoxical in several respects, we will try to depict it carefully by tackling the issues that teaching constitutional history faces in a first part before dealing with its addressees and their needs.

1. *How to teach constitutional history? – The method issue*

In the French doctrine, the method issue[10] was acutely raised following a controversy between Michel Troper and François Furet at the moment of the bicentenary of the French Revolution[11]. The former, adopting a Kelsenian perspective, pleaded for the autonomy of constitutional history, while the latter, who was a major historian of the French Revolution, forcefully challenged that theoretical vision. It indeed seems difficult to think constitutional history without taking into account the power struggles that have overshadowed the drafting of the texts organising power or accompanying their implementation[12]. Constitutions are deeply set in the movement of political history, which they punctuate and from which they result[13]. That reality is confirmed both by the multidisciplinary anchorage of constitutional history and the objectives it has to fulfil.

A wealth of tools

Making a list of all the tools that are available to teaching constitutional history leads us to examine both the reference disciplines it depends on and the methods available to it.

Even though constitutional history may be studied in specific courses, which are usually taught in second year in law schools and institutes of political science, they are most often linked to a course on constitutional law or the history of law. That link is what we should focus upon as the expected benefits of history are strictly related to the evolutions of those disciplines. Though the latter have not followed the same pace or even the same developments, it is useful to recap their main phases.

For a long time, legal history remained focused on studying the pre-Revolution era. This was for reasons of erudition, but also because of a political attitude – that of a fascination for monarchy[14]. It was only at the end of the 1980s, and the bicentenary, that jurists-historians eventually dealt with 1789 and overcame a taboo that took them back to the School of the Revolution and the founding moment of modern constitutional law[15]. Constitutional law itself has evolved. It was first centred on the study of republican and parliamentary institutions, then from the 1930s it was linked to political science and analysed power – how it is obtained, exercised and transmitted – before it became juridical and judicialised in the 1970s under the influence of the Aix School around Louis Favoreu[16]. The impact

of those changes is clearly seen in the titles of courses which have evolved from 'History of the Institutions' to 'Constitution History' and 'History of Constitutional Law'[17].

The political history of constitutions has progressively been enriched with the guarantee of rights and constitutional litigation[18]. That is a known fact. Should that normative dimension lead to marginalising the analysis of power? Should the confirmation of the French *Conseil Constitutionnel* as the guarantor of freedoms and the development of research on the past modify the way a historian looks at the latter?[19] Must the study of the constitutional role of Parliaments of the Ancien Regime which fought against absolutism prevail over that of the principles consecrated by the Revolution? Can those principles – national sovereignty, separation of powers, human rights –, which are at the foundation of our legal culture, be neglected to the benefit of another history that would be dictated by the judicialisation of constitutional law?[20] To say it more directly, one cannot seriously rewrite history or delete it. Whatever the doctrinal or circumstantial stakes, studying constitutional history means first and foremost studying the history of political power[21].

That is how it is considered in the vast majority of constitutional law textbooks which regularly place it after the general theory of the State and main foreign regimes[22]. That being said, various methods can co-exist. The most common way is to follow chronology before moving onto main developments on the Fifth Republic. Some approaches are more original, such as that of Bernard Chantebout, who thinks that constitutional history must be 'relieved of what is only circumstantial and trivial; broadened, since while France has given a lot to the world, it has also received a lot, and its experience is better understood when compared to that of other countries; and thought anew to avoid the chronological study of the succession of regimes hiding the long-term evolution of the nature of power'[23].

The essential merit of that invaluable excerpt is to remind us that using history answers complementary objectives. It aims to highlight the crises that have divided us, the traditions which have united us and to give explanatory elements useful to the understanding of substantive law. Any teaching of constitutional history must be integrated into those two registers while trying to provide a rationalised perspective. Two readings of history may in that respect combine their effects – a political reading which deals with the cyclical tensions between the executive and legislative powers[24] and a legal one which focuses on how constitutional traditions and creativity are formed[25]. Over time, each of those methods appears to be necessary as they provide system-creating tools, which allow to go beyond the simple level of description, the explanatory virtues of which are by definition quite limited.

Constitutional history could not possibly be confined to exclusively examining constitutional texts, as it should take the utmost account of political life. From a historical point of view, it therefore seems impossible to analyse a constitution without carefully examining the debates that have led to its adoption. Similarly, if one does not study practice, it is not possible to understand to what extent the 1814 Charter was an evolution towards a parliamentary regime[26], how in 1879 the 'Grevy Constitution' disturbed the frail balance that

had been established by the Constitutional Laws of 1875 and revived the revolutionary tradition of parliamentary sovereignty[27], and how the Fifth Republic gave roots to a presidential reading of the institutions despite alternations and coalitions[28]. These remarks lead us to focus more precisely on the issue of the objectives of constitutional history.

Diverse objectives

Writing or telling constitutional history may pursue noticeably different objectives. Forgive us for going back to fundamentals, but one should not lose sight of the fact that the content of teaching does not result from a revealed truth. It depends on the field that one decides to analyse and on the period of time one chooses to explore.

What framework to set for one's investigation? Should one reject national approaches and select a more comparative one? The current doctrine is clearly evolving towards a broadened perspective. The development of globalisation[29] as well as, on a smaller scale, the progress of Europeanisation[30] have logically pushed in that direction. To only deal with the latter aspect, the building of Europe has made a transnational reflection on our institutions necessary. Many studies that were looking for a common constitutional heritage have therefore been conducted[31]. For a long time they were above all dedicated to fundamental rights[32], but they are now developing in the domain of the institutions. Such an evolution appears mostly to be quite justified[33]. However, it seems excessive to assert that national histories are gone for good[34]. We think on the contrary that they are still essential, first because the national framework is a crucial historical reference for the understanding of the concepts of constitutional history, and, second, because until a new European order emerges, national history will above any other have the capacity to unite a community of citizens around shared republican values. At a time when voter abstention in France reaches worrying levels, it does not seem wise to renounce that dimension of constitutional history.

That being said, which chronological limits to choose for one's teaching? The *terminus a quo* is more debatable that the *terminus ad quem*. Can one speak of constitutional law in France when there was no constitution yet, before the first ones were written, that is, before the end of the 18th century? The question has been legitimately raised by Middle Ages specialists who consider that the *lex vel constitutio* of August 1374, which set the age of majority for kings, is also, more broadly, a text on the organisation of power[35]. Even though the limits that were then considered were not procedural but ethical ones, one may indeed see that it was real constitutional work, which was concerned with giving roots to institutions over time[36]. We must pay close attention to those faraway origins. However, the Revolution, because of the radical ruptures it introduced and the important innovations it created, is the foundation on which our institutions are established[37]. Admittedly it did not completely erase the past. It nonetheless kept the concept of sovereignty, but, while inheriting its main characteristics – unity and indivisibility – from Bodin, it deprived the King of them and transferred them to the nation[38]. In so doing, it indisputably opened a new era which was completely different from that of the Ancien Regime.

«Vive la Liberté»: print celebrating the siege of Bastille (Musée Carnavalet)

If Revolution is considered as an inaugural moment, how far in time should the analysis extend? Only one answer is satisfactory on a pedagogical level: it must be extended until its end, that is, until the current state of affairs. Teaching constitutional history can only completely reach its goal if it integrates a reflection on the present times. It is concretely possible to measure the institutions of the Fifth Republic only by situating them within a complex historical movement, which is rich in the many constitutional experiments that existed before them and of which they are a unheard of synthesis – borrowing from revolutionary, parliamentary and Caesarean traditions – and contrasted – a rupture in some respects and successful realisation in others[39]. Teaching constitutional history is in that sense much more than practising a learned activity, it means transmitting the reflection tools which will allow to understand our society and favouring a long-term political vision.

Constitutional history and constitutional law are related in that respect. Current affairs are no more owned by positivists than history is by historians. At the juncture of those disciplines, the connections of which must be encouraged, constitutional history has a major role in the training of jurists and, more broadly, in that of citizens. Let us not sacrifice

it to the spirit of the times, for, before being its interpreters, we are its fruit[40].

2. *Prospects – why teaching constitutional history and to whom?*

Any professor or defender of their discipline tends to assert that the latter is essential, useful or fundamental. Then reflecting on the teaching of constitutional history makes it necessary to answer a fundamental question – why do it? What is the aim of such learning? A practical way of answering is to present its addressees in order to highlight how it may contribute to their general intellectual training and, more precisely, to the understanding of political phenomena and history, and to the interpretation of the law and its transformation. From that perspective, constitutional history is first useful to all the citizens as a pedagogical tool, because it gives them civic culture which makes it necessary to grasp the main political and legal concepts of which it is the matrix. It is then a heuristic and epistemological tool for the jurist, that is, a means of discovering the law, especially constitutional law, and understanding how its fundamental mechanisms were born. Last, it is a useful tool not only to understand and learn our political system and the law, but also to make them live and evolve. It is its double empirical and hermeneutic function for public actors which makes it a guide of past experiences – from which one may pick and choose to act –, like a textbook interpreting our Constitution based on history without which public actors that judges, top civil servants and elected representatives are may hardly do.

A pedagogical tool for the civic culture of any citizen

Constitutional history is an essential part of political history, a tool to understand our Constitution and its mechanisms and a fundamental corpus to conceive its future evolutions and revisions.

It is a necessary tool for any citizen who wants to understand where institutional balances come from and better grasp the political life of their country. In many respects, it is the (sometimes implicit) backbone of the citizen's training to public affairs and more specifically the republican and democratic culture. During the first years of the Third Republic, the stake was quite well identified by liberal republicans who saw it as a tool to reinforce the regime in the minds of all the citizens. As early as 1878, Senator Eugène Pelletan[41] wrote in his report on Ferdinand Hérold's bill, which aimed to create a constitutional law chair in each law school, that 'teaching constitutional law should be, in France as in America, the first catechism introduced in elementary school so that any citizen who will have to cast a ballot may know the scope and the limit of their rights from their childhood'[42]. The history of the main republican principles – which necessarily refers to our constitutional history in the background – has a natural place in the republican school as imagined by Jules Ferry[43]. As early as 1882[44], the courses of 'moral and civic instruction' resorted to notions borrowed from our constitutional history, which are essential for the training of the citizen. Though the importance of the moral and civic teaching has varied in the syllabuses depending on reforms[45], those notions have remained a keystone because

those founding texts do not change. The main republican principles were present as early as in the Declaration of the Rights of Man and the Citizen of 26 August 1789, which is 'implicitly or explicitly on the frontispiece of republican constitutions' as summed up in the famous conclusion of *Commissaire du Gouvernement* Corneille in the *Baldy* decision[46].

Beyond political history, constitutional history gives the citizen a comprehension grid of the operation of our institutions. 'All the constitutions include a combination of a criticism of passed-away political institutions, a philosophy of power and a particular diagram of government organisation'[47]. To understand the role of the executive, legislative or judicial branches and their interactions and relations, it is necessary to understand the context of the balance intended by the Constitution, which necessarily refers to the balance – and sometimes the imbalance – that used to exist and which is often inherited from the text or the practice that prevailed in the former Constitution. To give an example, it is to the instability of governments under the Fourth Republic – there were twenty-four of them in eleven years – that the framing of governmental responsibility provided for in Article 49 of the Constitution of 4th October 1958 answers[48]. Thus, Article 49 section 3, the usefulness of which a citizen may wonder about today[49], is an answer to the blockages that could appear under the Fifth Republic. In that respect, studying the archives of the preparatory work of the text of the Fifth Republic shows that it was two former Presidents of the Council, Pierre Pflimlin and Guy Mollet, who imagined that tool that is emblematic of rationalised parliamentarianism[50]. Constitutional history is here merged with the life and political experience of previous regimes, which are quite practical to conceive possible 'remedies' to past issues.

Constitutional history is not only a tool to understand past or present times, but also to build the future. Indeed, 'History is a gallery of paintings where there are few originals and many copies,' as Tocqueville wrote in *L'Ancien Régime et la Révolution*[51]. Constituents – whether primary of secondary – pay special attention to constitutional history, including comparative history. It Provides them with many examples of constitutional mechanisms and a set of variations which are quite rich, on the drafting level as well as on the balances that were reached. Analysing the practice of those constitutions which were tested through years of the so numerous constitutional crises of our political history is full of lessons to be learnt. In reality, constitutions have very tight relations with the past[52]. In 1848 and 1946, references to the debates of the time of the Revolution were constantly made in the debates of the constituent assemblies. In a completely different area, and as a form of Caesarean memory, the Fifth Republic is the first of our republics not to have resorted to a constituent assembly, but that does not mean that constitutional history was absent from Michel Debré's reflections, as is shown in his speech to the *Conseil d'Etat* on 27th August 1958, where he explicitly mentioned the Third Republic to explain the transformations of the legislative procedure which would be included into the Constitution of 4th October 1958: 'The rule is again that of the Laws of 1875'. Teaching constitutional history therefore means giving critical distance and a 'gallery of paintings' from which lessons may be drawn.

Thus, constitutional history allows to put our political system and its evolutions into perspective. While the Constitution is the backbone of institutional dynamics, the fundamental rule of the distribution of powers and their interactions, constitutional history allows a dynamic vision of it. It is in the light of those constitutional changes or review that we may understand the new institutional balances, ruptures and continuity.

A heuristic and epistemological instrument for the jurist

Constitutional history has a special importance in law schools and institutes of political science. The examination of course structures shows that it is implicitly or explicitly present in most syllabuses with a strong legal component, from the first year at university. It is at the same time an introduction to the law, because it is taught at the beginning of the syllabus or because it is necessary to the understanding of constitutional law, and a guide for its interpretation.

Constitutional law is often one of the first contacts a student has with legal matters. Being also among the introduction courses of the first year of the Bachelor's, it is a way in as far as methodology is concerned and a basis for the legal culture of first-year students. However, while history may be useful to the citizen, it is necessary for the student. To decipher the text of the Constitution of 4th October 1958, one must know to what it is an answer and therefore have elementary knowledge of constitutional history. Very often, introduction classes to constitutional law are thus about the birth of the Fifth Republic, between the institutional crisis of the Fourth Republic and the war in Algeria. It is a very efficient pedagogical way in for it allows to give a very concrete vision of the text and its organisation – a constitution lives, evolves and sometimes dies. It evolves to better reflect the balance of powers the Constituents wanted or to include concerns of their time. That dynamics is illustrated by the plan of the Constitution of 4th October 1958, in which Title II is about the President of the Republic, Title III is about the Government and only Title IV is about Parliament, while the latter preceded the other two in the Constitution of the Fourth Republic[53]. To explain the main ruptures General de Gaulle and Michel Debré wanted, it is again necessary to call upon history – how to understand the establishment of a 'domain of the law'[54] without explaining that the latter had a limited field in previous constitutions, in compliance with the French *légicentrisme* which for a long time consecrated the supremacy of the legislative body?[55]

Whether they study private or public law, the law students will always have to draw upon notions of constitutional law and therefore master the latter's historical evolutions to interpret it. It may not be necessary to know them well to be a good technician. However, to situate the technique within its political environment, *get an overview*, that is, think law as a means to an end, and not as an end in itself[56], history, and especially constitutional history, is an essential frame of reference. If one admits that a constitution is 'a spirit, institutions, *practice*'[57], then that practice is the result of a specific context, of a series of events which will allow to grasp the meaning and interpretation of the Constitution not as a purely theoretical object but as a living text. It is possible to consider that 'event after event,

the Algerian affair allowed to define and reveal the "logic" of the Constitution. […] No war in Algeria, no exceptional circumstances, and therefore no Constitution of 1958. No war in Algeria, no inflection, no presidential or presidentialist "meaning" of the new regime'[58]. Events are an element from which the constitutional court may apprehend or interpret some provisions of the very text of the Constitution differently[59]. The event being tightly linked to a specific moment, to the καιρός[60], it cannot be disassociated from the historical context. In that respect, as Michel Troper underlines in *Le droit et la nécessité*, 'all Constitution specialists are convinced of the importance of the history of law to understand today's positive law'[61].

Constitutional history must remain at the heart of the pedagogical project of law schools as well as institutes of political science to continue training enlightened practicians of public affairs[62].

A symbolic, empirical and hermeneutic function for public actors

As the Constitution permeates the whole legal order in keeping with its place in the hierarchy of norms, understanding its mechanisms is necessary for practitioners of public affairs that judges, civil servants – in particular top civil servants – and elected representatives are. One cannot study constitutional law without including at least a little constitutional history. The latter is crucial for those three categories of actors.

Constitutional history is first a tool for the interpretation of constitutional law for judges. Mastering it allows them to keep the Constitution alive while revealing fundamental principles taken from our republican tradition, which enrich the 'constitutionality bloc' and perfect our system. That is how the *Conseil Constitutionnel* drew upon constitutional history to reveal, in a praetorian manner, the 'fundamental principles admitted by the laws of the Republic'[63] and the 'principles that are especially necessary to our time'[64] and which were in the Preamble to the Constitution on 27th October 1946, to which the Preamble to the Constitution of the Fifth Republic referred. Constitutional history is at the same time a guide to interpret constitutional principles and a means to legitimise that interpretation by inscribing it within a 'traditional' practice, that is, a long-term one. That hermeneutic function is found in France and abroad. In countries where the text of the Constitution seldom varies, as in the United States[65], the interpretation of the judges allows to give it a modern and evolving meaning.

For civil servants and especially senior civil servants of the national public service, mastering the fundamentals of constitutional history is likewise necessary. It is explicitly or implicitly expected in competitive exams for top civil servants. The role of constitutional history in syllabuses shows its importance in the political and legal knowledge they are expected to master to take some distance and conduct their mission. It allows to understand the origin of some practices, notions or mechanisms they will be charged with.

Last but not least, constitutional history is a crucial element of the political culture of elected representatives. It is a body of knowledge they should have, in particular members of Parliament. It is a cultural background that is particularly present in the French political imaginary. This is

shown in the frequent references to the texts of previous republics in the Assembly room, or the omnipresence of the French Revolution and its constitutional debates which animate it as soon as the Constitution is said to have to be modified, or that the Fifth Republic should be ended. More generally, the revolutionary myth[66] – and the constitutional work it illustrates – remains omnipresent in the French political life, no matter the party. On the right, elected members lay claim to Michel Debré's constitutional 'genius' as to the Constitution of the Fifth Republic, on the left, the Fourth Republic and even constitutions which have never really come into force have been rehabilitated[67] as a democratic ideal, and they even suggest moving on to a Sixth Republic. Constitutional history is thus the point of reference to criticise the system or on the contrary defend it. To that symbolic value should be added an 'empirical' or experimental one in the past constitutions. They at the same time testify to different conceptions of the State, the law or institutional and political balances. Constitutional history shows multiple nuances of the role of the President of the Republic or Parliament or even fundamental rights. Where to draw inspiration from if not from those multiple, positive and negative experiences, as models and anti-models? When the question of a sweeping revision or a change of Constitution is raised, it is towards history that members of constituent assemblies turn to build the future. That constitutional legacy cannot be ignored. It must be known and exploited to make the Constitution live and to perfect its content, like a master's painting which would serve as an example for the formation of a new work. It is not possible to break away from the past or, on the contrary, choose continuation without knowing history.

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[4] Constitution of 3-14 September 1791; Constitution of 24 June 1793; Constitution of 5 Fructidor Year III (22 August 1795); Constitution of 22 Frimaire Year VIII (13 December 1799); organic *sénatus-consulte* of 16 thermidor Year X (4 August 1802); *sénatus-consulte* of 28 Floréal Year XII (18 May 1804); Charter of 4 June 1814; Additional Act to the Empire Constitutions of 22 April 1815; Charter of 14 August 1830; Constitution of 4 November 1848; Constitution of 14 January 1852; *sénatus-consulte* of 7 November 1852; *sénatus-consulte* of 21 May 1870; Constitutional Laws of 1875; Constitution of 27 October 1946; Constitution of 4 November 1958.

[5] Girondin Constitution of 15 February 1793; Senatorial Consti-

tution of 6 April 1814; Bill of the House of Representatives of 29 June 1815; Draft Constitution of Marechal Pétain; Constitutional project / draft Constitution of 19 April 1946.

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[37] M. Morabito et G. Defontaine, *Qu'est-ce qu'une révolution juridique? Les enseignements de la Révolution française'*, in «Les Cahiers Portalis», n. 1, 8/2021, p. 29ff.

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[42] Journal officiel, *Sénat, annexe 191, séance du 26 mai 1879*, Rapport au nom de la commission d'initiative.

[43] Voir H. Orizet, *Le service public de l'éducation nationale sous la Troisième République*, Paris, LGDJ, 2021.

[44] Law of 28th March 1882 on the organisation of primary education.

[45] See for example P. Kahn, *L'enseignement moral et civique": vain projet ou ambition légitime? Éléments pour un débat*, in «Carrefours de l'éducation», vol. 39, n. 1, 2015, p. 185ff; see also Th. Douniès, *Chapitre 1. Genèse et consécration d'une réforme de l'enseignement moral et civique*, in Thomas Douniès (dir.), *Réformer l'éducation civique? Enquête du ministère à la salle de classe*, Paris, Presses Universitaires de France, 2021, p. 37ff.

[46] CE, 17th August 1917, *Baldy, No 59855*.

[47] To quote N. Wahl, *Aux origines de la nouvelle Constitution*, in «Revue Française de Science Politique», n. 1, 9/1959, p. 30.

[48] Voir Morabito, *Histoire constitutionnelle cit.*, p. 445ff.

[49] L. Audouy, *La révision de l'article 49 alinéa 3 de la Constitution à l'aune de la pratique*, in «Revue française de droit constitutionnel», n. 3, 107/2016, p. 1ff.

[50] See J.-F. de Bujadoux, *Des rationalisations du parlementarisme en France*, in «Droits», n. 1, 71/2020, p. 173ff.

[51] A. de Tocqueville, *Livre II - Chapitre VI: des mœurs administratives sous l'Ancien Régime*, in *L'Ancien Régime et la Révolution*, Paris, GF - Flammarion, p. 158.

[52] As underlined by A. Vidal-Naquet in *Constitution et passé: du fait à la norme*, in Ariane Vidal-Naquet (dir.), *Constitution et passé*, Aix-en-Provence, DICE Éditions, 2023, p. 17.

[53] Respectively Title II for Parliament, Title V for the President of the Republic and Title VI for the Council of Ministers. As Jean Gicquel notes, the Government «as such was superbly ignored, maybe at most mentioned, under the generic name of Council of Ministers». *Le sens unique de la Constitution de la V^e République*, in «Titre VII», 1, n. 1, 2018, p. 5.

[54] See for example M. Long, *La Loi*, in «La Revue Administrative», 54, n. 324, 2001, p. 566ff.

[55] See for example É. Maulin, *Chapitre I. La suprématie de l'organe législatif*, in Éric Maulin (dir.), *La théorie de l'État de Carré de Malberg*, Paris, Presses Universitaires de France, 2003, p. 243ff.

[56] Given that the law does not exist in itself and that it is not its own end but a means for the politician. See Morabito et Defontaine, *Qu'est-ce qu'une révolution juridique?* cit., p. 29ff.

[57] Press Conference of 31st January by General De Gaulle.

[58] N. Roussellier, *La Constitution de 1958 allait-elle dans le "sens de l'Histoire"?*, in «Titre VII», 1, n. 1, 2018, p. 12.

[59] See for example M. Disant, *L'appréhension du temps par la jurisprudence du Conseil constitutionnel. À propos du changement de circonstances*, in «Les Nouveaux Cahiers du Conseil constitutionnel», 54, n. 1, 2017, p. 19ff.

[60] The 'adequate time' (*'moment propice'*).

[61] M. Troper, *Chapitre IV. Histoire constitutionnelle et théorie constitutionnelle*, in *Le droit et la nécessité*, Paris, Presses Universitaires de France, 2011, p. 269. Further on in this chapter (p. 274) he adds that 'it is commonplace to say that constitutional law, like other branches of the law, results from history.'

[62] Today Legal theory and history are disassociated, or even isolated from each other, as if it were possible to do without the latter to understand constitutional law or elaborate a doctrinal reflection. That disassociation, which is recent, seems disputable. Constitutional theory may hardly

do without history: they are both linked. As Denis Baranger rightly writes, theory «has nothing more urgent to do than studying history», see *L'histoire constitutionnelle et la science du droit constitutionnel*, cit., p. 117.

63 Decision No71-44 DC of 16 July 1971, a law that complements Articles 5 and 7 of the Law of 1st July 1901 on the association contract, see B. Lecoq-Pujade, *1971, une révolution de palais?*, in «Revue française de droit constitutionnel», 130, n. 2, 2022, p. 283ff.

64 Decision No 74-54 DC of 15 January 1975, a law on abortion.

65 See for example E. Zoller, *Le sens d'une constitution vu par les États-Unis. Le point de vue des juristes*, in «Titre VII», 1, n. 1, 2018, p. 53ff.

66 F. Furet, *Penser la Révolution française*, Paris, Gallimard, 1978, 264 p.

67 The elected members of the La France Insoumise Party thus regularly refer to the Mountain Constitution of 24th June 1793.