The (un)reason of contemporary constitutional law
Elements for a balance sheet

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Foreword

This text was completed on January 30, 2019. It is part of the book *Mélanges en l'honneur du professeur Dominique Rousseau. Constitution. Justice. Démocratie*, ed. LGDJ-Lextenso, whose publication (and formal delivery to Dominique Rousseau) has been postponed until the fall of 2020. I thought it would be useful to share it with you, as the legal course of *the state of health emergency* thus declared by the law, shows the continuation of the state of near decay in which contemporary constitutional law finds itself. To give you just one illustration, if there was still any need, the French Constitutional Council, whose mission as guarantor of the constitutionality of laws we have been - badly - taught, in its decision of 26 March last, validated *the emergency organic law to deal with the covid-19 epidemic* (promulgated on 30 March) by dismissing out of hand the French Constitution, which is particularly precise about the adoption of organic laws. Paul Cassia entitled his post on this subject "The Constitutional Council is tearing up the Constitution", and goes on to state that there is now nothing more to be expected from the control of the French Constitutional Council (just as he states in his 11 April post that the French Conseil d'Etat is "a jurisdictional labeling body for decisions taken by the Prime Minister"). I obviously agree with this statement, except that it is by no means a novelty and that the decision of 26 March 2020 certainly does not come as a surprise. It is even distressingly logical in the light of the last two decades of decisions taken.

Having wanted to believe in the mission of the French Constitutional Council for so long without warning of the Council's failure to carry it out, it is certain that it has not contributed to making constitutional law a living matter. Let us say that this reflection would like to be a fire that keeps a few embers still warm under the ashes of the pyre.

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If one could identify a constitutional law reason, would that be a good thing? The constitutional reason sounds like a promise, regularly formulated, from the writing of the first constitutions to the advent, more or less early according to legal cultures, of judicial review, to the recognition of a common (or even universal) constitutional heritage in Europe and the existence of corresponding constitutional standards. Today, this promise seems to be weakened. It is so when, for example, the affirmation of the existence of constitutional identities specific to each state breaks a supposed unity; when a European state, at the dawn of the 21st century, adopts a "problematic" constitution, and when the same one, with others in Europe, seems to be playing with the standard of the rule of law by proclaiming itself "illiberal"; and it is so when judicial precedents that built the guarantee of rights and liberties are cracking all over the place "because of the crisis", both security and economic. Even the very strong hypothesis of *societal*

constitutionalism (more than that of *global constitutionalism*), weakens by itself the specificity of constitutional law as it has always been thought. If a constitutional reason had been constructed, it could be said that it would today tend to be deconstructed. What should or should not be rejoiced in then? But is it the function of the researcher to look for an object of rejoicing? These questions can be understood by first answering those that will clarify the title of this contribution: what does "reason" mean here, and then also "unreason"? What does the expression "constitutional law" mean here?

I. Why Speak of "reason" and "unreason", about which "constitutional law"?

The question of reason and/or unreason is not part of a philosophical reflection on the possibility of a rationality of constitutional law, which is itself part of a more general and historical thinking on *legal reason*. On the other hand, the hypothesis of a reason or unreason of constitutional law is well supported by the assumption here that *there is a set of principles and ways of thinking* in constitutional law that support the idea that there are actions and judgments *consistent with those principles and ways of thinking*. The question, therefore, is not whether it is possible to determine what would in itself be "right to act" or "right to think" according to an assumed human reason, but to say that man, through constitutional law, has established principles and norms that allow him to evaluate other practices and other standards. The reason of constitutional law is therefore profoundly be a kind of deconstruction of the principles and ways of thinking that underlie the constitutional reason. In the accepted vocabulary, though, the notion of "unreason" does not correspond to such a process, but, more simply, to a *lack of* reason, which implies that there are no, or no longer any principles and ways of thinking on which action and judgment are based in constitutional law. As is often the case, one thing is simply the other way around: according to Adorno, in order to achieve "a truly humane society", it would be necessary to have "a healing awareness of the marks of unreason in its own reason, and the traces of the rational in the irrational as well"[1]. In order to refine the question of a possible "unreason" of constitutional law which might be found, at least in part, in the very reason of constitutional law, it becomes necessary to say what is meant here by *constitutional law*. Some time ago, I entitled a short reflection on two lectures I had attended (by Dieter Grimm and Gunther Teubner), "Constitutional Law without a Constitution", to mean that more and more lawyers, especially foreign ones, were being able to talk about constitutional law *apart from any Constitution*. Here in the law of the European Union, there in the "fundamental" standards actually drawn up and monitored by human, societal and, above all, economic microgroups. Constitutional law would thus be separated from the Constitution. What is at stake is the distance from politics: all these "constitutional" rules, real or supposed, European, international, multinational, societal and economic, mean that the expression "constitutional law" does not then refer to *political* constitutional law. Moreover, this traditional political constitutional law would no longer institute and organise the exercise of political power, or even establishe the relationship between the latter and the members of the social group by the necessary guarantee of their rights. Other rules, or set of rules, would play this role today. In this contribution, I am referring to *the original constitutional law, which concerns genuinely political power, based on the mechanisms of representation*.

Several observations can then be made that seriously question the value of contemporary political constitutional law and the relevance of its modes of examination and observation. It seems to me that contemporary political constitutional law *is not taken seriously by its main*

[1] Theodor Adorno, *Hegel: Three Studies*, The Mit Press, Cambridge, 1963, p. 74.

actors, the constituted powers and the constitutionalist literature, and that, *meanwhile*, *it is dying*, both in its capacity and in its legitimacy to embody the political and social dimensions of a given human group.

II. Constitutional Law is not taken seriously by its main actors

The actors of constitutional law are both institutional and academic: there is constitutional law as it is lived and understood by the constituted powers that read and interpret the political constitutional text, and which moreover owe it their legal legitimacy; and there is constitutional law as it is observed, commented on and thought by those who profess to say *what it is*, namely mainly academics.

In both cases, constitutional law tends not to be taken very seriously. Here I give a few examples of this idea, based mainly on the studies and reflections I have recently carried out[2]: 1. the Constitution is not - and cannot be - taken seriously by the French Constitutional Council (supposed to be the constitutional court), according to a logic that the other constituted powers do not challenge, perhaps because they find it to their advantage; 2. the situation of the other constitutional courts in Europe is often "better" than that of the French Constitutional Council, but the assimilation of their jurisprudential statements to the "whole" of constitutional law tends at the same time to undermine its political, economic and social ambition; 3. the constitutionalist literature maintains this failure to take constitutional law seriously, through an atrophy of its own ambition, both from the point of view of its object and of its concepts and tools. Accompanying a current form of rediscovery of Vladimir Jankélévitch's thought, I will here pose only *Almost-nothing* on these three points.

1. The Constitution is not - and cannot be - taken seriously by the French Constitutional Council

The Constitutional Council is made up of members who are mostly inexperienced in legal and constitutional reasoning and rarely celebrated for their attachment to the constitutional reading of the political community. However, these personalities do not enjoy the *legal assistance* worthy of a supposedly "comparable" court in Europe and in the world, and their means are relatively limited. Moreover, the Council's approach does not take account of the basic rules for an independent and impartial judiciary, as promoted in the various European and international bodies. A "weak" conception of withdrawal and the collusion by some of its members with interests at stake in disputes before the Constitutional Council seriously undermines its credibility[3]. Finally, the decisions are most of the time badly drafted and the motivations are so often reduced that they can be considered as non-existent, which makes it difficult for citizens and litigants to appropriate the constitutional reasoning and the norms to

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[2] A book is still in preparation, but my current reflections are available at www.ledroitdelafontaine.fr

[3] These different aspects are now known, either from journalistic investigations or from academics. I refer in particular to M. Mathieu, "Dans les coulisses du Conseil constitutionnel, cible des Lobbies" (*Behind the scenes of the French Constitutional Council, target of the Lobbies*), Mediapart, 12 October 2015, but also to L. Fontaine and A. Supiot, "Le Conseil constitutionnel est-il une juridiction sociale? (*Is the Constitutional Council a social court?*), *Revue de Droit Social*, September 2017, p. 754, and to P. Wachsmann, "Des chameaux et des moustiques. Réflexions sur le Conseil constitutionnel" (*Camels and mosquitoes. Reflections on the Constitutional Council*), in *Frontières du droit, critiques des droits. Billets d'humeur en l'honneur de Danièle Lochak*, Paris, LGDJ, 2007, p. 279; and Thomas Perroud, "La neutralité procédurale du Conseil constitutionnel" (Procedural neutrality of the Constitutional Council), *La Revue des Droits de l'Homme*, 2019, n°15, online: https://journals.openedition.org/revdh/5618.

which it relates[4]. The absence of separate opinions completes this pitiful picture: the Constitution is thus "privatized" by the Constitutional Council. The most surprising thing about this situation is that it does not seem to surprise many people: neither the European and international institutions, which nevertheless have a "different model" of justice and constitutional justice, nor the national political institutions, which, on the contrary, seem to be perfectly at ease with it, nor finally the constitutionalist literature, which continues to think that its Grail will be found when the end of the ex officio membership of the Constitutional Council of former Presidents of the Republic is finally decreed[5]. If we consider the minute scope of this provision, it is understandable that there is no appreciable improvement in sight. However, one must ask oneself what the position of all members of society is on this subject. Let us say that it is very difficult to establish this, but it is obvious that nothing - or almost nothing - is said or done to make it a genuine subject for reflection.

2. The solution is not to be found in the "more favourable" institutional situation of the other constitutional courts, where constitutional law does not more readily carry its ambitions.

We would be very happy to isolate the French situation within a more amiable European configuration. At the institutional level, and before the reverse movements in the regimes claimed to be "illiberal", the situation is more amiable: eminent lawyer members, adequate resources (in particular assistants who are themselves high-level jurists), operating rules that suggest that independent and impartial justice is delivered, and decisions drafted in such a way that they can lend themselves to discussion, a discussion that is often provoked when there is the possibility for judges to deliver separate opinions. However, this "very minimum" still seems insufficient in view of the ambitions of the original political constitutional law. It is not enough for the Constitution to be read, and read well, by the constitutional courts to give constitutional political law its full scope. It is not because a constitutional court considers that such and such a right exists *under the Constitution* to give them a scope *beyond the court's decision*. And this is indeed a major difficulty of modern constitutional law, both as a technique and as an object of studies: jurisprudential assertions would suffice to establish the reality of constitutional right whereas, strictly speaking, they are limited in scope only to the cases in respect of which they are made. Who would think of asserting that the constitutional principle of equality has tangible effectiveness in the social space, even though it is enshrined by all courts? It is that, beyond the statement, there is a difficulty in *grasping the law*. For all that, it is as if normative and jurisdictional statements constitute the whole of constitutional law, thus marking its profound limit, perhaps as social practice and certainly as an academic discipline.

3. The "complicity" and atrophy of the constitutionalist literature

It is possible that the constitutional studies have been much more marked than they imagines by the history of constitutions first, and then by normativism.

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[4] See. L. Fontaine, "Le Conseil constitutionnel s'en tient à une lecture restreinte de son role" (*The Constitutional Council confines itself to a restricted reading of its role)*, *Le Monde*, Tribune, 10 April 2019.

[5] The introduction of dissenting opinions is also promoted by a small part of the doctrine, including, of course, the dedicatee of this book. The deletion of the provision contained in Article 56 of the Constitution according to which "former Presidents of the Republic are automatically members of the Constitutional Council for life" is included in the draft constitutional law registered in the National Assembly on 29 August 2019.

By the history of constitutions, that is certain, since "at last", "likeable" principles and rights were politically and legally affirmed that could serve as a basis for collective and/or individual claims (this is the story as it is told). Through normativism this is also a reality, and despite assertions to the contrary. Indeed, the observation of the enthusiastic belief in the possibility of *constitutional engineering*, i.e. of a science of constitutional rule such that, with a specific arrangement, one will almost necessarily obtain a certain result, allows us to draw the thread of what has happened in the recent history of the constitutional studies. With the adoption of their "model" constitutions, drawn up with the help of the European and American "constitutional pilgrims", many of the countries of Central and Eastern Europe were able, in the 1990s and 2000s, to claim their membership of the rule of law and democracy. The law thus emerged as an "instrument" at the service of human beings wishing to fulfil a particular purpose, i.e. a political and social organization in which people would be regarded as free and as actors together in their own destiny. These aims of the rule of law are regarded as philosophically acquired and even indisputable in terms of "morality". Such aims being indisputable, it is almost exclusively on the technical aspects that constitutional reflection has focused. Constitutional thinking has thus developed separately from political, economic, social or cultural thinking. Since the advent of the rule of law theory, the law has finally been an object of interest *only insofar as it is the indispensable support of a state governed by the rule of law*. Law and society would thus only have a common destiny that is conceivable and acceptable to the extent that it is under the rule of law. This way of seeing things is part of the more general framework of the fact that the "legal science" would only be of interest to society if it seems possible to identify technical mechanisms that allow or prevent this or that type of result, as is the case with the other social sciences[6]. Constitutional law is therefore mostly seen as a science of results. In reality, it has no structural link with the rule of law (a concept that comes after the advent of constitutional law itself), and *as a science of result* it can serve *any kind of interest*. At the political level, the legal "cleverness" of the Hungarian government illustrates this at leisure, which even claims to respect the principles of the rule of law. Constitutional law does not, *in itself*, generate agreement with its primary ambitions.

By limiting itself to a "positivist", and often normativist, analysis of constitutional law, the constitutional studies miss out on contemporary developments in conceptions of the social body. If we confine ourselves to the European area, political constitutions appear, *at the very least*, to be the *effective* framework for understanding the action of those in power. In fact, *other norms* constitute the guide and the thread of the action of these various constituted authorities which, formally, are based on, and yet make "official" use of the political constitutional rules. Insofar as the tools hitherto forged by constitutionalists seem partly insufficient to grasp the constitutional reality that is supposed to be its object, recourse to other types of analysis seems to be a useful avenue to explore. It would thus be interesting to understand why the Constitution has a relatively "instituting" force (of the bodies to which it refers), but not at all an "acting" force (of the behaviours it aims at), particularly on the question of the principles that are supposed to structure the action of these instituted bodies. This question is, dare I say it, not perceived "in the right place", and it is understandable that, despite the very important and widespread constitutional expertise in Europe over the last 50 years, the constitutional matter of lawyers has virtually no real force, because other elements are active within the social space

[6] Claude Lévi-Strauss himself in his collection of texts constituting his *Structural Anthropology* (1958, New York: Doubleday Anchor Books, 1963) is not far from thinking of the need for anthropology to determine causalities, while recently, during his inaugural lecture at the *Collège de France* in 2016, the economist Philippe Aghion explains his intention to make "'instruments" by transforming a link into causality, *Repenser la croissance économique* (*Rethinking Economic Growth),* Fayard, 2016.

and are increasingly taking the name of *constitutional law*, while largely escaping the analysis of constitutionalists.

III. Meanwhile, constitutional law is dying

It seems less and less doubtful that political constitutional law is "taking on water": it is "pierced" and is submerged by contrary waters: 1. would we like to believe that constitutional norms constitute an unsinkable whole intended to crystallize in a unitary manner the political and social dimensions of a given human group, ensuring, in its name, the guarantee of the rights of its members, that we can see today that there are always *very good pretexts* for ignoring them, deforming them, transforming them. 2. If we like to believe that even if contemporary constitutional law is ignored, distorted and transformed, it is still the political foundation of our contemporary societies, we thus don't see what is, or tends to be, the real foundation of the contemporary societies, with the very blessing of constitutional law as it stands.

1. The good pretexts of ignorance, distortion and transformation of contemporary political constitutional law

The literature has been swelling on these issues in recent years, noting that economic and security arguments have the effect of dismantling piece by piece what was supposed to be the base of constitutional law as a vehicle for democracy and the rule of law. In order to see this, we need look no further than Hungary, Poland and the other European countries that seem to want to follow the same path. All over Europe this substratum is regressing. Iphigénie Kamtsidou makes a bitter observation of it with regard to Greece and its distorted constitutional right of exception[7], Simone Gaboriau draws a damning European portrait of justice[8], and the French *Conseil d'Etat* plays on the "letter" of the text to ignore its spirit and validate an equally distorted use of exception procedures[9]. Meanwhile, the principles of the law of the market are validated one by one by the constitutional courts[10] and we learn every day that legislative provisions remotely guided by lobbies easily pass through the filter of the Constitutional Council, which continues to ignore to a large extent, or even waives, with the exception of the same overvalued case[11], the individual and the political character of the unity of the social body and the legal guarantee on which it is based[12]. It is interesting to note that constitutionalists seem, on the whole, to manage not to talk about all this.

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[7] I. Kamtsidou, *Un état d'exception nullement exceptionnel. La crise souveraine et le crépuscule de la Constitution. Aperçu historique*. http://www.ledroitdelafontaine.fr/un-etat-dexception-nullement-exceptionnel-le-crepuscule-de-la-constitution/ (*A state of exception by no means exceptional. The sovereign crisis and the twilight of the Constitution. Historical overview*).

[8] S. Gaboriau, « Justice en Europe : état d'urgence démocratique », *Délibérée* 2018, 1, p. 64 (*Justice in Europe: Democratic State of Emergency*)

[9] See my text, *La disparition. 5 petits mots et puis s'en vont* (*The Disappearance. 5 small words and then go*), about the decisions of the French Conseil d'Etat of 11 December 2015 on the question of the legality of house arrest of environmental activists, http://www.ledroitdelafontaine.fr/la-disparition/

[10] See, for example, the special issue of *Semaine sociale Lamy*, "Les gardiens des droits sociaux en Europe" ("The guardians of social rights in Europe"), n° 1746, 28 novembre 2016.

[11] Like the summer 2018 decision on "fraternity", which incidentally is part of the republican motto: Decision 2018/717-718 QPC, July 6, 2018, *Mr. Cédric H. et al.*

[12] See again recently Decision 2018-771 DC of 25 October 2018, *Loi pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous*, by which the French Constitutional Council invalidates a series of provisions of an informative nature or protecting the interests of consumers, considered to be unrelated to the initial bill (according to the famous "cavalier législatif " technique).

2. The disqualification of contemporary political constitutional law as a fundamental societal value and its role in its disqualification

Formally, the "basis" of constitutional law seems to have been preserved: legislators elected by declared "universal" suffrage, governments legally responsible to legislators and the people, a well-organized judiciary responsible for verifying the legality and constitutionality of each other's actions. Of course this constitutional justice system still exists formally; Of course this constitutional justice system still exists formally; it is still being reformed, we often talk about it and its procedures are followed. But, in the end, significant changes and a general unease do not make it possible to avoid questioning the scope of what is called *constitutionalism*. What does the existence of a political constitution *really* imply for the political community, beyond the institution of the rulers? It seems that the *institutional* character of political constitutions is not or no longer a procedure that does not change the basis of political action and the relationship with the political community. What guides the action of the public authorities and what structures the social space politically, socially and economically (the three aspects being today often confused in a single movement) *is not found in the political constitution*. There is a "constitutional elsewhere", "constitutional" this time in the primitive and organic sense of the term. This would be symbolized by new constitutional authorities and new constitutional rules, for which this qualifier seems unusual or even absurd, while its tangible reality is less and less in doubt.

The evolution has taken place at several levels and by different actors. In the 1990s, the major international financial institutions (World Bank, IMF, etc.) directly "administered" the legal voice on the rule of law and democracy to the - many - borrowing countries[13]. Since the 1960s, and particularly at the turn of the 21st century, the European institutions have been promoting European law to which all national institutions, *even constitutional ones*, were and still are required to comply[14].

The evolution has also and obviously occurred at the state level, when it has been a matter for the various constitutional courts to *validate* the discourse of the political authorities making economic entities both the holders of constitutional rights opposable to the original holders of these rights (the individuals who are members of the social body) and the thinkers of many of these rights and constitutional rules. The constitutionalisation of the economic world, or even, to use Dieter Grimm's expression when talking about the European institutions, their *hyper-constitutionalisation*, is characterised both by a devaluation of the traditional authorities and by the possibility for the new authorities to make constitutional wishes or rules[15].

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[13] Voy. J. K. M. Ohnesorge, "État de droit (rule of law) et développement économique. L'étrange discours des institutions financières internationals" (Rule of law and economic development. The strange discourse of the international financial institutions), *Critique internationale,* 2003, 1, p. 46.

[14] On the superiority of European Union law over national constitutional norms, see the judgment of 11 January 2000 of the Court of Justice of the European Communities, case C-285/98 Tanja Kreil v. Bundesrepublik Deutschland, and for an analysis of this historical process, see Dieter Grimm, "Quand le juge dissout l'électeur" (When the judge dissolves the voter), *Le Monde Diplomatique*, July 2017.

[15] The letter sent by Mario Draghi and Jean-Claude Trichet (then respectively Governor and ex-Governor of the European Central Bank) in August 2011 to Silvio Berlusconi, then Prime Minister of Italy, could symbolise this (letter unveiled in the *Corriere della sera* edition of 29 September 2011): in it the way forward for the Prime Minister of Italy was made very clear, with clearly prescriptive wording: "The government must take immediate and courageous measures to ensure sound public finances. Additional corrective fiscal measures *are needed*. We consider it essential for the Italian authorities to bring forward the date for adoption of the measures decided in July 2011 by at least one year. (...)" (emphasis added). The authors of the letter also indicated the normative means to be used and the deadlines for adopting the standards in question: "Given the seriousness of the current market situation, *we consider it essential* that all the actions mentioned in the first and second sections above *be adopted*

It so happens that an exclusively legal and normativist analysis tends to reinforce the effects of these transformations in the role of law and constitutional law, either by ignoring them or by validating them. It is not very difficult to see that the contemporary analysis of law, that of national law as well as that of the law of the European Union - otherwise "constitutionalised" - consists in making the economic prescriptions of the dominant actors and their "agents" appear inevitable[16]. European Union law is resolutely seen as the expression of a certain economic logic established about the market between different economic operators. In this respect, there is today a significant gap between the analysis of "traditional" scientific jurists and jurists with a "voluntarist" analysis of the law in the service of an economic vision of society: the latter have thus developed a very important intellectual corpus[17], which is widely deployed outside the law faculties[18], relayed by the general press[19], but which is still relatively neglected by the former, except for those who are convinced that it is necessary to follow the movement, led in this direction by "institutional" legal scholars[20].

Working on contemporary constitutional law in Europe can therefore no longer consist of merely observing the classic institutional structures (Parliament, Government, their relations and powers). In drawing up and administering the rules of social organisation, these institutions tend to play and increasingly play a secondary role, only doing what is demanded by other actors. While the political theories underlying constitutionalism make the people both the original holder of constituent power and the natural recipient of constitutional rights, the emergence of new holders of constitutional rights - especially corporations - means that, at the same time, they acquire as a consequence (or as a cause, it remains to be seen) a share of legislative and even constituent power. To continue along this path is, *at the very least*, to expose oneself to the legitimate question: "When did companies become people?[21]

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Although these few lines are merely a series of observations, it should be remembered that constitutionalists have spent a lot of time in recent years "rejoicing": here in the implementation of the reform or the very success of the judicial review, there in the adoption of new and compliant constitutions in regimes whose authoritarianism was thus over, and there again in a

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as soon as possible by decree-laws, followed by parliamentary ratification at the end of September 2011" (emphasis added).

[16] See my text, "Le constitutionnalisme (turc) à l'abandon" (*Abandoned (Turkish) constitutionalism*), in M. Touzeil-Divina, eds, *Liberté(s) ! En Turquie ? En Méditerranée !*, Revue méditerranéenne de droit public, éd. L'épitoge, 2018, p. 209. (

[17] Part of this corpus is referenced on the site of *the Centre de Droit Européen et d'Economie de l'Essec*: http://cede.essec.edu/droit-management-strategies

[18] Over the past few years, we have been witnessing the creation of a new category of jurists, those from the "Grandes Ecoles" and business schools, for which an association has been created, the *Association des Professeurs de Droit des Grandes Écoles*, which in May 2016 became the *Association Française Droit et Management* (French Law and Management Association)... this explains this.

[19] Just one example (reading the newspaper *Le Monde* reveals many others): V. Giret, "Le droit, les rentiers ou l'innovation" (*Law, Annuitants or Innovation*), Le Monde, 9 March 2016.

[20] See the comments of a former first president of the French Cour de Cassation (G. Canivet, "La pertinence de l'analyse économique du droit : le point de vue du juge" (*The Relevance of the Economic Analysis of the Law: The Judge's Perspective*), *Les Petites Affiches*, May 2005, n° 99), and those of a former vice-president of the French Conseil d'Etat (J.-M. Sauvé, "L'arme du droit" (*The Weapon of the Law*), communication at the days organized on the occasion of the bicentenary of the re-establishment of the Paris Bar, UNESCO, 26 June 2010, *Ordre et transgression. Les leviers juridiques du progrès* (*Order and transgression. The legal levers of progress*), http://www.conseil-etat.fr/Actualites/Discours-Interventions/L-arme-du-droit)

[21] Nina Totenberg, on the website of *National Public Radio* in 2014.

constitutional revision. Perhaps it is time to close the festivities and start working, unless it is not possible to make constitutional law in a different way, but then why, and why even continue to make constitutional law?