

The Constitutional Imaginary versus the Fiction of Constitutional Law

Translated from the French by John Angell

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The idea that constitutions bring what they say into existence is widely accepted. The act of enunciation makes fictional entities become real. As a result, they are no longer entirely fictional. As Bentham pointed out, language is “the instrument without which, although it is nothing in and of itself, nothing can be said, and almost nothing can be done.”^[1] Language thus institutes what is talked about, while at the same time claiming merely to be an instrument. And if what is being talked about is a “fiction,” i.e., *it is not real*, then it is also a “*fixion*,” i.e., something that from that moment forward must be considered a *new reality*. Indeed, the original reason for writing constitutions seems to have been to *fix* things, thus stabilizing them and guaranteeing their importance by situating them within a universally visible and accessible frame of reference. A written constitution is thus a way of counteracting the volatile, changing, and arbitrary nature of the spoken word. The history of the law, particularly constitutional law, seems to be based on the authority of the written word, as opposed to spoken discourse. Because they consist of fiction, though, oral myths seem to play a more important role than written discourse in stabilizing the beliefs that organize groups. *But if this is true, why do we implicitly think of a fiction as more credible if it is written down than if it is spoken?* The power of writing does not appear to be self-evident: Writing is just the residue of a (spoken) word, which needs to be reiterated in order to preserve meaning. For this reason, an assertion in a text dating from 1789 is considered valuable today because we reaffirm its value. Writing is a residue of the spoken word, without which the written is “literally” inconceivable. It is the spoken word that we are constantly attempting to record in writing and, more importantly, to then read and interpret. *The power of what is written can therefore be measured by its ability to reveal the spoken word, as well as its ability to elicit an utterance, or even to create imagination.*

Fiction in constitutional law may not be what the Constitution chooses to say, which apparently corresponds only imperfectly to the reality that it apprehends (assuming that we possess the capacity to evaluate the fiction-truth relationship with any accuracy), it might be – or even might mostly be – *what is said about constitutions*. Consequently, two basic types of fictions in constitutional law merit close consideration: 1. Fictions *employed or created by constitutional norms*, and, 2.

Fictions *about constitutions*. Observing the impact of the fictions enunciated by constitutions suggests that *we enjoy telling fictions about constitutions*.

The two fictional components of constitutions: imagination and reality put to the test. It has long been acknowledged that a constitution [2] consists of two distinct components and even two timeframes. The first is a fictional narrative that forms the basis of a kind of constitutional mythology, like a *fictional universe*. The second is a group of rules, some of which derive from *fictional concepts*.

* The *fictional narrative* could also be called the founding fiction of an entire constitution. This is often distinguished from the remaining sections of a given constitution, first because it almost always occurs at the beginning of the constitution, usually in the preamble. But this is also true because it contains no actual rules, i.e., no enunciations that directly or indirectly allow specific actions to be executed. *This narrative tells a story that establishes a shared interpretation of the world in order that a specific constitution appears legitimate in and of itself.* The amount of detail in the story depends on the text of the constitution, but it is always there. It can refer to the past, or it can just serve to establish the state of affairs when the particular constitution was enunciated. But it also - and often - indicates the way forward.

A few examples from a variety of temporal and geographical contexts will help illustrate this point. First, the Swedish Constitution of August 21, 1772, whose preamble contains a *historico-political narrative that constitutes the mythology of the constitution*, states: " We, by a sad experience, have found, that, under the name of the blessed Liberty, several of our subjects have formed an Aristocracy, so much more intolerable, as it hath been framed under licentiousness, fortified by self-interest and severities, and finally supported by foreign powers, to the detriment of the whole society, and which hath brought us in the utmost insecurity by the wrong interpretation of the law, and at last might have led the kingdom, our dear native country, to the dreadful fate, which the history of former times, and the example of our neighbours, hath led before us, had not the spirit of zealous citizens, and their love to the country, supported by the zeal and achievements, of the High and Puissant Prince and Lord Gustavus III. King of Sweden, Goths, and Vandals, our most gracious Sovereign, saved and drawn us out of it." The text also contains a *description of the purposes and values of society*: "so that we have turned out our thoughts upon fortifying our liberty, in a manner, that it may not be abused by a bold enterprising ruler, not by ambitious, self-interested, and treacherous citizens, or spiteful and haughty enemies ; but that the old kingdom of Sweden and Gothia for ever may be a free and independent realm." Again, this preamble contains a

designation of enemy values: “and deem those to be enemies to us and the kingdom, that would persuade us to deviate therefrom, as it, word for word, here follows.” The laconic tone of the preamble to the German text of 1949 is quite different, but it also contains a fictional narrative that forms the basis of a mythology after it is connected to the whole text and once *it is contextualized*. [3] A well-constituted imaginary is created in the preamble, which affirms the following: “Conscious of their responsibility before God and men, moved by the purpose to serve world peace as an equal part in a unified Europe, the German People have adopted, by virtue of their constituent power, this Constitution”. Fundamental rights presented in the text highlight the philosophy of the German Constitution of 1949. And, although the German *social state* (Article 20 of the Fundamental Law: “(1) The Federal Republic of Germany is a democratic and social federal state.”) is not linked to specified social rights in the text because of their association with Stalinism at the time, they cannot be thought of as entirely missing from the narrative, as indicated by the reference to a “Social State.”

In the 1947 Italian Constitution, a series of “fundamental principles” precedes the first section, establishing the basis for a narrative that runs throughout the entire constitution: “Sovereignty belongs to the people.” (Article 1); “All citizens have equal social dignity and are equal before the law” (Article 3); “The State and the Catholic Church are independent and sovereign, each within its own sphere” (Article 7); “Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes”(Article 11). The narrative takes the form of assertions that bring into existence whatever they name, which is the proper function of the law: Strung end-to-end, these assertions create a specific fictional universe.

The Hungarian Constitution of 2011, which begins with an “Avowal of National Faith” that expresses *a historical mythology*, offers a more recent case: “We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago ” and We are proud that our people has over the centuries defended Europe in a series of struggles and enriched Europe's common values with its talent and diligence” (Lines 2 and 5 of the Avowal of national faith). The passage continues with a presentation of *the state of affairs presided over the constitution's creation*: “We believe that our national culture is a rich contribution to the diversity of European unity ” and “We respect the freedom and culture of other nations” (Lines 9 and 10 of the Avowal of national faith). It also obviously *states the way forward*: “We hold that after the decades of the twentieth century, which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal” and “We trust in a jointly-shaped future and the commitment of younger generations. We believe that our children

and grandchildren will make Hungary great again with their talent, persistence and moral strength ” (Lines 23 and 24 of the Avowal of National Faith).

Even when a constitution is the result of an international - as opposed to domestic - process, there is a fictional narrative. For example, in the Constitution of Bosnia-Herzegovina, the people and citizens who comprise the country proclaim their “respect for human dignity, liberty and equality, dedicated to peace, justice, tolerance, and reconciliation, Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society” (Preamble to the 1995 Constitution of Bosnia-Herzegovina).

The purpose of a written fictional narrative is to render realistic precisely that which is unknown, along with the supposedly proper way of interpreting reality. *Recording matters in writing is therefore a way to try to compensate for a lack of knowledge.* How can we know for sure that the people are sovereign? How can we be absolutely certain that the nation is “great”? In these cases, the claim of writing is that, by enunciating it, it brings reality into existence, although it also remains quite fragile, because it does not alter the status of everything that inevitably remains unknown.... This is the function of the fictional narrative that is contained by constitutions. [4]

* *The rules and fictional concepts of constitutions.* There are two categories of constitutional rules[5]: 1. *Constitutive* rules that bring their subject into existence by being enunciated (as true of *the people* as of a Head of State or Parliament), and, 2. *Regulatory* rules that directly or indirectly prescribe specific actions; these actions do not have cause-effect relationships with the rules that they relate to. The guarantee of rights falls into the regulatory category. Whether constitutive or regulatory, constitutional rules, like all legal rules, sometimes appeal to fictions and, more specifically, to *fictional concepts*. Fictional concepts are statements or utterances that, because they are grounded in observable reality, say something that seems to be a transformation or distortion-or even a pure creation- of an observable reality. For example, when a constitution states that the territory is indivisible, it is expressing a fictional concept that does not simply describe an observable fact, but a deformed representation of that fact or reality that has no existence beyond the nominative entity that designates it. In short, it is a concept—a *fictional concept*—because it is grounded, not on a simple understanding of observable reality, but rather on a reinvented version of that reality. The notion of an indivisible territory is illustrates this very well. It has long been evident that fictional concepts often serve a pragmatic, teleological function by ensuring that the law’s intentions can be achieved. I will not linger on this point.

A fictional narrative is not identical to a fictional concept, which says something about reality that can actually be proven, even if the proof is obtainable only through an interpretive lens. On the other hand, a fictional narrative states something that is not knowable. *The connection between these two components of constitutions has not been sufficiently investigated.* The fictional narrative has essentially been studied in terms of its legal significance as a component of a constitution, but surprisingly little in terms of its connection—and the precise nature of the connections—to constitutional rules, the other major component of a constitution. Indeed, the contribution of constitutional rules to the overall impact of a constitution stands entirely unquestioned.

In fact, when we look closely at contemporary constitutions inside their native habitats, i.e., at how they function in the societies for which, in which, and by which they are written and, *from the point of view of that constitution's value*, the true connection between the two components that comprise constitutions—the fictional narrative and constitutional rules—becomes apparent. Two observations merit mention here. They are unrelated to the legal value of a given fictional narrative (via the preamble), but instead involve *the value of constitutional rules*. Observation 1. The effectiveness of a constitution is measured by the performance of its fictional narrative rather than by that of its rules; 2. This in turn accentuates the development of techniques to ensure the effectiveness of constitutional rules; these techniques thereby minimize the role of the fictional narrative, while also tending to weaken the overall significance of the constitution...as is happening in most current liberal democracies.

2. Evaluations of the effectiveness of a constitution are based on the performance of the fictional narrative more than on constitutional rules, strictu sensu. Based on a two-fold observation, it seems clear that: 1. Although a written constitution is represented as the foundation of a government's exercise of power in most of the countries on the planet, there is no obvious correlation between the effectiveness of the rules contained in a given constitution. In other words, it is not because we affirm the value of our constitution that its rules are automatically and truly effective. This is a blatant truism, but at the same time, there is a certain level of coherence between the fictional narrative produced by a constitution and the rules produced *by virtue* of that same constitution. One is therefore compelled to conclude that the fictional narrative fulfills its role perfectly as the seat of authority and power, which, as its name indicates, is the ultimate purpose of a constitution. Its value is therefore more a function of the story than of the rules, which can often be relatively "technical." Stated in more explicit terms, a close reading of the fictional

narrative of the Chinese Constitution reveals that it is just as explicit about the kind of society and power that it stipulates. The Constitution of the *People's Republic of China* begins with a three-and-a-half page "narrative" that integrates *mundane affirmations* that nevertheless take on singular *meaning* within the overall tone of the narrative: "China is one of the countries with the longest histories in the world" intones to the first sentence of the Preamble to the Constitution, thereby invoking *tradition*—in this case, "revolutionary" tradition--while at the same time claiming to be part of a *politico-historical continuity*: "After the founding of the People's Republic, the transition of Chinese society from a new democratic to a socialist society was effected step by step. The socialist transformation of the private ownership of the means of production was completed, the system of exploitation of man by man eliminated and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed. The Chinese people and the Chinese People's Liberation Army have thwarted aggression, sabotage, and armed provocations by imperialists and hegemonists, safeguarded China's national independence and security and strengthened its national defense. Major successes have been achieved in economic development. An independent and fairly comprehensive socialist system of industry has in the main been established. There has been a marked increase in agricultural production. Significant progress has been made in educational, scientific, cultural, and other undertakings, and socialist ideological education has yielded noteworthy results. The living standards of the people have improved considerably." There is also another *founding declaration based on a fictional representation of the people and the State*: "the Chinese people took state power into their own hands and became masters of the country" and "The People's Republic of China is a unitary multinational state built up jointly by the people of all its nationalities"; there is a *presentation of Chinese society's purposes and values*: "Socialist relations of equality, unity and mutual assistance have been established among them and will continue to be strengthened"; and there is a *description of enemy values*: "In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local national chauvinism." This type of position statement is often associated with folklore and local culture, without seriously attempting to evaluate their applicability. The question of observable differences between various constitutional fictional narratives should be investigated more systematically. For example, there are especially striking differences between the 1949 and 2011 versions of the Hungarian Constitution, which express two very different but equally intense narratives. The preamble to the 1949 Constitution stated that "The armed forces of the great Soviet Union liberated our country from the yoke of the

German fascists, crushed the anti-people [*népellenes*] state power of the major landowners and capitalists and opened the road of democratic progress to our working people. Reaching power through hard struggles against the masters and defenders of the old order, the Hungarian working class, in alliance with the working peasantry and with the generous help of the Soviet Union, rebuilt our country destroyed in the war. "The Constitution of the People's Republic of Hungary also expresses very well the results, achieved through struggle and constructive labor, and the fundamental changes in our country's economic and social organization, and we are now opening the way to our future development." By contrast, the 2011 Constitution begins with "God bless the Hungarians." As proclaimed in the *Avowal of National Faith* that follows: "We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources," "We honor the achievements of our historical constitution and we honor the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation" as well as "We hold that after the decades of the twentieth century which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal" (Lines 8, 18, and 23 of the *Avowal of national faith*). These two narratives were written during different phases of Hungarian history, reflecting two very different political and social visions.

Narratives such as these must be taken seriously. The prospect that a constitution could be waved around to justify the exercise of power in a specific instance is not a mere matter of principle, but also a deep question of content, i.e., of the specific fictional narrative that a given constitution contains. *Constitutions do not just say random things*. The apparent veracity of what they say in terms of the material aspects of reality is not in question: *Clearly, the most important thing is to say something that gives form to that which is otherwise unsaid or unsayable* and which, to some extent, underlies an individual and collective spirit, at least among most of a country's people. The imagination to which a narrative appeals promotes the idea that observing material reality does not necessarily make it possible to re-narrate reality *as it is*, i.e., implicitly, it is *fantasies that forge the connection between these various components*, even though the connections are fantasized. The crucial thing is that these fantasies are shared.

For example, although a number of stipulations contained in the Chinese constitution are generally unapplied (for example, Article 35 states "Citizens of the

People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration," a provision that obviously is applied in a somewhat different manner than this statement suggests), Chinese officials have always taken considerable care, particularly after the 1990s, to eliminate sections of the founding narrative that might appear outdated or were not seen as supporting centralized control over the country. Sections of the politico-historical narrative were deleted, including a section deleted in 1993 that said that "Under the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of 'Three Represents', the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship." At the time, the Chinese authorities added the claim that "The system of multi-party cooperation and political consultation led by the Communist Party of China will exist and develop in China for a long time to come." In 1999, a statement was added to the beginning of Article 5 that "The People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law." This means that *the principle of legality has become important* in this fantasized political narrative, although this does not even begin to reflect reality. For such a narrative to remain effective, the norm must be stated explicitly, which in turn enables the narrative to *generate norms related to this fantasized reality*. The actual impact of the narrative can easily be observed in the inferior norms that are derived from it. For example, the national security law of July 1, 2015 defends China's struggle against "Western values" and "foreign influences," which might otherwise be considered relatively consistent with the constitution. It is equally unsurprising that the present Hungarian government has adopted certain new laws - covering the press, for example - that are consistent with the *tone* of the founding narrative of the constitution. The Hungarian founding narrative is thereby reinforced by its principal authors' related discourses - *because they continue to control* most government functions [6].

A book by the historian Johann Chapoutot entitled *La loi du sang. Penser et agir en nazi* [The Law of Blood: Thinking and Acting Like a Nazi] is particularly instructive. [7]. Chapoutot, in exploring the discourses of "Nazi" lawyers and legal texts, accurately demonstrates how the fact that the Nazis stated that the law derives from deeds (*ex facto jus oritur*) was a discourse concerning reality, from which very specific norms could be derived. These norms are closely connected to their discourse about law and facts: The Law tells a story of the world, according to a mythology that both precedes it and is simultaneous with it. It is therefore important to clearly understand that the constitution would be useless if, on the imaginative level, its words did not allow it to reify power, because a constitution provides an intellectual explanation for observable reality. There can be no rules without a supporting narrative, regardless of the narrative's actual nature, i.e.,

whether it is coherent or incoherent, or carefully constructed or spontaneous. What is important is that the narrative, as well as what follows—the rules and other statements that it produces—are to some extent spontaneously comprehensible.

Norms seem all the more effective, sometimes unfortunately, when they are accepted as the direct consequence of a mythology that is subscribed to by a given collectivity soon after they appear. The effectiveness of norms is therefore directly correlated to their consistency with a founding mythology or a mythological matrix. This consistency also appears to be present more often in mythologies associated with totalitarian tendencies than those associated with liberal mythologies. *It would seem that constitutions function as “façades” for mythologies under authoritarian regimes more often than in liberal systems, although, in fact, they are particularly effective linchpins of a determined narrative program.*

3. The Weakening of the value of a constitution due to the increased effectiveness of constitutional rules. As the Chinese case amply demonstrates, a constitution’s value does not flow from how its rules are applied. On the contrary, its value derives solely from the fiction that a constitution institutes. *The claim that the value of constitutions depends on the application of their written rules is a fiction.* Legitimacy, whether it is associated with legality or not, is a consequence of the ability to take reality into account, not necessarily in terms of scientific facts, but in terms of a constitution’s potential to inspire the popular imagination about matters that are ultimately unknowable.

Historically and theoretically, the birth of constitutional law is a direct outcome of constitutions. Furthermore, a freshly hatched legal framework is *a priori* a primary rule system before matters become more complex. This means that in addition to primary prohibitions, another group of rules, particularly constitutive rules, establish institutions and systems that are intended to guide how primary rules are applied. In a constitution, *regulatory* rules, which are usually primary, i.e., the founding rules that establish what is fundamentally prohibited, are in a secondary position. In order to impose prohibitions on power and the exercise of power, power itself must first be established or constituted; obviously, this is the function of a constitution’s *constitutive* rules. In constitutional law, the relationship between primary rules and secondary rules is inverted—constitutive rules come first, and regulatory rules are secondary.

As a result, *the primary rules of constitutional law cannot be violated* because they constitute. There are no founding prohibitions like those that can be found elsewhere [8]. This makes it easier to understand why the authorities in power, because they are not the beating heart of the constitution, seem to *be able to be*

exonerate themselves more easily from regulatory rules without questioning the constitution's fundamental value. This key observation applies equally to Western parliamentary democracies, supporting the generalization that regulatory constitutional rules -for example, those that stipulate respect for rights or the separation of powers, or the prerogatives attributed to those powers - can easily be circumvented. Nevertheless, the constitutional reference remains relevant. And if the fictional narrative does not fit, the constitution is perceived or represented as needing to be changed. At the same time, the value that is specifically attributed to regulatory rules seems to be of a lower magnitude, which explains why it can be relatively easy to modify a regulatory rule to bring it into conformity with its application, which had seemed to contradict the rule [9], thus putting the rule's impact into perspective.

Some further fundamental observations concerning individual understandings of constitutional norms suggest the need to emphasize the fact that the most essential norms appear to be non-regulatory norms. A constitution seems to be much less likely to be applied if a particular principle is ineffective (for example the protection of health), than if a specific rule covering the relationship between the executive and legislative branches is not respected, despite the fact that such norms are presented as essential or even constitutive of a liberal democracy [10]. It also appears that, in constitutional scholarship, the importance of respecting regulatory rules increases in proportion to the decrease in the force of a constitution's fictional narrative and imagined power. It should also be noted that the degree of sophistication of the mechanisms that guarantee respect of a constitution goes hand-in-hand with the minimization of the power of its founding narrative fiction. This tendency can be reinforced by the attitude of a constitutional judge who will more or less accept deviations from a founding narrative, naturally by interpreting it using legal techniques whose links to the fiction in question can be hard to trace. This uncoupling of regulatory rules from founding fictions is tending to be increasingly acute, which raises political questions about a constitution's value. Such questions give new interest to the question of a constitution's value, which is no longer a technical rule, i.e., not exclusively ...normalization.

It is possible to begin to feel forced to accept this alternative, that the constitution tells pretty stories and, while freeing themselves from its rules, the authorities keep referring to it to ensure that it maintains its position as the supreme symbolic norm. *Or*, alternatively, one can conclude that the constitution does not tell pretty stories, and that the mechanisms designed to ensure that rules must be generally respected. At which point, the political societies to which the rules pertain, and that gave birth to them, experience the dissolution of the glue that binds them together, i.e., of their

constitutions. Although it would be preferable to avoid attributing this dissolution to the fragmentation of the sophisticated mechanisms that guarantee constitutional rules, a reasonable person could arrive at the conclusion that this pattern is confirmed by certain tendencies in contemporary political history.

Observing political systems from the angle of their relationships to their constitutions can teach us that we should not expect anything different of our constitutions than we do of what they produce—an invented but necessary his/story whose meaning we endlessly misapprehend. Envisioning constitutional law as a purely technical undertaking fails to keep our main focus on the *links* that are made possible by the uses of the imaginary and the imagination. [11] Because of our tendency to focus our attention only on *what* constitutions say, the writing of a constitution comes to seem to be a specialized kind of technical writing, a narrow and impoverished vision that perpetuates ignorance, specifically about that which cannot be written, even in the Constitution.

L.F. May - December 2015

Notes

[1] See the French publication: J. Bentham, *Théorie des fictions*, Paris: Ed. de l'Association freudienne internationale (translation, introduction, and notes by Gérard Michaut), 1996, p. 53. See also Charles Kay Ogden, *Bentham's theory of fictions*, Londres, 1932.

[2] The notion of the Constitution is understood here in the broad sense of norms or of a text thought of as, or in fact being, the *foundation* (most often of the principles and norms) *that is the basis for all political and judicial action*.

[3] See also L. Fontaine, *Un texte constitutionnel est toujours un contexte* [A Constitutional Text is always a Context, [on line](#)].

[4] See also C.-M. Pimentel in “Quelques remarques sur les origines intellectuelles du pluralisme politique” [A Few Remarks on the Intellectual Origins of Political Pluralism]: “Pour qu’un récit constitutionnel devienne réalité, il n’est sans doute pas suffisant de la dire; en revanche, selon toute probabilité, il suffit de la croire,” (“In order for a constitutional narrative to become a reality, it is unquestionably insufficient to say it; however, it is highly probable that it suffices to believe it”) in L. Fontaine (Ed.), *Droit et pluralisme* [Law and Pluralism], Bruylant, Coll. Droit et Justice, n°76, 2008, p. 50.

[5] See in particular J. Searle, *Speech acts. An essay in the philosophy of language*, Cambridge University Press, 1969.

[6] How will this narrative be seen once Prime Minister Viktor Orbán’s government

can no longer address a question demands attention?

[7] J. Chapoutot, *La loi du sang. Penser et agir en nazi* [The Law of Blood. Thinking and Acting like a Nazi], Gallimard, Bibl. des histoires, 2014.

[8] See also L. Fontaine, *La violation de la Constitution, autopsie d'un crime qui n'a jamais été commis* [Violating the Constitution, An Autopsy of a Crime never Committed], *Revue du droit public*, 2014, n°6, p. 1617, and on line.

[9] See, for example, Proposal 2 of the *Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République* [Committee to consider and off a proposal for modernizing and balancing the institutions of the Fifth Republic] (the so-called “Balladur Committee”) in October 2007, regarding revisions to Article 20 of the 1958 French Constitution.

[10] See also the non-legal scholars’ perceptive views of the Constitution at “Quelles perceptions extra-juridiques de la Constitution?”, a conference held on October 15, 2015 at Paris-La Sorbonne, co-organized by L. Fontaine, N. Forster, O. Peiffert, and T. Racho (proceedings in press), as well as in *A chacun sa Constitution. Regards – inattendus? – sur la Constitution* [To Each his own Constitution. Unexpected Viewpoints on the Constitution].

[11] See also Jacky Hummel, *Essai sur la destinée de l’art constitutionnel* [Essay on the Destiny of the Constitutional Art], Michel Houdiard, Ed., 2010, p. 142: “The American experience seems to confirm the Lockian idea that the importance of a constitution resides less in the legal guarantees that it encompasses than in the moral *trust* that it makes possible (the agencies constituted by it are given responsibility by the people). It is less a question of writing a constitution than of believing in its meaning.”