

Rethinking the electoral and constitutional system: the works of Palma and Brunialti on the Norwegian constitution

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1. *The enactment of the 1814 Norwegian constitution*

During the last decades of the nineteenth century two influential jurists, Luigi Palma¹ and Attilio Brunialti², both dedicated studies to the Norwegian constitutional system in the framework of their researches in the fields of electoral legislation and of movements towards parliamentary governments.

The existence of a cultural reference to a country so geographically far and culturally different can maybe be explained by the features of the charter of Eidsvold and by the particular circumstances of its enactment. The Norwegian constitution attracted the attention of foreign politicians, scholars and magazines since its implementation in 1814. The main reason for this interest could have been related to the fact that, when the Norwegian constitution was published, Europe was experiencing the Restoration and going in a strikingly

different direction with respect to Norway. Norway enacted a constitution based on the sovereignty of people, the division of powers and comprehensive of fundamental rights that stood out as even more liberal when other European constitutions became more authoritarian during the nineteenth century³.

The Norwegian constitution was the result of external events that led to the cession of the country from the throne of Denmark to the one of Sweden, according to the treaty of Kiel. This agreement was signed on the 15th of January 1814: the king of Denmark relinquished his claims on the kingdom of Norway and, in return, the Norwegians were to be secured in all their rights and privileges, and Pomerania and the island of Rugen were incorporated with Denmark⁴. Norway, even if «too remote and humble» had experienced its share of the consequences of the changes and struggles of the great belligerent powers⁵. The Danish Court was aware of the impossibility of successfully resisting the combination of force

projected by the Allies, and wanted to spare «brave and generous Norwegian people» from experiencing the horror of famine. In particular, it must be underlined that Norway was ceded to the Swedish King and not the Kingdom of Sweden, so the Norwegian people were to continue the enjoyment of their own laws, rights, privileges and liberties⁶.

In a report about the Norwegian constitution dated back to 1836, the English travel writer Samuel Laing stated that Norwegian people were not happy to be «handed over like a herd of black cattle»⁷. In the same period, a journalist of the magazine *Il Corriere Milanese* shared the same impression, when he wrote that «the people of Norway were handed over as if they were a private property». In 1878, also the English *Fraser's Magazine* affirmed that Norway «was not ready tamely to submit to a change of masters, for which the consent of the nation had not been asked»⁸.

The Danish prince Christian Frederik, regent of Norway, received by the Norwegian people «the warmest ebullitions of attachment to his person and independence», and subsequently convoked an Assembly of Notables in the city of Eidsvold with the goal of assigning a representative constitution to Norway and acknowledge his hereditary rights⁹. The most prominent Norwegian people gathered there and, in a few days, framed and adopted the Constitution of the 17th of May 1814. The path towards the Charter of Eidsvold is resumed in the words of Andreas Elviken, who affirmed that, until that moment, «Norwegians had been groping toward the ideas of 1789. Facing stark reality, the notables, acting on behalf of the Norwegian nation, repudiated the old basis of sovereignty»¹⁰.

As soon as the Swedes realized that the Norwegians would not submit to their demands, they invaded the southern part of Norway, led by the Swedish Crown Prince, Karl Johan Bernadotte, formerly one of Napoleon's generals, who had been adopted by the childless King Charles XIII¹¹. King Christian Frederik, considering the possibility of winning a battle against Sweden very unlikely finally accepted to cede Norway to Sweden with the convention of Moss, upon the condition of the upkeep of the constitution. Christian Frederik abdicated and an extraordinary *Storting* (the national Assembly) was summoned at the capital Christiania and, on the 4th of November of the same year, Norway was declared to be a «free, independent, and indivisible kingdom, united with Sweden under one king»¹². In fact, the Act of Union did not change the first paragraph of the Norwegian constitution, which stated that Norway was a free, indivisible, inalienable realm¹³.

The events that led to the implementation of the Charter of Eidsvold were the outcome of the European historical developments but it should be emphasized how «the constitution was not regarded as an innovation and a new experiment in government»¹⁴. Samuel Laing had also stated that «the new constitution was but the superstructure of a building of which the foundations had been laid [...] by the ancestors of the present generation»¹⁵. In fact, the source of the democratic nature of this constitution was often traced to Norway's equal distribution of land and wealth¹⁶.

The claims to national and popular sovereignty were stemming from the inclination of the Norwegian social condition; in particular, the study by Samuel Laing¹⁷ confirmed that opinion by affirming that the

reason that made a constitution possible was «not cemented with blood, but taken from the closet of the philosopher and quietly reared and set to work» was that «all the essential parts of liberty were already in the country»¹⁸.

In 1851, the Italian historian Cesare Cantù thought that the constitutional system of the country was well in accordance to the ancient inclination of Norway and to the fact that it did not experience feudal property and enjoyed, as a consequence, a large sharing-out of wealth¹⁹. These social conditions enabled, in Cantù's opinion, a smooth transition to a representative government. In 1870, the Italian constitutional jurist Guido Padelletti²⁰ shared the same view about the Norwegian constitution, which he expressed stating that the Charter of Eidsvold matched the social conditions of the country²¹. The importance of the element of the division of private property was stressed also by Braekstad who affirmed «they live under ancient laws and social arrangements totally different in principle from those which regulate society and property in the feudally constituted countries»²². The equal distribution of wealth was highlighted also by the French jurist and lawyer Pierre Dareste who wrote, in 1884, that «la propriété foncière est extrêmement divisée»²³. Norway's egalitarian and law-abiding history made possible for the framers of the Charter of Eidsvold to share key features of the European revolutionary constitutions of the 1790s, in particular the French 1791 constitution, even if they did not follow the standard revolutionary patterns as no social revolution took place²⁴. Pierre Dareste found a possible reference to the Spanish constitution of 1812 and to the American one: «les ré-

dacteurs avaient pris principalement pour modèle les constitutions françaises de 1791 et de l'an III, celle de la république batave de 1798, la constitution espagnole de 1812 et celle des États-Unis de 1787»²⁵. In addition, Guido Padelletti seemed to recognize the Norwegian constitution as an ideal sequel of the Spanish constitution of Cadiz when he said that, when the *Cortes* were dismantled, a liberal stream was developing in the extreme north of Europe²⁶. The well-known Italian *Nuova Enciclopedia popolare italiana* shared these opinions on the influence of the models of the 1791 French and of the Spanish constitution on the Norwegian constitution²⁷.

The constitution of Eidsvold had been pronounced «the most liberal of constitutions, one of which any modern nation may boast»²⁸ and, in the famous French *Revue encyclopédique*, one of the best in Europe²⁹. The Italian jurist Enrico Cenni even defined it an almost republican constitution³⁰.

For what concerns the ruling of powers, the Italian constitutionalist Luigi Palma underlined that the Charter of Eidsvold respected the theory of the division of powers and provided the Parliament with complete control over the legislative function as the article 49 of the constitution stated that «the people shall exercise the legislative power through the Storting, which consists of two divisions, a Lagthing and an Odelsting»³¹. It is important to call attention to the fact that the King was allowed to initiate legislation and to adopt provisional legislation when the *Storting* was not in session but could only delay legislation and ultimately did not have the right to prevent its enactment. In fact, when the same draft law had passed by three successive *Storthings*, it became law without the assent

of the king. In this way, the King only had the power to delay the approval of a legislative draft but could not prevent its enactment. Therefore, the constitution provided Parliament with «a right not known in any other Monarchy»³². In addition to this, the King did not have the right, as it happened in most representative systems, to dissolve the Parliament.

This kind of allotment of powers caused many problems and led to the constitutional crisis that marked the eighties of the Nineteenth century³³.

It is important to underline that Italian scholars had at their disposal the complete *Collection des constitutions, chartes et lois fondamentales des peuples de l'Europe et des deux Amériques*³⁴ published in Paris in 1830. The second series dedicated a chapter to the constitution of Norway, with an introduction to its constitutional history and a translation in French of the document issued by the Diet of Eidsvold. The authors of the *Collection des constitutions* affirmed that their translation from Norwegian to French was trustworthy, as opposed to other available translations, and that they had tried to use expressions similar to the originals. The knowledge of French was common in the intellectual class at that time so it did not represent an obstacle to its diffusion among the intellectuals of the region. Only one translation in Italian was available and it dated back to 1820 by Angelo Lanzellotti, published in Naples³⁵. It was likely not a translation from Norwegian to Italian but a translation from French to Italian since the main works of this author are translations from French to Italian³⁶.

The *Collection des constitutions, chartes et lois fondamentales des peuples de l'Europe* had a liberal approach: in fact, the author of the

introduction of the first volume of the edition of 1821 underlined that those volumes were addressed not only to the people devoted to law-making and public law, but to all categories of citizens who had the intention to discover more about «their rights and their normative grounds»³⁷.

This work offered to the reader a vivid picture of the development of the constitutional system in Norway: the description given was based on a report by M. Heyberg who was portrayed as a person with «the talent of a writer and the enthusiasm of a good patriot». The constitution was defined as based on liberal principles and on national independency and the author underlined the fact the members of the Diet of Eidsvoll had had little time to write down the declaration but, notwithstanding this constraint, they had been able to accomplish their task successfully³⁸.

The open-minded attitude of the writer of the *Collection des constitutions* was shared in the paragraph dedicated to Norway in the magazine *Ricoglitore* mentioned above: the authors tried to sum up the main lines of the Norwegian constitutional structure and affirmed that Norway was a free and independent State, united to Sweden in a tempered monarchy³⁹. The only critical point in the constitutional legislation of the country was, in the author's opinion, the fact that it prohibited Jewish people from entering the country, marking a stark difference with respect to the general liberal attitude of the document. The journalist suggested that the reason for this rule alleged by the Norwegian legislator was the maintenance of social and religious cohesion of the country, supported by the presence of people of only one religion (in this case, Christian Lutherans).

This particular facet of the constitution in Norway must have interested Italian readers because, ten years later, in the magazine *Annali universali di statistica, economia pubblica, geografia, storia, viaggi e commercio*⁴⁰ the author reported that the King, during a stay in Cristiania, designated the Minister of justice to prepare a legislative draft for the admission of Jewish people in Norway and that this project should have been presented to the *Storting*⁴¹. In 1866, the *Corriere Israelitico*⁴² (a monthly magazine of Jewish history and literature) greeted the constitution of the first Israelite community in Norway and reminded its readers of how, twenty years before, a Jewish scientist – going to Norway for scientific purposes – had had issues entering the country and was forced to request special permission.

The Norwegian constitutional system attracted then the attention of Italian jurists, in particular Attilio Brunialti and Luigi Palma, for what concerns the subjects of the electoral legislation and the one of the transition to a parliamentary type of government: thanks to its long lasting experience, Norway offered a fruitful field of study also many years after the enactment of the constitution.

2. The debate about the Norwegian electoral system

The Norwegian constitution established a quite liberal voting right for the time, even though it did introduce property and income requirements. The Charter of Eidsvold ensured that legislative power laid in the hands of the Norwegian people: the

article 50 granted suffrage to three types of residents – public officials, town citizens and freeholders – and the latter two categories were defined with explicit property requirements⁴³. In fact a Norwegian citizen, in order to have the right to vote, had to be twenty-five years old, to have resided five years in the country, to be living there at the time of the election, and either be or have been an official. If living in a country district, citizens had to own or have cultivated for more than five years registered land; if living in town, they had to be «burgess», or to own house property or ground of the value of 300 *kronor*⁴⁴.

Even if the suffrage was only extended in 1898 to all men, regardless of property and circumstance, the Norwegian electoral system had been regarded as a very liberal one. Italian scholars displayed a particular interest for the study of electoral laws during the last decades of the eighteenth century, in particular after 1882 when the right to vote was widely spread. Once again, Italian scholars thought that the possibility to grant such a wide diffusion of the right to vote in Norway depended on the conditions of the country, marked by relatively low social disparities⁴⁵.

Attilio Brunialti, who was professor of constitutional law at the University of Turin, had already shown some interest for the Norwegian constitutional order before he started his academic career. In fact, he was well known for his studies of the representation of minorities and in 1871 published a book with the title *Libertà e democrazia: studi sulla rappresentanza delle minorità* [translated as "Liberty and democracy: Studies about the representation of minorities"]. Brunialti had founded, together with the lawyer Francesco Genala, the *Società per*

lo studio della rappresentanza proporzionale (that can be translated with "Association for the study of proportional representation"): members of the association were other important scholars of constitutional law such as Guido Padelletti, Carlo Ferraris and Luigi Palma⁴⁶. The need to study the political and electoral systems of foreign countries was underlined in 1878 by Brunialti who affirmed that the experience of every country could be a good example in order to avoid mistakes and to choose the best possible policies in the constitutional life of the state⁴⁷. Carlo Ferraris recalled the activity of Brunialti in this field and his effort to spread the knowledge of the European and American constitutions⁴⁸. In fact, Brunialti was the director of a collection of one of the most important Italian and foreign works, la *Biblioteca di Scienze politiche*, in the field of political science⁴⁹. He was chosen for this position probably also because he had always been convinced of the importance of linking the study of constitutional law to the one of politics: in his opinion, no one could deny the fact that constitutional law was a political science⁵⁰.

The second series of the *Biblioteca di Scienze politiche* collected works concerning administrative and constitutional law with a specific focus on the study of the Italian system in comparison to other foreign political orders⁵¹. The second volume of the second series contained contributions by Attilio Brunialti and Luigi Palma: in this book, the two scholars both paid specific attention to the Norwegian constitutional system in relation to the Italian one and to other countries.

The specific interest of Brunialti for the representation of minorities gave him the chance to discover more about the charter

of the Diet of Eidsvold: in fact, he dedicated a paragraph to the conditions for the right to vote adopted by the Norwegian constitution and he counted Norway among the States that adopted a system of universal suffrage. He added that the rules contained in that constitution allowed the right to vote to those who were at least 25 years old and had either a certain amount of wealth or were charged with a public function⁵².

Brunialti specified in his work that, starting from a law dating back to 1821 for the «very poor Department of Finmark», the right to vote had been widened to include people who had resided in the country for at least five years and who were at least 25 years of age. He specified then that this broadening of the right to vote had been, in his opinion, cut down by the recent introduction of indirect elections of the representatives of the *Storthing*⁵³.

In addition, the jurist Emilio Serra Groppelli affirmed that the Norwegian constitutional system established a suffrage that could have been considered as 'almost universal' but that the introduction of indirect elections had reduced the democratic nature of that system because, in this way, the voters only had the chance to choose other voters. In his opinion, the Norwegian constitutional regulation allowed a proper use of the political rights that the country offered to the citizens⁵⁴.

With regard to the electoral law in Norway, the German Biedermann stated that the indirect system that had been chosen was far more conservative than the general approach defined by the constitution⁵⁵.

Luigi Palma was also interested in the specific field of electoral law: he underlined, in his work *Del potere elettorale negli Stati liberi* [translated as «On electoral

power in the free States»]⁵⁶, that the Norwegian electoral system should have been counted among those that granted the right to vote based on the two alternative requirements of wealth and competency, the latter gathered from the charge of a public function. Luigi Palma thought that the indirect election of representatives was not to blame: in fact, according to the professor, this system did not cause the dreaded effects that had been expected. On the contrary, he affirmed that Norway was one of the most prosperous and liberal countries in Europe «notwithstanding the difficulties due to bad climate»⁵⁷.

In addition to this, Luigi Palma quoted the Norwegian model with reference to his criticism against the existence in the Kingdom of Italy of a chamber composed of nominated members. He underlined that in Norway, when a legislative proposal had to be discussed and approved, the *Storthing* was split into two chambers: the first, the *Odelsting*, discussed the project of law while its elected representatives chose from among the same members of the *Storthing* the components of a second chamber, the *Lagthing*, who were charged with the approval of laws. According to Luigi Palma, this system was meant to control the power of the chamber elected in a direct way; he assumed that this system was better than the one in Italy (a second chamber of members nominated by the King), but he thought that this was not the best possible model because the members were not elected but selected among the representatives of the *Storthing*, who would promote the values and instances they already support in the other chamber.

He concluded that these reflections did not lead him to criticize the Norwegian

model following the maxim *non omnis fert omnia tellus*; in his opinion, the Norwegian people approved the model based on only one chamber grounded in popular representation but this system was not the best for each and every country.

With regard to the Italian situation, Attilio Brunialti was persuaded that universal suffrage was close and he underlined that it was impossible to stop the rising of democracy, he felt that the coming of democracy would be an apocalypse for the group of people who had the power and he said that, with a growing financial wealth, the population would also strive for power⁵⁸.

Guido Padelletti criticized the fact that Brunialti presented the importance of the representation of minorities only as a possible setback for the assertion of universal suffrage. In his opinion, the point that should have been underlined was the importance of the introduction of an electoral system that offered the chance to represent also the minorities in order to have the best representatives possible and not in order to avoid universal suffrage⁵⁹. Actually, also Brunialti was aware of the need to have the leaders with the best political and cultural background possible, but he was afraid that the broadening of the right to vote would have lead in the opposite direction⁶⁰.

In the opening lecture held for the beginning of his course at the University of Turin, Brunialti affirmed that the constitutional government was the biggest accomplishment for public law⁶¹. He asked himself if the problems of this type of government were not underestimated and if a change was needed. Answering this difficult question, he said that, besides the Constitution, two elements helped in the development of public law: science and

tradition. Brunialti thought that a balance between these three elements had to be found: the written constitution should meet the population requirements and be in line with the history of the country⁶². Regarding this subject, he said that the *Statuto Albertino* affirmed that local institutions had to be organized by the law and that the law that was then written contributed to the lack of political and administrative culture. He underlined that custom is important in the study of constitutional law⁶³ and affirmed that in no other field as the one of constitutional law, it was so necessary for scientific improvements to be welcomed by general consent⁶⁴.

With reference to the electoral system, he thought that an election reform was possible for Italy and that the *Statuto Albertino* allowed for changes⁶⁵. In fact, he stated that the *Statuto Albertino* had some articles that should not be changed but many others that should or could be changed in order to follow the development of the country⁶⁶. On the other hand, professor Brunialti thought that constitutional politics should respect more strictly the constitution: for example, he affirmed that the *Statuto Albertino* specified that each deputy represents the Nation, not just the district in which he was elected⁶⁷. Therefore, Brunialti thought that the deputy had a trust relationship with his voters, but his parliamentary mandate did not have an imperative nature⁶⁸. Guido Padelletti agreed with his opinion and he affirmed that each representative should worry about the fulfilling of the interests of the whole nation because his charge was qualified as a *munus publicum* and not as a civil law mandate⁶⁹.

The multiple references to the Norwegian regulation of the right to vote show the

reader how its features, marked by a relative broad diffusion of the right to vote and a democratic approach in the share of powers, interested Italian and European scholars engaged in the debate about the ruling of representation. In fact, the broadening of the right to vote led the Italian jurists to study the experiences of the States that had already experienced similar policies in the field of the electoral legislation and the Norwegian model was an interesting case study in this field.

3. *The Norwegian constitutional conflict, 1880-1884*

The transition to a parliamentary type of government was a subject that enlivened the constitutional debate in the last decades of the nineteenth century in Italy and in Europe. During this period, Norway offered an interesting case study with the constitutional conflict that opposed the king and his ministers and the *Storting*.

The Norwegian constitutional conflict drew the attention of many jurist such as the French Pierre Dareste who affirmed:

jusqu'à ces dernières années, la Norvège n'avait pas coutume d'occuper le monde de sa politique intérieure. Le récent conflit qui tient de se terminer par la victoire de l'opposition a excité quelque curiosité en Europe: le bruit qu'il a fait a surpris les Norvégiens eux-mêmes, peu habitués à voir le public étranger s'instruire de leurs affaires particulières⁷⁰.

Luigi Palma, in a contribution contained in the collection directed by Attilio Brunialti and cited above⁷¹, also studied the Norwegian constitutional conflict of the period 1880-1884.

The specific interest in this field was determined by the presence of similar problems in the Italian political debate. Moreover, reporting about what happened in a foreign country was a good chance in order to express a true opinion on that subject. Palma was a supporter of the transition to a parliamentary type of government; he summarized its features saying that in that kind of system the parliament had the power to impose to the king which were the ministers that should form the government⁷². Even though he thought the parliamentary one was the kind of government that better mirrored the will of the country, Palma was aware of the presence of many problems. The scholar feared, in particular, that the Parliament could assume an unrestrained power. He was convinced that it was important for the Crown to maintain its *super partes* position that represented a safeguard for the good ruling of the country: the exercise of the royal prerogatives could represent a restraint to the power of the legislative assembly⁷³. Bruniati also underlined the importance of the powers of the King who represents the unity of the nation and whose powers were exercised in the interest of the country⁷⁴.

Palma offered to the readers a first insight into the Norwegian constitutional system. He explained that the original approach was inspired by a stiff separation of powers and marked by the model of the French constitution of 1791; that meant that the King and his ministers (the state counselors) held executive power while the *Storting* held legislative power. He emphasized that in Norway the King did not even have the power to dissolve the Parliament; on the contrary, the provisions of the *Statuto Albertino* granted this option to the Italian

monarch. In addition to this, article 62 of the Norwegian constitution prevented the ministers from being elected in the *Storting* in order to safeguard the separation of powers.

After this introduction, Professor Palma summed up the facts concerning the constitutional conflict: in 1872, the politician Sverdrupp promoted a draft law that allowed the ministers the chance to take part in the assemblies of the *Storting*, without the right to vote.

The proposal of the King was approved by the Parliament but the King rejected it using his veto power; then, in 1874, the King himself endorsed the faculty for his ministers to enter the Parliament, laying down the condition that the *Storting* should have granted to the monarch the right to dissolve the Parliament. The *Storting* rejected this proposal and, in 1877, promoted again the project dating back to 1872. The King opposed again using his veto driving the opposition party of the Parliament to propose that the project had to be considered law, even if it did not have the royal authorization. On this subject, Samuel Laing affirmed that «the constitution of Norway nearly resembles the constitution of the United States, the king having merely a suspensive veto»⁷⁵; once again the influence of the American constitution on the Norwegian one was noticed.

Luigi Palma underlined that the Norwegian King addressed the Faculty of law of *Cristiania*, considered the most important scientific authority in this field, in order to have an answer to the question of whether or not the King had the power of 'royal sanction' in the field of constitutional changes.

The scholars of the University of *Cristiania* acknowledged that the monarch

held an absolute veto power. Palma stated that this answer sounded appropriate in this field. He thought that, in a monarchy, the King had to represent the nation and to maintain a detached position above the different parties: he observed that his royal sanction was the act that enforced each law and it was even more necessary that the monarch held this power in the field of constitutional changes.

On the other hand, he observed that this constitutional conflict was the sign of an attempt of evolution from a 'royal constitutional' government to a parliamentary one: according to Luigi Palma, this kind of development aimed to change the function of the ministers, who were first interpreters of the will and personal judgement of the King and should have become representatives of the Parliament⁷⁶.

Palma concluded that this kind of transformation could not be stopped with the help of influential scholars or keen law reasoning but that it depended upon a political conflict that should have been solved with political measures: it would have been better not to apply strictly the law but to analyze the political change. On this issue, Palma agreed with Brunialti when he said that in no other field as the one of constitutional law, it was so necessary for scientific improvements to be welcomed by general consent: in fact, he affirmed that a skilled and competent public opinion was important in order to sustain the political and constitutional activities⁷⁷.

Luigi Palma described the further development of the constitutional conflict and highlighted how the *Storthing* upheld a charge against the ministers who had approved the denial of the royal authorization for the resolutions of the Parliament.

The judgement in this field was assigned to the *Rigsret*, composed by 28 members of the *Storthing* and the 9 members of the Norwegian Supreme Court, the *Højesteret*: the minister were judged guilty and condemned by the *Rigsret*. The King did not want to continue the conflict: he considered the convicted ministers as resigned and nominated as leader of his Counselors the head of the opposition party, Svendrupp. The *Storthing* subsequently approved the article 74 of the Constitution that granted the ministers the possibility to take part in the assemblies of the Parliament, without the right to vote, and to join in the discussions when they were public⁷⁸.

Luigi Palma stated that this was not to be intended as a defeat of the King, but that the growing awareness of the population that aimed at a change in the political system had to be respected: the art of the government in his opinion, was not merely to apply the law, but to fulfil the needs of the population. Brunialti agreed with Palma on this point, because he thought that politics was an important part of the constitutional science that could not deal only with law⁷⁹. It is interesting to underline that, in another work dated back to the same period, Palma affirmed once again that the sanction of the King had to be considered fundamental for the building of the will of the State and that the parliamentary majorities could represent sometimes fleeting needs while the King had to represent and sustain the enduring welfare of the country⁸⁰.

The study of the specific features of the Norwegian constitutional life shows how Italian scholars, living in a country that was geographically far and different for what concerned habits and culture, studied and

mentioned the Norwegian constitutional structure.

Notwithstanding the differences in the lifestyle of the population, and the fact that Italian and Norwegian institutions arose from a completely unlike historical and political development, in the second half of the eighteenth century the themes emerging in the political debate encouraged Italian scholars to deepen the study and the research on the history and the functioning of other political models, like the one of Norway. This interest could have been motivated by different reasons, but it prompted politician and scholars to broaden their knowledge and their studies to the constitutional models of other countries, giving them the chance to face problems with an open-minded approach. Norway

proved to be an interesting example and model of study for its electoral system – in an historical setting in which there existed widespread concern about the effects of the extension of the right to vote – both regarding the transition towards a parliamentary system of government and the role of the monarchy.

The works of two prominent Italian jurists like Palma and Brunialti underlined how the features of the Norwegian constitution embodied a case study that offered many hints for the legal debate, because it was the one – with the American constitution – that presented the more long-lasting constitutional experience.

¹ Luigi Palma was born in Corigliano Calabro 1837 and he taught for many years constitutional law at the University of Rome and he became also councilor of the Council of State. For further biographical news: G. Melis, *Palma Luigi Prospero*, in I. Birocchi, E. Cortese, A. Mattone, M.N. Miletta (eds.), *Dizionario Biografico dei Giuristi Italiani*, Bologna, il Mulino, 2013, pp. 1492-1493; F. Lancaster, *Palma Luigi Prospero*, in *Dizionario Biografico degli Italiani*, vol. 89, Roma, Istituto dell'Enciclopedia Italiana Treccani, 2014, pp. 582-584 and L. Borsi, *Storia, nazione, costituzione. Palma e i preorlandiani*, Milano, Giuffrè, 2007.

² Attilio Brunialti was born in Vicenza in 1849 and he graduated in law in 1870. He was well known for some studies about the representation of minorities: in 1871, he published a book about *Libertà*

e democrazia: studi sulla rappresentanza delle minorità. In 1881, he arrived at the University of Turin. He kept his place as professor of constitutional law until 1893, when he became councilor of the Council of State. He also had a political career: he was deputy for nine legislatures and he dealt mostly with topics of foreign politics and the colonial problem. A complete biographical portrayal is presented by A. De Gubernatis, *Dizionario biografico degli scrittori contemporanei*, Firenze, Le Monnier, 1879; G. D'Amelio, *Attilio Brunialti*, in *Dizionario biografico degli italiani*, vol. XIV, Roma, Istituto dell'Enciclopedia Italiana Treccani, 1972, p. 636; G. Cazzetta, *Una costituzione "sperimentale" per una società ideale. I modelli giuridico-politici di Attilio Brunialti*, in «Quaderni fiorentini per la storia del pensiero giuridico moder-

no», n. 15, Milano, Giuffrè, 1986; G. Cazzetta, *Brunialti Attilio*, in I. Birocchi, E. Cortese, A. Mattone, M.N. Miletta (eds.), *Dizionario Biografico dei Giuristi Italiani* cit., pp. 349-351.

³ In the contribution by D. Michalsen, *The Norwegian constitution of 1814 between European Restoration and Liberal Nationalism*, in Kelly J. Grotke, M. Prutsch, (edited by), *Constitutionalism, legitimacy and power: nineteenth century experiences*, Oxford University Press 2014, p. 210, the Norwegian constitution is defined a revolutionary one.

⁴ G.L. Baden, *The history of Norway*, London, Hamblin and Seifang, 1817, p. 315.

⁵ Ivi, p. 312.

⁶ F. Nansen, *Norway ad the union with Sweden*, Bungay, Richard Clay and sons, 1905, p. 14.

⁷ S. Laing, *Journal of a residence*

in Norway during the years 1834, 1835, and 1836 made with a view to inquire into the moral and political economy of that country, and the condition of its inhabitants, London, Longman-Rees, Orme-Brown-Green, & Longman, 1836, p. v.

⁸ W.D.T. (the author had signed the article only with his initial letters), *The constitution of Norway*, in «Fraser's Magazine», vol. XVIII, London, Longman-Green and co, 1878, p. 62.

⁹ G. Astuti (ed.), *Le costituzioni della Svezia e della Norvegia*, Firenze, Sansoni, 1946, (Testi e documenti costituzionali, 13), p. 113; A. Elviken, *The genesis of the Norwegian nationalism*, in *The Journal of modern History*, vol. III, n. 3, September 1931, p. 378: «the prince claimed *de jure* the throne of Norway ad heredity. But Professor Georg Sverdrup voiced the sentiments of the notables by declaring that "the claims which Frederick VI has renounced revert to the nation. Only from the hands of the nation you will receive the crown.». Also the German Friedrich Karl Biedermann affirmed that «comme les Norvégiens aspiraient à former un royaume indépendant, ils demandèrent à leur lieutenant qu'il leur donnât une Constitution comme à un peuple libre» (F.K. Biedermann, *Die repräsentative Verfassungen mit volkswahlen, dargestellt und geschichtlich entwickelt* (1864), tr. fr. *Les systèmes représentatifs avec élections populaires historiquement exposés et développés en rapport avec les conditions politiques et sociales des peuples*, Leipzig, F.A. Brockhaus, 1864, p. 197.

¹⁰ Elviken, *The genesis* cit., p. 378.

¹¹ H.L. Braekstad, *The constitution of the Kingdom of Norway. An historical and political survey*, London, David Nutt, 1905, p. xi.

¹² Ivi, p. xii. It must be underlined that: «The preamble to the Act of union stated that the union between the two countries was accomplished "not by force of arms,

but by free conviction", and the Swedish Minister of foreign affairs announced to the European powers that the Treaty of Kiel had been abandoned, and that it was not to this Treaty, but to the confidence of the Norwegian people in the Swedish» (Elviken, *The genesis*, cit., p. 380).

¹³ Elviken, *The genesis*, cit., p. 382.

¹⁴ Ivi, p. 380.

¹⁵ Laing, *Journal of a residence in Norway*, cit., p. 480.

¹⁶ J.W. Moses, *Emigration and political development*, Cambridge, Cambridge University press, 2011, p. 93.

¹⁷ This text should have reached a wide audience as it was translated and published in the Italian magazine *Il Ricoglitore Italiano e straniero*; even if no hint of the original author is included in the *Ricoglitore*, the reader can notice that the text has some paragraphs that are the plain translation of the English text. («*Ricoglitore italiano e straniero* ossia rivista mensile europea di scienze lettere, belle arti, bibliografia e varietà», IV anno, parte seconda, Milano, 1837, pp. 301-321).

¹⁸ Laing, *Journal of a residence in Norway*, cit., p. 479.

¹⁹ C. Cantù, *Storia di cento anni 1750-1850*, vol. III, Firenze, Le Monnier, 1851, p. 89.

²⁰ For some biographical information, cfr. G. Ferri, *Padelletti Guido*, in *Dizionario Biografico degli Italiani*, vol. 80, Roma, Istituto dell'Enciclopedia Italiana Treccani, 2014, pp. 178-181; G. Negri, *Padelletti Guido*, in *Dizionario Biografico dei Giuristi* cit., p. 1482.

²¹ G. Padelletti, *Teoria della elezione politica*, Napoli, Stamperia della Regia Università, 1870, p. 84.

²² Braekstad, *The constitution*, cit., p. ix.

²³ P. Dareste, *La dernière crise politique en Norvège*, in «*Revue des deux mondes*», vol. LXVI, Paris, 1884, p. 354.

²⁴ E. Holmøyvik, *The Norwegian 1814 constitution*, in P.C. Müller Graff, H. P. Gravver, O. Mestad (eds.),

European law and national constitutions, Berlin, Berliner Wissenschafts Verlag, 2016, p. 34.

²⁵ Dareste, *La dernière crise politique*, cit., p. 348.

²⁶ «Mentre un movimento liberale si spegneva in questa guisa nel mezzogiorno di Europa, era assai più fortunato un paese dell'estremo settentrione, la Norvegia, che nel riunirsi alla Svezia si dava una costituzione tanto democratica», G. Padelletti, *Teoria della elezione politica*, cit., p. 83.

²⁷ *Nuova enciclopedia popolare italiana ovvero dizionario generale di scienze, lettere, arti, storia, geografia ecc. ecc. Opera compilata sulle migliori in tal genere inglesi, tedesche e francesi coll'assistenza e col consiglio di scienziati e letterati italiani*, V edizione, vol. XV, Torino, Unione tipografico-editrice, 1870, p. 64.

²⁸ Laing, *Journal of a residence in Norway*, cit., p. 480.

²⁹ «Une des meilleures chartes que possèdent les peuples de l'Europe», «*Revue encyclopédique ou analyse raisonnée des productions les plus remarquables dans la littérature, les sciences, les arts par une réunion de membres de l'institut et d'autres hommes de lettres*», A. Julien, A. Petetin (eds.), Paris, Sedillot libraire, 1831, p. 414.

³⁰ E. Cenni, *Delle presenti condizioni d'Italia e del suo riordinamento civile*, Napoli, Stabilimento tipografico dei classici italiani, 1862, p. 94.

³¹ Braekstad, *The constitution*, cit., p. 25.

³² Ivi, p. xvii.

³³ Luigi Palma wrote a specific contribution on this subject, that I dealt with in depth in paragraph 3: L. Palma, *Le costituzioni moderne*, in A. Brunialti (diretta da), *Scelta collezione delle più importanti opere moderne italiane e straniere di scienze politiche ed amministrative*, serie 2, vol. 2, Torino, Unione tipografico-editrice, 1894, pp. 337-344.

³⁴ P.A. Dufau, J.B. Duvergier, J. Guadet, *Collection des constitu-*

- tions, chartes et lois fondamentales des peuples de l'Europe et des deux Amériques: avec des précis offrant l'histoire des libertes et des institutions politiques chez les nations modernes, tome III, Paris 1830.
- ³⁵ A. Lanzellotti (translated by), *Costituzione di Norvegia del 1814 sotto Carlo XIII*, Napoli 1820.
- ³⁶ In fact, Lanzellotti was the author of many translations from French to Italian: A. Lanzellotti, *Costituzione della repubblica francese del 1799*, Napoli 1821; Id., *Costituzione degli Stati Uniti d'America tradotta in italiano*, Napoli 1821; Id., *Costituzione francese del 1791 sotto Luigi XVI*, Napoli 1820; Id., *Costituzione inglese o sia gran Carta del Regno britannico del 1815*, Napoli, 1820; Id., *Costituzione francese e carta costituzionale del 1814 sotto Luigi XVIII*, Napoli 1820.
- ³⁷ P.A. Dufau, J. B. Duvergier, J. Guadet, *Collection des constitutions, chartes et lois fondamentales des peuples de l'Europe et des deux Amériques: avec des précis offrant l'histoire des libertes et des institutions politiques chez les nations modernes*, tome I, Paris, Pichon et Didier libraires, 1821, p. XII.
- ³⁸ Ivi, pp. 314-317.
- ³⁹ «Ricoglitore italiano e straniero ossia rivista mensile europea», cit., p. 21.
- ⁴⁰ «Annali universali di statistica, economia pubblica, geografia, storia, viaggi e commercio», volume 14 of the second series, October-November-December 1847, Milano, pp. 46-47. This magazine was founded in 1824 in Milan and had the goal to spread in Italy scientific and socio-political knowledge: it obtained a good success not only in Italy but also in the other European countries and was often quoted in the French «Revue encyclopedique» and in the «Edinburgh Review» and in the «Quarterly review».
- ⁴¹ The law dated back to 21st July 1851 repealed the article concerning the prohibition for Jewish people to enter the country.
- ⁴² «Corriere israelitico, periodico mensile per la storia e la letteratura israelitica e per gl'interessi generali del giudaismo», A.V. Morpurgo (published under the direction of), fifth year, Trieste, stabilimento Libr. Tip. Lit. Music. e Belle arti di Colombo Coen, 1866, p. 116.
- ⁴³ Moses, *Emigration and politica*, cit., p. 95.
- ⁴⁴ W.D.T., *The constitution of Norway*, cit., p. 70.
- ⁴⁵ Padelletti, *Teoria della elezione*, cit. p. 84.
- ⁴⁶ A. Brunialti, *La costituzione italiana, Prolusione al corso di Diritto Costituzionale letta nella Regia Università di Torino il giorno 7 febbraio 1881*, Torino, Loescher, 1881, p. 25.
- ⁴⁷ A. Brunialti, *La giusta rappresentanza di tutti gli elettori*, Roma, Stab. G. Civelli, 1878.
- ⁴⁸ C.F. Ferraris, *Nuovi studi sulla rappresentanza delle minoranze nel Parlamento*, in «Archivio Giuridico "Filippo Serafini"», vol. 8, Pisa, 1871, p. 24.
- ⁴⁹ I. Porciani, *Attilio Brunialti e la Biblioteca di scienze politiche*, in A. Mazzacane (ed.), *I giuristi e la crisi dello stato liberale in Italia fra Otto e Novecento*, Napoli, Liguori, 1986, pp. 191-230.
- ⁵⁰ A. Brunialti, *Il diritto costituzionale e la politica nella scienza e nelle istituzioni*, vol. I., Torino, Unione tipografico-editrice, 1896, p. 31.
- ⁵¹ A. Brunialti (dir.), *Scelta collezione delle più importanti opere moderne italiane e straniere di scienze politiche ed amministrative*, series 2, vol. 2, Torino, Unione tipografico-editrice, 1894.
- ⁵² A. Brunialti, *Libertà e democrazia: studi sulla rappresentanza delle minorità*, Milano, E. Treves editore, 1871, pp. 100-102.
- ⁵³ It is interesting to see that this paragraph contained the book by professor Brunialti, published in 1871, was reported, almost literally, in the book T. Arabia, *La nuova Italia e la sua costituzione*, Studii, Napoli 1871, p. 347. This citation testifies the spread of the works of the professor Brunialti.
- ⁵⁴ E. Serra Gropelli, *Della riforma elettorale*, Firenze, Cotta e compagnia Tipografia del Senato del Regno, 1868, pp. 63-65.
- ⁵⁵ «La Norvège a une Constitution des plus démocratiques de l'Europe sous le rapport des droits des représentants du peuple et le peu de privilèges de la couronne, mais par contre assez conservative en ce qui concerne le droit électoral»; (Biedermann, *Les systèmes représentatifs*, cit., p. 184).
- ⁵⁶ L. Palma, *Del potere elettorale negli Stati liberi*, Milano, E. Treves editore, 1869, p. 76.
- ⁵⁷ Ivi, p. 118.
- ⁵⁸ Brunialti, *Libertà e democrazia*, cit., pp. 106-108; «col pane queste masse vorranno anche il potere»: the sentence quoted might be translated "once obtained the financial wealth (the bread) people will struggle also for the power".
- ⁵⁹ G. Padelletti, *La rappresentanza proporzionale in Italia. A proposito di recenti pubblicazioni*, in «Nuova antologia di Scienze, lettere ed arti», anno VI, volume XVIII, fascicolo IX, 1871, p. 166.
- ⁶⁰ A. Brunialti, *Legge elettorale e politica commentata*, Torino, Unione tipografico-editrice, 1882, pp. XXXI.
- ⁶¹ Brunialti, *La costituzione italiana*, cit., p. 7.
- ⁶² Ivi, p. 11.
- ⁶³ Ivi, p. 21.
- ⁶⁴ «La scienza è il più odioso dei despoti quando non se ne fa ministro responsabile la pubblica opinione», *ibidem*.
- ⁶⁵ Ivi, p. 25.
- ⁶⁶ Ivi, p. 26.
- ⁶⁷ *Ibidem*.
- ⁶⁸ Ivi, p. 30.
- ⁶⁹ Padelletti, *La rappresentanza proporzionale*, cit., p. 168.
- ⁷⁰ Dareste, *La dernière crise politique*, cit., p. 347.
- ⁷¹ L. Palma, *Le costituzioni moderne*, in A. Brunialti (dir.), *Scelta collezione delle più importanti opere moderne italiane e straniere di scienze politiche ed amministrative*, series 2, vol. 2, Torino, Unione tipografico-editrice, 1894, p. 339. In the

same work, also Attilio Brunialti offered to the reader a short description of the Norwegian constitutional conflict (pp. LXIII-LXIV).

⁷² Palma, *Le costituzioni moderne*, cit., p. 99.

⁷³ L. Palma, *Il diritto costituzionale negli ultimi cento anni. Discorso per l'inaugurazione degli studi dell'Università di Roma il 9 novembre 1882*, in *Questioni costituzionali: volume complementare del Corso di diritto costituzionale*, Firenze, G. Pellas, 1885, pp. 34-36.

⁷⁴ Brunialti, *La costituzione italiana*, cit., p. 36.

⁷⁵ Laing, *Journal of a residence*, cit., p. 125.

⁷⁶ Palma, *Le costituzioni moderne*, cit., pp. 339-340.

⁷⁷ A. Brunialti, *La legge nello Stato moderno*, Torino, Unione tipografico-editrice, 1888, p. CCLIV.

⁷⁸ Ivi, p. 342.

⁷⁹ Brunialti, *Il diritto costituzionale*, cit., p. 35.

⁸⁰ L. Palma, *Corso di diritto costituzionale*, vol. II, Firenze, Pellas, 1884, p. 389.