

The Second

IMAGINE Workshop:

CONSTITUTIONAL IMAGINARIES OF EUROPE IN COMPARATIVE HISTORY

JAN KOMÁREK
MICHAL KOPEČEK
AND BALÁZS TRENCSENYI
NATASHA WHEATLEY
MICHAL KRAJEWSKI
MARINA BÁN
BIRGIT AASA
PETR AGHA

iCourts, University of Copenhagen (ZOOM)

24 and 25 November 2020

IMAGINE

European Constitutional Imaginaries

Utopias, Ideologies and the Other

This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (ERC Starting Grant No. 803163).



IMAGINE

European Constitutional Imaginaries

Utopias, Ideologies and the Other

“Constitutional Imaginaries” are sets of ideas and beliefs that help to motivate and at the same time justify the practice of government and collective self-rule. They are as important as institutions and office-holders, providing political action with an overarching sense and purpose recognized by those governed as legitimate. Constitutional imaginaries can be seen as 'necessary fictions' that make political rule possible, or as ideologies understood in (post-) Marxist terms as 'means of domination'. Even if “necessary” in the former sense, we believe that by better understanding constitutional imaginaries we may better address various injustices produced by their ideological effects.

IMAGINE's comparative strand of research seeks to understand how the ideas of statehood and constitutionalism, developed at the national level, responded to the demands of European integration and got transformed along the way. While our primary focus is Europe, we do not leave out of the picture the whole international dimension of national constitutions and its conceptual history.

We put special emphasis on post-communist member states, but do not leave “Old Europe” (whatever it is) out of the picture. The aim of the project is to integrate various perspectives into a more complete picture of how constitutional law imagines Europe than has been ever achieved.

AIM:

This workshop brings together our four postdoctoral researchers, each of whom conducts a case study focused on one post-communist country, and three experienced scholars who contributed significantly to our understanding of the history of political and constitutional thinking in East and Central Europe. We want to focus on their key findings, methodological challenges of their projects and discuss the early ideas of our researchers on how they plan to go about their case studies.

We have asked our guests to briefly present their respective projects and answer questions from us, such as:

- What was the most un-expected finding you made in your project?
- Have you found it difficult to find an audience “in the West” or at the global level for your project, which has focused on East and Central Europe – beyond your colleagues in the field who are also interested in this area and its history?
- Do you think there is something that needs to be better understood at the European (global) level about East and Central Europe, so that Europe as a whole understands itself better?
- What else might be “out there” when speaking about discovering the importance and potential influence of East and Central Europe's intellectual history in broader terms and its imaginative myths about Europe more specifically?
- How do you (and how to) make broader abstract generalisations about East and Central Europe in the context of so many different and diverging national, cultural and historic realities? Does it do justice to look at East and Central Europe as one unit or should national differences be more pronounced?
- The methodological question (especially from us as lawyers to our invitees as historians): how to methodologically prudently draw contemporary conclusions from historical observations, e.g. how to mindfully claim that a historical understanding of a concept or idea really has some or crucial influence over current predominant understandings and “collective myths”?
- What problems with delineating the scope of your study did you encounter?

We have also asked them to provide feedback on conceptual notes written by each of our researchers as they plan their case studies. These will be discussed in the second half of the workshop.

PROGRAMME AND SPEAKERS:

Note: All times are in CET; we apologize for the late time when the workshop ends, which is due to its transatlantic dimension.

TUESDAY 24 November, 13:30-15:30 CET

13:30-13:45 **Jan Komárek: Introduction to the Workshop**

Jan Komárek is Professor of European law at the Faculty of Law, University of Copenhagen and IMAGINE's Principal Investigator.

13:45-14:30 **Michal Kopeček and Balázs Trencsényi: A History of Modern Political Thought in East Central Europe**

Michal Kopeček is the Head of the Ideas and Concepts Department at the Institute of Contemporary History in Prague, and Co-Director of Imre Kertész Kolleg, Friedrich Schiller University in Jena; *Balázs Trencsényi* is Professor in the Department of History, Central European University Budapest and Co-Director of Pasts, Inc., Center for Historical Studies at the CEU.

A History of Modern Political Thought in East Central Europe, published by the OUP in three parts in 2016-2018, is a synthetic work, coordinated by Balázs and authored by an international team of researchers, covering twenty national cultures and 250 years. It goes beyond the conventional nation-centered narratives and presents a novel vision especially sensitive to the cross-cultural entanglement of political ideas and discourses. Its principal aim is to make these cultures available for the global 'market of ideas' and revisit some of the basic assumptions about the history of modern political thought, and modernity as such.

14:30-14:45 **Break (Coffee DIY...)**

14:45-15:30 **Natasha Wheatley: The Temporal Life of States: Sovereignty at the Eclipse of Empire**

Natasha Wheatley is Assistant Professor of History in the Department of History, Princeton University. Natasha's current book project, *The Temporal Life of States: Sovereignty at the Eclipse of Empire*, recasts the modern transformation of the world of states from the pivot point of Central Europe. It tracks a recurring set of questions about the legal birth and death of states from the cradle of Austro-Hungarian constitutional law into the interwar international order and, beyond that, to the crisis of global decolonization that followed the Second World War. Tracing the problem of states-in-time from the mid-19th century through to the mid-20th, it presents an unfamiliar pre-history of the international law of decolonization, as well as new ways of understanding Central Europe in the world.

Workshop drinks Yes, we have to do without them... However, it should not mean that we cannot engage in social drinking, if only in front of our screens, thinking of the second day of the workshop.

TUESDAY 24 November, 13:30-15:30 CET

13:30-14:00 **Michal Krajewski: Poland**

Before the events known as the Polish Constitutional Crisis or Backsliding just a handful of constitutional scholars in Poland took seriously the idea of a critical and contextual analysis of constitutional law as an academic discipline and social practice, including the foundations of the method of constitutional reasoning employed by the Constitutional Tribunal. Such ideas were even criticised as lacking a proper 'scientific' approach, encouraging legal and moral relativism, and possibly threatening the constitutional setting and fabric of the society. Nowadays, we increasingly realise that the mainstream imaginary of constitutional law as a rigorous science have served to conceal strong political aspects of Constitutional Tribunal rulings during the last decades. An academic strategy to build a value-neutral 'science' of law, based on the analytical philosophy, finds its origin in the communist era, when it was supposed to shield legal practice from politics. At the same time, this imaginary might have been reinforced by transplanting from the 'Western Europe' what has been considered an objective order of constitutional values. The adoption of these objective rule-of-law-related values was seen as indispensable to foster especially the EU accession. The imaginary of constitutional law and the constitutional review of parliamentary legislation as objective and scientific has had a profound impact on the constitutional practice and academia after 1989, on the self-understanding by constitutionalists of their social role, research interests and methods, professional careers, teaching methods, let alone the self-legitimising narrative developed by the

Constitutional Tribunal as the intellectual centre of Polish constitutionalism. The research hypothesis is that the dominance of this constitutional imaginary over the last decades in Poland may partly explain more recent countertrends such as various references to the idea of 'political constitutionalism' emphasising the sovereignty of the political branches. A deconstruction of this imaginary and an exploration of alternative imaginaries formed along the way, in the spirit of 'ideology critique', must precede any constitutional reconstruction attempts.

14:00-14:30 **Marina Bán: Hungary**

My case study focuses on the presence of history in Hungarian constitutionalism. The study centers on the concept of the historical constitution of Hungary. The historical constitution entails a collection of documents considered foundational in ensuring the continuity and survival of the state, especially during times of occupation and oppression. The case study intends to examine how and why the historical constitution; and historical narratives in general are used on the political, juridical and academic level to shape Hungary's constitutional identity in relation to the EU.

The case study consists of three parts: the first is a workshop organized in Hungary, to assemble local experts in the areas of law and history to discuss the past and current appearances of historical narratives in Hungarian constitutionalism. The workshop will also reflect on how relying on these narratives and on the historical constitution, in order to assert sovereignty and identity, interacts with European constitutional imaginaries.

The second aspect of the case study encompasses a series of interviews with judges and lawmakers who have shaped the present use of the historical constitution concept as a legal doctrine, both in the Hungarian Fundamental Law, and constitutional case law.

The third aspect of the case study, the final paper, will serve to synthesize the results of the workshop and the interviews, zooming on the concept of the historical constitution by examining its development as well as its past and current relevance in constitutional discourse. The case study will shed light on a unique aspect of Hungarian constitutionalism, intending to reveal an unexplored perspective regarding the present constitutional and democratic situation in the country.

14:30-15:00 **Birgit Aasa: Estonia**

Estonia is in many ways different from the other IMAGINE case studies. It is the only ex-Soviet Republic and not only a satellite state. It has never made any imperial claims or felt even a remote equal footing in imperial constellations reigning on its soil. It has an excruciatingly long history of oppression and occupation and an equally short and fragile history of statehood. This provides a unique perspective and understanding both of sovereignty, statehood and self-determination, but also possibly of EU accession and membership. The Estonian case study plans to zoom in on these conceptions of sovereignty, freedom and statehood to test the hypothesis that in the Estonian imagination of them, sovereignty is necessarily always shared because of the collective anxiety that we cannot make it alone.

15:00-15:30 **Petr Agha: Czech Republic (and Czechoslovakia)**

The Czech leg of the project focuses on the so called Czech Question. It is a term which is loaded with many historical, geopolitical and cultural connotations which may help to unlock the pathways to the understanding of the Czech constitutional imaginaries and their interplay with the European ones. Constitutional imaginaries cover a wide range of elements, four of which we will analyse. The first is the "Back to Europe!" imaginary, which expresses the conviction that Czech Republic behind the Iron Curtain had been cut off from its roots. The second imaginary is the self-understanding of Czechs as a non-self-evident nation, the term used by Milan Kundera, which is perhaps best understood as that Czech national identity has been formed and shaped by the multiplicity of territorial and governmental entities. This was significant for the formation of Czech national identity, which was constructed both in contrast to Austria and Germany with which the Czechs shared a cultural, geographical, political and economic space, and later in contrast to Slovakia and the Soviet Union. The third imaginary this leg of the project will pursue is the position that the interplay between "antipolitical politics" and "political politics" (articulated by Václav Havel) plays in the constitutional imaginaries of Czechs and how it connects with elite discourse of the judiciary and government officials. The fourth imaginary complements the first three and addresses the gap between public, official, state and institutionally anchored memory of the pre-89 regime as well as the post-89 years of transformation, as there is no shared interpretation of transformation because its consequences have been so diverse and opposite. The combination of these imaginaries might help us identify how the Czech national constitutional imaginaries responded to the demands of European integration and at the same time highlight imaginaries and dissenting voices which were perhaps lost and silenced by the "nachholende Revolution" which dominated the constitutional imaginaries of the European project and captured

most of the elites which contributed to the formation of the discourse within which most of the Czech constitutional imaginaries played out.

15:30-15:45 Final remarks

Workshop to dinner Go to your favourite restaurant, if you still can, or order to home; we hope be able to properly host you next spring, when our guest are coming for the Author meets critics event, co-organised with CEMES, University of Copenhagen – precise date to be announced.

**(If you are interested in participating,
please get in touch with IMAGINE PI,
Professor Jan Komárek
at Jan.Komarek@jur.ku.dk.)**

IMAGINE

European Constitutional Imaginaries

Utopias, Ideologies and the Other

