

IMAGINE

European Constitutional Imaginaries

Utopias, Ideologies and the Other

Freedom and power of European constitutional scholarship

Third IMAGINE Workshop
21-25 June 2021, (Prague/Copenhagen/ZOOM)

Thematic introduction:

Constitutional law scholarship has always been close to public power. Constitutional lawyers have contributed to the legitimacy of the State, supported its transformations and influenced or served those in power through their arguments and positions about constitutional law. EU constitutional scholarship is not an exception. The Third IMAGINE workshop will analyse the role of ideas and of those who produce them in the creation of the European constitutional imaginary. It will also look into the various dimensions of power within the field.

IMAGINE (ERC Starting Grant No. 803163) investigates European Constitutional Imaginaries: sets of ideas and beliefs that help to motivate and justify European integration as a constitutional project. It examines such imaginaries at two levels: First, supranational, produced by thinkers aiming at the international audience and communicated across borders – between various levels of government and across particular Member States. Second, IMAGINE seeks to understand how the ideas of statehood and constitutionalism responded to the demands of European integration and got transformed along the way. We put special emphasis on post-communist member states, but do not leave “Old Europe” out of the picture. The aim of the project is to integrate various perspectives into a more complete picture of how constitutional law and theory imagines European integration. More information at <https://imagine.sites.ku.dk/>.

Programme:

The workshop will be spread over the whole week of 21 – 25 June 2021. Each session will take place on a separate day, ideally at the same time (starting probably at 17:00 CET, but we may need to adjust this to the speakers’ and discussants’ availability). Sessions will last 2 to 2,5 hrs, including a short break in the middle. The workshop will be open to registered participants.

All speakers are confirmed.

DAY 1 • Monday 21 June 17:00 – 19:30

Jan Komárek and Michał Krajewski (iCourts/IMAGINE): Freedom and power of European constitutional scholarship – introduction to the workshop

PANEL I • Theoretical reflections on the place of constitutional scholarship in European law

This panel will take up more theoretical questions concerning the role of academic scholarship for constitutional law – in Europe, but also more generally. Has the role of constitutional scholars changed since the times of Hans Kelsen, who wanted to purify legal science from politics in order to emancipate it from various pressures scholars felt? Is EU constitutional scholarship ever capable of such emancipation? Or, is the role of the scholar an active one, or even activist, with a mission to defend the fundamental values of the law they are expounding?

Chair: *Urška Šadl (EUI)*

Speakers:

- *Alexander Somek (University of Vienna)*
- *Karen Alter (Northwestern University)*

Discussants – welcome to submit their own, shorter reflections on or reactions to the papers:

- *Armin von Bogdandy (Max Planck Heidelberg), Michelle Everson (Birkbeck, University of London)*

DAY 2 • Tuesday 22 June 17:00-19:30

PANEL II • Hegemony and emancipation in and through EU constitutional scholarship

Constitutional scholarship can be seen as an instrument of power – but also emancipation, allowing those who contribute to it to imagine other visions of the legal and political order. This panel will seek perspectives that reflect on such (potentially) emancipatory nature of EU constitutional scholarship, but also its limitations, given by the geographical or other location of the author.

Chair: *Joana Mendes (University of Luxembourg)*

Speakers:

- *Hugo Canihac (University Saint-Louis, in Brussels)* - a piece on EU constitutional lawyers in France (how far has this been mainly an Anglo-Saxon/German generated domain? Why there is no French “Joseph Weiler” or “Armin von Bogdandy”, who would have influenced the field in the same way?
- *Jo Shaw (University of Edinburgh)* – In our Survey on European constitutional imaginaries we have seen that male authors dominate the field – in terms of perceived influence, but also the

number of authors contributing with “big visions” of EU constitutional order. Why is this so? And is it a correct view of the field and the nature of the discipline?

- **Lech Garlicki (University of Warsaw)** on doing European constitutional law in an authoritarian regime

Discussants – welcome to submit their own, shorter reflections or reactions to the papers:

- **Renáta Uitz (CEU Vienna), András Jakab (University of Salzburg)**

DAY 3 • Wednesday 23 June 17:00-19:30

PANEL III • Influence and Power

Influence is a form of power, but the relationship between the two is circular: some scholars (and ideas) seem to have influence (only) because they occupy positions of power – institutional, but also social. However, scholarship becomes influential also through the power of ideas expressed through it. How does this process work and how shall we actually measure the influence of particular scholars and schools of thought?

Chair: Fernanda Nicola (American University)

Speakers:

- **Antoine Vauchez (Université Paris 1-Sorbonne/iCourts)**, ‘When Scholarship Matters: Theory-Building and Theory Effects in the EU Polity Context’ – (to build on *IMAGINE Working Paper No. 7*, <https://ssrn.com/abstract=3647175>)
- **Jan Komárek and Michał Krajewski (iCourts/IMAGINE)**: ‘So, who is influential? Methodological reflections’

Discussants – welcome to submit their own, shorter reflections or reactions to the papers:

- **Daniela Caruso (Boston University) and Loïc Azoulai (Science Po Paris)**

DAY 4 • Thursday 24 June 17:00-19:30

PANEL IV: ‘From the hills of Fiesole’

Chair: Mikael Rask Madsen (iCourts, University of Copenhagen)

Speaker:

- **Bruno de Witte (Maastricht/EUI)**: In his book *Brokering Europe* (CUP 2015) Antoine Vauchez wrote that the “reinvention [of European law] that we can conveniently place under the banner the ‘constitutionalization of Europe’ flourished most particularly in the hills of Fiesole between Badia Fiesolana and the Villa Schifanoia, the home of the law department of the European University Institute (EUI) since its creation in 1976’. We will ask one of the key

protagonists of this process and probably the longest-serving member of the EUI academic staff, Bruno de Witte, to comment on this.

Roundtable: *Monica Claes* (Maastricht University), *Antoine Vauchez* (Université Paris 1-Sorbonne/iCourts), *Michael Wilkinson* (LSE); *Joseph Weiler* (NYU)

DAY 5 • Friday 25 June 17:00-19:30

PANEL V • Scholarship and the Court

Chair: *Monica Claes* (Maastricht University)

Speakers:

- *Jan Komárek* (iCourts/IMAGINE) and *Joseph Weiler* (NYU), ‘The Court of Justice Written by Itself’

Scholars are usually preoccupied with the question of whether their scholarship matters for legal practice, particularly courts. In this paper we however ask an opposite question: what is the value of judges’ academic contributions, and how do their contributions add to the authority of their institution, especially when it is the Court itself they are writing about? In other words, how we lawyers (both academics and those outside the Court), should take the “Court written by itself” in our internal discourse of law?

Roundtable:

- *Allan Rosas* (University of Turku; 2002-2019 Court of Justice of the EU); *Gertrude Lübbe-Wolff* (University of Bielefeld, 2002-2014 Federal Constitutional Court of Germany)

Closing remarks

Jan Komárek and Michał Krajewski (iCourts/IMAGINE)

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