CONSTITUTIONAL IMAGINARIES: THE STORY OF THE RISE AND FALL OF INTELLECTUAL ENCHANTMENT

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I INTRODUCTION

'What happened to the European Union constitutional imagination?' asks Jan Komárek in the introduction to the book on the European constitutional imaginaries, narratives and utopias.[1] Are the language and metaphors of constitutionalism in the Union still helpful or relevant, and if so, how? This contribution does not read Komárek's question as concerning the (nostalgia-generative) demise of constitutional vocabulary.[2] Rather, this paper modestly suggests a response to the abovementioned question. It does so by looking at the material and socio-economic conditions of the European constitutional academia and scholarship. I believe that such a perspective can quite easily fit the book's sensitivity to the political-economic layer of law. Before moving on to the argument, two caveats should be highlighted. First, the paper does not make any claim to give an exclusive and final response. Instead, it suggests that, apart from exploring the political economy or socio-economic philosophy of the EU, it is also worth seeking explanations a bit closer - in the material preconditions of the academic profession itself.

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[1] Jan Komárek, 'European Constitutional Imaginaries: Utopias, Ideologies, and the Other', in Jan Komárek (ed), *European Constitutional Imaginaries: Between Ideology and Utopia European Constitutional Imaginaries: Between Ideology and Utopia* (Oxford University Press 2023) 1-2.

[2] Which had played a remarkable role in a concrete period, prior to the EU crises.

Second, the paper is not driven by the wish to save or praise the grand (or at least large enough) constitutional narratives for their own sake. Rather, it assumes that at least some of the constitutional imaginaries have had refreshing, enchanting, inspiring, and emancipatory potential. It is this potential that, I argue, can serve as an explanatory tool for tracing the transformation of the European constitutional imaginaries.

II Intellectual Enchantment and the Birth of the Academic Discipline of EU Constitutionalism

Both the research project and the resulting volume are precious for exposing an explicitly personal touch within the field of European constitutional law. Komárek admits[3] that for him, just as for many other European constitutional scholars,[4] the work of Joseph Weiler was crucial for developing his early interest in EU law, which previously they had associated with boring technical regulations and bureaucratic problems. No doubt, the suggestive style of Weiler, his metaphors and literary inclinations have spoken not only to one's mind and learning capacities but also to the heart or, if you wish, to one's potential to imagine. The story of the EU and its law was thus (re)told by Weiler and other constitutional scholars in a way that could inspire both imagination and academic investigation. But the relay race of intellectual allure apparently did not start at the author of *The Transformation of Europe*. A long time ago, Weiler himself reflected on how Eric Stein had turned the pieces of the early Community's legal doctrine, produced by the ECJ in cooperation with national actors, into the inspiring

[3] 'Why read The Transformation of Europe today? On Transformation's constitutional imaginary' (*EUI TV*, 2020) <www.youtube.com/watch?v=JMZ6FWc_GsI> accessed 8 October 2023.

[4] Jan Komárek, 'Whose Ideas Matter? Studying the Origins of European Constitutional Imaginaries' (2022) iCourts Working Paper Series no. 300 4, 23-24; Jan Komárek, 'Why Read *The Transformation of Europe* Today?: On the Limits of a Liberal Constitutional Imaginary', in Komárek (n 1) 137.

constitutional narrative.[5] Weiler further noted the dialogue between the disciplines of EU law and social sciences, in his words amounting to a mutual '*Eureka!*' discovery.[6]

Among the other persons and texts formative for EU constitutionalism, Weiler praised the 'law in context' movement, initiated in the late 1980s and 1990s by the works of Francis Snyder.[7] The latter author's call for the contextual study of EU law turned out to be so suggestive and inspiring as to impact many legal scholars to follow and to result in the founding of a special academic journal.[8] Snyder's texts alike had voiced enthusiasm and passion. They had advocated the analysis of new areas of the emerging academic discipline of Community law, 'an intellectually fascinating subject of study'.[9] Their author protested against the treatment of the Community law 'simply as a highly technical set of rules',[10] and against obsolete and

[5] Joseph H H Weiler, *The Constitution of Europe: 'Do The New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge University Press 2005) 225-226.

[6] Ibid., 226.

[7] Ibid., 229-230. See: Francis Snyder, 'New Directions in European Community Law' (1987) 14(1) Journal of Law and Society; Francis Snyder, *New Directions In European Community Law (Law in Context)* (Northwestern University Press 1990). Interestingly, the volume does not reflect on the intellectual legacy of Snyder, except for the contribution by Hugo Canihac, where the author includes 'the law in context' movement in the background for emergence of the theory of constitutional pluralism. See: Hugo Canihac, 'From Constitutional Pyramid to Constitutional Pluralism: The Transformation of the European Constitutional Imaginary', in Komárek (n 1) 171.

[8] Bruno de Witte, 'From the Hills of Fiesole – What the European University Institute Did for European Constitutional Law' (2022) iCourts Working Paper Series no. 298 4-6; Francis Snyder, 'Editorial' (1995) 1 European Law Journal.

[9] Snyder, 'New directions' (n 7) 167.

[10] Ibid.

fragmented forms of teaching Community law.[11] But Snyder was outspoken also about the critical edge of the research methods and goals that he had suggested. He had considered the rising European legal discipline to be an obvious material for critical investigation, focusing on topics such as the ideologies of the common market, political economy, and neo-colonialism.[12] I will come back to this critical underpinning of 'the law in context' in Section V of this paper.

In a way, it is not surprising that the 'strong poets'[13] of legal academia like Stein, Weiler, Snyder, Neil MacCormick, or others[14] have had such strong, alluring impact. The narrative-makers enjoyed all the freedom and potentiality that they could get in the young, jurist-driven discipline of EU law. It is already a well-documented and oft-repeated truth that European constitutionalism has been brought into being, to a large extent, by concrete individuals in the legal profession: judges, lawyers, and scholars.[15] But there is one more, quite elusive, yet indispensable piece of puzzle to this picture: academic passion and enchantment. I interpret the volume on constitutional imaginaries as an initiative to put this piece into place. In other words, it is a tribute to the role of intellectual enthusiasm in the creation of the academic field of EU constitutionalism. The volume aims to tell the tale of constitutional tales – a story of how certain (often very personal in an academic sense) ideas, narratives, and notions were, and sometimes continue

[11] Ibid., 168-169. See also the retrospective text on Snyder's ideas which, among others, highlights this aspect of his thought: Carol Harlow, 'The EU and Law in Context: The Context' (2022) 1 European Law Open 209.

[12] Snyder, 'New directions' (n 7) 169-180.

[13] Cf. Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge University Press 1995) 61-62.

[14] Komárek, 'Whose ideas matter?' (n 4).

[15] For research on these processes see: Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015); Tommaso Pavone, *The Ghostwriters: Lawyers and the Politics Behind the Judicial Construction of Europe* (Cambridge University Press 2022).

to be, inspiring and tempting. I believe, as Komárek seems to suggest in the introduction to the book,[16] that the project also has further ambition, even if not very much voiced later throughout the volume. The ambition would be to understand what has happened to the very capacity of imagining and narrating the constitutional tales in Europe. After all, the discipline of EU constitutionalism has grown in maturity, and in particular in the number of texts that are produced every year by those referring to the European constitutional vocabulary. And yet, Komárek identifies a shift in our imaginative capacity, since '[t]he kind of constitutionalism emerging from the past decade and a half has lost its utopian character'.[17]

III *EX ORIENTE LUX*? THE CURRENT PREOCCUPATION OF THE ACADEMIC DISCIPLINE

In 2014, Komárek still waited for a new wave of enthusiasm – for 'the existential revolution in Europe', through which the East-European experience of 'return to Europe' after communism would help reimagine the EU anew.[18] One year later, the PiS party won the parliamentary elections in Poland, and illiberalism in the Union ceased to be a local, post-imperial Hungarian excess. It became a field of study in its own right, with many (rightly) critical voices commenting on the policies implemented by Viktor Orbán and Jarosław Kaczyński. In consequence, the potential inflow of imaginaries from the East has been again postponed.[19] Instead, we have got

[16] Komárek, (n 1).

[17] Ibid., 1.

[18] J. Komárek, 'Waiting for the Existential Revolution in Europe' (2014) 12 International Journal of Constitutional Law 190. In the text concluding the book, Komárek annunciates the next volume, with a focus on the narratives created at the national level in non-Western Europe. See: Jan Komárek, 'Conclusion: Making 'the Other' Explicit', in Komárek (n 1) 378-380.

[19] In the conclusion to the volume Komárek cites the speech of Václav Havel at the Polish parliament of 1990, in which the Czech President argued that Central Europe

much research trying to explain what, why, and how has happened to our post-communist liberal dream and analysing whether and how we can still return to it. Hence, there have been many attempts to describe and conceptualize the most recent course of action in East-Central Europe. To be sure, one should not disregard country reports, case analyses, and explanations to a 'Western' reader of how ill our East-European lands fare. These scholarly interventions are indispensable to our knowledge of what is happening to Eastern democracies. One could ask, however, what happens next with this collection of knowledge. Surely, part of it can and indeed is being used by policy-makers, courts, activists, and teachers. But it is not equally certain that the knowledge we have gathered will also provoke new, robust, refreshing constitutional narratives for the EU, reaching beyond the context of the rule of law crisis. In reality, to frame EU reactions to the rule of law violations, European lawyers keep invoking the concept of militant democracy, taken from the inter-war German constitutional theory. Signe Rehling Larsen, however, demonstrates how the normative and explanatory potential of this concept is historically and geographically limited.[20] No doubt, one of the very painful implications of the illiberal surge is that the East-Central European narratives are absent precisely at the moment when they are most needed. While governments are flirting with authoritarianism (Hungary even friendly nodding towards Russia), the intellectual alert on the 'darker legacies' of Russian imperialism in the region could have benefited from a decisive EU response to the ongoing war.[21] But the current

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could give the West, among others, 'bold peace initiatives, untapped creative potential, the ethos of freshly gained freedom'. Komárek comments that '[i]nstead of coming up with fresh ideas that could inspire the West, it became a period of 'catching up', followed by a more recent revolt against ostensibly Western values'. See: ibid., 379.

[20] Signe Rehling Larsen, 'The European Union as 'Militant Democracy'?' in: Komárek (n 1).

[21] Cf. Christian Joerges and Navraj Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal*

predicament of constitutional narratives is not only a matter of a missing East-European contribution.

Here comes a personal testimony in a modest attempt to parallel the one of Komárek. When entering the field of EU constitutional scholarship in 2018 in the hills of Fiesole,[22] I quickly noticed that this is not a field convenient for constitutional narratives or imaginaries. Constitutional scholars are not expected to imagine. Rather, they are primarily expected to deliver (surely, in-depth and competent) responses to (broadly understood) policy questions about what is happening in East-Central Europe, and how to tame it.[23] At best, scholars are supposed to do the exercise of delineating the limits for national or supranational excesses. They are called to separate the wheat from the chaff as regards what is justified for either national or EU legal actions. To be sure, EUI researchers do receive both stimulating intellectual environment and freedom to explore methodological avenues of their choice. But the field itself – the universe of call for applications and of call for papers, of emerging academic institutions, of the publishing race, of blogosphere and of grant competition – leaves little doubt to a young scholar. EU constitutional law is certainly not all about constraining populist democracy.[24] But it is indeed very much about finding solutions to the urgent policy problems. In the remainder of this paper, I will further elaborate on how the current predicament of legal academia may impact our imaginative capabilities.

Traditions (Hart 2003). As Komárek admits in the introduction to the volume, the Russian invasion of Ukraine began only after the closing of the content, thus it could not be discussed. See: Komárek (n 1) 17.

[22] Cf. de Witte (n 8), the title following: Vauchez (n 15) 202.

[23] On the differentiation between policy-oriented research and critical research in legal academia, see: Martti Koskenniemi, 'What is Critical Research in International Law? Celebrating Structuralism' (2016) 29(3) Leiden Journal of international Law 29.

[24] Cf. Jan Komárek, 'The EU Is More Than A Constraint On Populist Democracy', (*Verfassungsblog*, 25 March 2013) <https://verfassungsblog.de/the-eu-is-more-than-a-constraint-on-populist-democracy/> accessed 8 October 2023.

IV Embracing the Socio-Economic Underpinning of Constitutional Imaginaries

Very much à la mode, much of the volume's content follows 'the need to look at the political economy'.[25] In this regard, we have got a truly impressive diversity of problems discussed. Michael A Wilkinson argues that it was the traumatic, mainly German experience that has shaped much of the ideological foundation of the European Community's law.[26] Hjalte Lokdam reconstructs the ideologies underlying the regulation of the Eurozone throughout the decades, from the establishment of the Treaty of Maastricht up until the present day.[27] Jeffrey Miller and Fernanda G Nicola critically explore how EU constitutional law and discourse have (not) confronted racism and its entanglements with capitalism.[28] Damjan Kukovec introduces the notion of economic and political powerlessness of individuals to the debates of EU constitutionalism and constitutional pluralism.[29] While taking a broad perspective on constitutional imaginaries, Marija Bartl examines the idea of prosperity in the European constitutional tradition.[30] Some of the

[25] Komárek (n 1), 11-13. Among the many books published in recent years on the topic, see: Guillaume Grégoire and Xavier Miny (eds), *The Idea of Economic Constitution in Europe* (Brill Nijhoff 2022); Poul F. Kjaer (ed), *The Law of Political Economy: Transformations in the Function of Law* (Cambridge University Press 2020); Achilles Skordas, Gábor Halmai and Lisa Mardikian (eds), *Economic Constitutionalism in a Turbulent World* (Edward Elgar Publishing 2023); Michael Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021).

[26] Michael A Wilkinson, 'On the New German Ideology' in Komárek (n 1).

[27] Hjalte Lokdam, 'Beyond Neoliberal Federalism? The Ideological Shade of the Eurozone's Constitutional Order after the Eurozone Crisis' in Komárek (n 1).

[28] Jeffrey Miller and Fernanda G Nicola, 'The Failure to Grapple with Racial Capitalism in European Constitutionalism' in Komárek (n 1).

[29] Damjan Kukovec, 'Constitutionalism and Powerlessness' in Komárek (n 1).

[30] Marija Bartl, 'Imaginaries of Prosperity as Constitutional Imaginaries' in Komárek (n 1).

authors discuss experiences and the historical and biographical circumstances which have lurked behind the work of the key EU imaginary-makers.

What is lacking in the volume, however, is the more thorough and direct treatment of the socio-economic and political conditions of the European academia itself. If much of the ideologies, utopias, and language of European constitutionalism have been created and solidified by constitutional scholars, it is a pressing need to analyse the circumstances of academia as our closest area of social reality. In other words, if scholars and intellectuals are powerful actors of constitutional imaginaries (as the book suggests), the material analysis of constitutionalism should embrace these actors as well.[31] I believe that such an analysis, in particular, could help us to better understand the question posed by Komárek, about what and why has happened with the potentiality to imagine in constitutional terms. Below, I sketch a modest proposal, indicating social circumstances which could be relevant for such a type of analysis. I try to reflect on what, beyond the purely intellectual sphere of ideas and concepts, impedes the ability to reimagine the constitutional character of the EU. This is only a preliminary suggestion, and by no means a contribution that could in any way equal the depth of the political-economic explorations included in the volume. I should also firmly emphasize that the below depiction of the academic predicament, even if of quite a bitter undertone, is not meant to be a complaint catalogue about the current times. Instead, it is a very tentative attempt to connect the dots: between the discipline's socio-economic preconditions on the one hand, and the poor condition of the European constitutional imagination on the other hand.

Firstly, the market imperative of the mass production of academic publications certainly does not foster deep reflection, as much as the latter is indispensable for imaginaries. But in fact, there is low demand for reflective texts among readers – publications to be digested have no end, and attention

[31] Cf. Marco Goldoni and Michael A Wilkinson (eds), *The Cambridge Handbook on the Material Constitution* (Cambridge University Press 2023).

is the new gold due to its scarcity. Life of publications is dramatically short not only due to the pace of events, legal and political changes, but also due to the systemic pressure on 'having the publication out'. Komárek mentions that the seminal essay 'The Transformation of Europe' published in 1991 in The Yale Law Journal has been the fruit of the 13-year-long research by Weiler.[32] Today, this sounds like a grandfather's fairytale, not only because the body of the European constitutional law to be analyzed was much narrower in the 1980s than it is now. But one should not too much criticize (or rather grumble about) the very forms of publishing. There is nothing wrong with legal blogosphere *per se*, and it is a positive change that we have now many opportunities to get our work published (relatively) fast. The problem lies instead, as mentioned in the preceding section, in the ingrained expectations as to the content of academic outputs. Even if many and pluralistic, the publishing venues of today have a great urgency bias, epitomized in micro-reports, solution-proposals, and comments on the most recent events. Much less often they can be considered the right place for theoretical and distanced inquiries.

This is indeed the second systemic aspect which impedes thinking and writing in terms of constitutional imaginaries: the orientation at tangible or practically applicable results. I believe it is a deeply rooted problem, reaching to the dominant trends in methodology of legal research. Understandably, the mass inflow of academic texts provokes skepticism as to the value of their academic input. Sources of law are easily available, and most of them are quickly discussed and commented on at length. This situation overall generates a demand for measurable outcomes – something palpable, able to persuade the overwhelmed readers that what they receive is really new data worthy of their attention. Tangible outcomes are also desired for sustaining our identity as academics. The measurable results, useful for policy-making, help both convince the grant-givers, and justify the existence of academia before our governments. Legal academic methods and goals are, in this

[32] Komárek (n 4) 123.

sense, political, closely linked to a concrete redistribution of resources at the various levels of assessment and evaluation.[33] For instance, it seems that one cannot fully understand the philosophical and ideological underpinnings of empirical legal studies without embracing the material conditions of today's academia.[34] The reasons behind the gradual extinction of academic positions in legal theory, or in turn the reasons behind the rise of empirical projects, are certainly complex. But part of them relates to the socio-economic circumstances of our profession. If, as it seems to be the case, this is not a good time for constitutional narratives and imaginaries, I believe this is partly because they need speculation, rereading of sources, risky intellectual merges, and delayed academic gratification. To be sure, quantitative studies, interviews, archival research or policy reports provide a unique contribution to legal knowledge. They are not to be despised. Moreover, they potentially give a great foundation for constitutional narratives and imaginaries. But too often, the 'data production' is being treated as the goal in itself, as a currency that ensures intellectual self-sufficiency: research efforts are fragmented, cooperation and exchange between the various research fields is limited. And here we arrive at the third systemic element of the academic predicament, namely the personal engagement within legal academia, or the lack thereof.

[33] In their text about the politics of the empirical research in law, Tommaso Pavone and Juan Mayoral discuss how this research connects to 'market demands for useful knowledge' and how the 'battle was waged in the arena of what we term "knowledge politics": ELS [empirical legal studies – MK] embraced a narrow conception of the "empirical" as quantifiable data lending itself to statistical analyses responsive to evolving social and market needs'. See: Tommaso Pavone and Juan Mayoral, 'Statistics as if Legality Mattered: The Two-Front Politics of Empirical Legal Studies', in Marija Bartl and Jessica C Lawrence (eds), *The Politics of European Legal Research* (Edward Elgar Publishing 2022) 80, 84-85, 88-90.

[34] Cf. Ibid.; Urška Šadl and Jakob v H Holtermann, 'The Foundations of Legal Empirical Studies of European Union Law: A Starter Kit', in Christoph Bezemek, Michael Potacs and Alexander Somek (eds), *Vienna Lectures on Legal Philosophy, Volume 2: Normativism and Anti-Normativism in Law* (Hart 2020).

Indeed, intellectual enchantment and enthusiasm presuppose some kind of personal engagement. Professors, students, and young researchers must have time to meet at small seminars and masterclasses. Instructors need time and energy, if they want to be able to spark interest among the people in the classroom. Syllabi must offer the students time for intellectual experiments and for an in-depth encounter with the sources. Teaching cannot have the status of the mass-scale customer service, outsourced as a necessary evil to the academic beginners.[35] In parallel, without time and space for extensive engagement and reflection, the interactions between academics will not bear the fruit of inspiring narratives. Conferences with discussion restricted to five minutes after each presentation are not helpful, nor are the cooperative research projects where contributors are strictly supposed to only report on their jurisdiction in brief. Certainly, there will always be individuals who, like the readers of 'The Transformation of Europe' in the 1990s, will find their way to passion even through the most boring and depersonalizing academic circumstances. However, the proliferation of opportunities is necessary: we need time and space for passing the baton of enchantment.

Both Komárek and Weiler have also criticized some (or similar) of the phenomena in European legal academia which I discuss above. The former commented on the impact that social media have on the field, while the latter opposed the quantity-oriented 'publication trap' and disrespect for the practice of teaching.[36] However, much research is still needed to comprehensively systematize these phenomena, as constituting the material

[35] Joseph H H Weiler, 'Editorial: On My Way Out IV – Teaching' (*EJIL: Talk!*, 25 January 2017) <https://www.ejiltalk.org/on-my-way-out-iv-teaching/> accessed 8 October 2023.

[36] Jan Komárek, 'Freedom and Power of European Constitutional Scholarship' (2021) 17(3) European Constitutional Law Review 424; Joseph H H Weiler, 'Editorial: On My Way Out – Advice to Young Scholars II: Career Strategy and the Publication Trap' (*EJIL: Talk*, 18 February 2016) <https://www.ejiltalk.org/on-my-way-out-advice-to-young-scholars-ii-career-strategy-and-the-publication-trap/> accessed 8 October 2023.

conditions which cannot be coped with by individual researchers alone. But are all these phenomena exclusive to legal academia? Not at all. Do they only concern the field of (European) constitutional law? Certainly not. I argue, however, that they may hamper, *in particular,* the academic work which could result in new inspiring imaginaries and narratives, should we want them to emerge. In other words, the fertile intellectual enthusiasm, elusive and unpredictable as it may be, has no good chance to flourish in the circumstances sketched above. In the next section, I try to indicate how we can critically frame the gradual fading of the European constitutional imaginaries under the pressure of the socio-economic circumstances.

V Intellectual Enchantment and Alienation

The material conditions hindering constitutional imagination are complex and multifaceted. There are neither obvious suspects to blame, nor simple solutions to be found any soon. Most of us (if not all) are somehow complicit. Again, the predicament is systemic, and goes far beyond the resistance capabilities of the individual academic ethics. It is a collective professional experience, strongly interconnected with the general situation of the market, labor, and economy. As such, it can be explored in terms of the tradition of the critique of ideology. Borrowing from Terry Eagleton, the so-understood ideology would signify 'the general material process of production of ideas, beliefs and values in social life', but also 'false or deceptive beliefs ... arising ... from the material structure of society as a whole'.[37] Komárek refers to the Marxist-inspired understanding of ideology as one of the ways to define the European constitutional imaginaries.[38] I propose to take a slightly different point of view: to look at the process of alienation, in which potentially emancipatory imaginaries transform into ideology.

In his early 'Economic and Philosophic Manuscripts', Karl Marx conceptualizes alienation as, among others, the alienation of the very activity

[37] Terry Eagleton, *Ideology: An Introduction* (Verso 1991) 28, 30.

[38] Komárek (n 1).

of labor from a working individual. In this sense, workers' own productive activity becomes something external, foreign and estranged to and from themselves. The socio-economic conditions hinder a worker from her self-fulfillment at work, from realizing her human capabilities and satisfaction. They impede her creativity and, indeed, her imagination. In this process of alienation, according to Marx, a worker:

> in his work … does not affirm himself but denies himself, does not feel content but unhappy, does not develop freely his physical and mental energy but mortifies his body and ruins his mind. … He feels at home when he is not working, and when he is working he does not feel at home. His labor is therefore not voluntary, but coerced; it is *forced labor*. It is therefore not the satisfaction of a need; it is merely a *means* to satisfy needs external to it. [emphases in the original] Its alien character emerges clearly in the fact that as soon as no physical or other compulsion exists, labor is shunned like the plague. … Lastly, the external character of labor for the worker appears in the fact that it is not his own, but someone else's, that it does not belong to him, that in it he belongs, not to himself, but to another. Just as in religion the spontaneous activity of the human *imagination* [emphasis added], of the human brain and the human heart, operates on the individual independently of him – that is, operates as an alien, divine or diabolical activity – so is the worker's activity not his spontaneous activity.[39]

Would it be possible to trace the story of the European constitutional imaginaries as the story of alienation of the professional academic activity? There are at least some very telling premises for such an understanding. The constitutional imaginaries of the Community had certainly enchanted many academics, and in this way had helped them to feel more at home at their own work. Hence the personal stories of fascination, of being saved from the boring and barren preoccupation with law. As I suggest above, if now we long for those capabilities of inspiring imagination and ask about the

[39] Karl Marx, *Economic and Philosophic Manuscripts of 1844* (Progress Publishers 1977) 71.

reasons for its shortage, we should take a closer look at the socio-economic circumstances of academia.

Moreover, one could associate the story of imaginaries with a particular form of alienation described by Marx, that is with fetishism.[40] The latter means that 'the products of the human brain appear as autonomous figures endowed with a life of their own, which enter into relations both with each other and with the human race.'[41] In the words of David Leopold, in fetishism 'human creations which have somehow escaped (we might say that they have inappropriately separated out from) human control, achieved the appearance of independence, and come to enslave or dominate their creators.'[42] As Eagleton comments, 'men and women fashion products which then come to escape their control and determine their conditions of existence.'[43] In this way '[i]deology freezes history into a 'second nature', presenting it as spontaneous, inevitable and so unalterable.'[44] Komárek himself argues that the European constitutional imaginaries can be understood as deceitfully reifying and naturalizing a particular picture of the EU.[45] I believe, however, that there is a more fundamental layer of investigation, that could supplement the volume's take on imaginaries-as-ideologies. It would be to analyse how constitutional imaginaries have been themselves alienated, so that we now tend to see them rather as deceitful stories than as empowering, personally-driven ideas.

Indeed, we can observe how some of the constitutional imaginaries have not only 'escaped' the control of the imaginary-makers, but even have turned

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[40] David Leopold, 'Alienation' (*Stanford Encyclopedia of Philosophy*, 2018, revised 2022). <plato.stanford.edu/entries/alienation> accessed 8 October 2023. Cf. also: Jon Elster, *An Introduction to Karl Marx* (Cambridge University Press 1986) 56-58.

[41] Karl Marx, *Capital: A Critique of Political Economy, Volume One* (Penguin Books 1982) 165.

[42] Leopold (n 40).

[43] Eagleton (n 37) 84-85.

[44] Ibid., 59.

[45] Komárek (n 1) 3.

against their very original normative motivation. They oppose the enchanting, critical, and refreshing potential of constitutional narratives. It is evident in the case of the theory of constitutional pluralism, of which some popular versions have become 'reified' and 'naturalized' as the indispensable components of EU constitutional law.[46] The more striking example concerns the imaginary of 'the law in context'. This had been an overtly critical and progressive project, later to become a misty, rather intuitive than theorized idea about the 'interdisciplinary' legal research. Much more often than with the critical legal research, 'the law in context' is now associated with methods and research goals of growing popularity, such as empirical legal studies.[47] Likewise, proposing 'the contextual approach' (whatever it is intended to denote) seems to be a safe choice when one applies for research funding or creates a study curriculum. But it is rarely remembered that Snyder had originally called for 'at least three levels' of the contextual study of law.[48] Interdisciplinarity is but one level. The other one is the analysis of 'new areas of study' of EU law, in particular those less popular and neglected.[49] The last level is 'to begin, in both teaching and research, to analyse European Community law using social theory and critical theories of law'.[50] The use of theory and of critical approaches had thus been intended as indispensable component parts of 'the law in context'. In a similar vein, Snyder had called for 'the context' on equal terms in both research and

[46] In the volume constitutional pluralism is analysed in contributions by Hugo Canihac and by Amnon Lev. See: Canihac (n 7); Amnon Lev, 'The Imaginary and the Unconscious: Situating Constitutional Pluralism' in Komárek (n 1). Cf., among others, Joseph H H Weiler, 'Prologue: Global and Pluralist Constitutionalism – Some Doubts' in Gráinne de Búrca and Joseph H H Weiler (eds), *The Worlds of European Constitutionalism* (Cambridge University Press 2011) 8.

[47] Urška Šadl, 'Who Needs the European Society for Empirical Legal Studies?' (2022) 29(6) Maastricht Journal of European and Comparative Law 644; Šadl and Holtermann (n 34).

[48] Snyder, 'New Directions' (n 7) 181.

[49] Ibid.

[50] Ibid.

teaching. The fame of the notion of the 'law in context' certainly did not help sustain its clearly critical and progressive undertone and potential. Arguably, this has been the case of the other enchanting constitutional imaginaries as well.

VI Conclusion

As is well-known, the story of EU constitutionalism has been the story of lawyers, courts, networks, compromises, ideas, and legal doctrines. But this has also been the story of the inspiring and inspired scholars, academic refreshment, and creativity. The theme of the intellectual fascination in the field of EU law is worth further research. Adding the study of the material predicament of legal academia may inform us on what and how has been lost. The enchanting constitutional imaginaries played a remarkable, personal, and existential role. Apart from encouraging critical research, they helped legal scholars identify with their professional path. The current socio-economic conditions of the field raise doubts about the availability of similar channels of inspiration.