European constitutionalism: Towards an ‘ideology critique’

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European constitutional imagination: utopia and ideology

In the early 2000s many people believed that European constitutionalism could push the integration project to a qualitatively new stage. Some understood the adoption of the Treaty establishing a Constitution for Europe by the high contracting parties in 2004 as the Union’s constitutional moment, realising their much wished-for utopia.¹ Then the Treaty was rejected in the French and Dutch referenda and the European Council officially abandoned the ‘constitutional concept’.² Several crises and challenges of the Union followed, most of them having direct implications for constitutionalism in Europe: the financial and economic crisis, the refugee crisis, the rule of law crisis in Hungary and Poland, and of course, the Brexit challenge.³

The kind of constitutionalism emerging from the last decade has lost its utopian character: the need to adopt a new constitutional settlement is seen not as a further step in European integration but as an obstacle better to be avoided. Only few actors now call for the reinvigoration of constitutional process.⁴ Political practice has returned to a much less demanding legalistic concept of the constitution, putting emphasis on the rule of law understood

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³ For a recent analysis of the EU’s various crises see Desmond Dinan, Neill Nugent and William E. Paterson (eds), The European Union in crisis (London: Palgrave Macmillan 2017).
⁴ See Matej Avbelj, ‘The Ljubljana Initiative for Re-Launching the European Integration’ Verfassungsblog of 13 January 2017, available at http://verfassungsblog.de/the-ljubljana-initiative-for-re-launching-the-european-integration/ (last accessed on 18 August 2017). It is telling that the text of the initiative is no more available on the link provided in the article.
mainly as compliance with rules (and this only selective). Union’s constitutional utopia has been left to few intellectuals.⁵

Do we need to care about this utopia then? In this paper I want to argue that the answer should be yes.

Utopias are crucial for preserving opposition to the status quo as aspirational schemes that seek actualisation.⁶ They orient political action towards change and can lead to reforms that reconcile the political order with the desires of its subjects. One of the problems of today’s European constitutionalism consists in its inability to offer a utopia that could give a sense of direction to those who cannot identify with the present state of affairs – but at the same time (still) hesitate to follow European constitutionalism’s enemies.

European constitutionalism is also an ideology; however: another component of constitutional imagination, whose role is to integrate individual subjects and their beliefs into a common whole.⁷ Ideology conceals the gap between political order’s claim to legitimacy and its subjects’ beliefs. This can be seen as indispensable to make the political rule possible – a ‘necessary fiction’,⁸ or as an instrument of domination. Ideology can e.g ‘reify’ – make the products of human activity to appear natural and fixed, excluding thus any possibility to change them. For some time European integration appeared to be reified in the sense that it seemed impossible to reverse it and it seemed futile for the existing members to think about alternatives. Today, it is the ‘global race of nations’, where Europeans must become first of all competitive and only then are allowed to think about the ‘European way of life’, which they cannot afford in the race with states that do not need to bother with achieving social justice.

In my view we need to maintain, to the extent it is possible, both views of ideology. We need to understand why, in the different periods of European integration, European constitutionalists hold particular views about the constitution (both conceptual, referring to the realm of constitutional theory, and empirical, related to their understanding of the ‘really existing’ constitution of the EU) – without interpreting them as ‘simply having been afflicted with

⁸ On such necessary fictions see Yaron Ezrahi, Imagined Democracies: Necessary Political Fictions (Cambridge: CUP 2012).
psychological pathologies’, seeking power or even domination. When establishing the meaning (or meanings) of the European constitution, one needs to take their ideas as seriously as possible.

At the same time, in order to uncover the reformist potential of the constitutionalist project – its utopia – or its ultimate failure, we need to keep the critical project in sight. This can be pursued through ‘ideology critique’, which is, according to Susan Marks ‘geared to promoting social change, not by advancing blueprints for the future, but by encouraging investigation of the resources of the past’.10

How would such ideology critique of European constitutionalism look like? Recently, there have been several projects that can lead to a substantive critique of the European constitutional ideology. They comprise works by constitutionalists themselves, which go beyond ‘mere’ conceptualisations of European constitutionalism and offer reflections on what it means to engage in constitutional practice and scholarship. In addition, ‘New Legal History’ of the EU is being written, together with the sociology of EU law. None of them, however, engage in a deep analysis of the world of ideas of the EU constitutional theory.

Elements of a critique of the European constitutional ideology

András Jakab’s recent book European Constitutional Language11 comes close to an analysis of the European constitutional ideology in several respects: it seeks to analyse a conceptual ‘vocabulary and grammar’ of European constitutional discourse, sensitive to the historical and sociological context in which it has been arising since the 16th century. The ‘grammar’ for Jakab consists primarily of the rules of constitutional reasoning,12 while the ‘vocabulary’ is formed by different conceptualised responses to social challenges at various points in history, for

[о]ur basic concepts of constitutional law are a patchwork historical collection of responses to different challenges, and rightly so. Great social achievements like

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12 Analysed in a relatively short Part I of the book.
modern constitutional systems are all based on an incremental, lengthy, trial-and-error development of human knowledge.\textsuperscript{13}

One cannot agree more – and the contextual analysis of the European constitutional discourse that Jakab offers provides important material for the ideology critique. Where we need to take parts with Jakab, however, is when he seems to apply the ‘objective teleological method’ to determining the content of the concepts, including the historical challenges they are intended to give response to.\textsuperscript{14} To be sure, Jakab tries to be open about his normative preferences - to the extent that they can be read from his statement of political vision: ‘a federal Europe (meaning the European Union) which is a strong contestant on the political and economic world stage and which is based on its common constitutional traditions’.\textsuperscript{15} The statement says nothing with regard some crucial issues, which remain hidden from European constitutional discourse, such as the balance between politics and economics, democracy and capitalism or centre and periphery. Instead, we have a chapter on ‘the rule of law, fundamental rights and the terrorist challenge in Europe and elsewhere’,\textsuperscript{16} which is almost exclusively about the liberal principle of the rule of law and says very little with regard fundamental rights – no matter whether understood as negative liberties or more demanding claims for social freedom.\textsuperscript{17}

In fact, Jakab admits that his book is intended to be ‘an intellectual contribution to European institution-building’,\textsuperscript{18} which does not have a critical-emancipatory ambition – which lies at the heart of a ‘constitutional ideology critique’ in the very specific sense suggested above. We need to problematize and analyse in a much greater detail the ‘historical challenges’ which inform the formulation of constitutional grammar and vocabulary of the time. In other words, we need to engage in a project of ‘constitutionalism as critique’ rather than simply contributing to the building of a project.\textsuperscript{19}

\textsuperscript{13} Jakab, n 11, 87, where Jakab also acknowledges inspiration for such view in Anthony Quinton, \textit{The Politics of Imperfection} (London: Faber & Faber 1978) – see also Jakab, ibid, 3, fn 11.

\textsuperscript{14} Jakab, n 11, 87.

\textsuperscript{15} Jakab, n 11, 5, fn 15.

\textsuperscript{16} Ibid, Chapter 7.

\textsuperscript{17} For this concept see Axel Honneth (Joseph Ganahl transl), \textit{Freedom’s Right: The Social Foundations of Democratic Life} (Cambridge: Polity Press 2014).

\textsuperscript{18} Jakab, n 11, 4, fn. 12.

Peter Lindseth’s *Power and Legitimacy: Reconciling Europe and the Nation-State* explicitly seeks ‘to challenge the claim, so prevalent in the work of leading European legal theorists on integration over the last several decades, that autonomous regulatory power [of the EU] demands an equally autonomous form of “non-statal constitutionalism”, or “constitutionalism beyond the state”’. Instead of constitutionalism Lindseth suggests ‘the post-war constitutional settlement of administrative governance’, with delegation (from the member states to supranational institutions) as ‘a foundational normative principle in European law’.

But even if Lindseth was right about the administrative, and not constitutional character of the EU integration project, constitutional ideology can do very important work for the whole construction to be sustainable and for supranational institutions to maintain authority over individual member states. One may therefore accept Lindseth’s characterization of the EU but point to a missing element in it: the role of constitutional ideology in the more critical sense mentioned above as something that conceals the gap between the claim to authority by the EU and beliefs of its subjects as regards what can possibly justify such authority. Still, Lindseth’s book is indispensable for the kind of intellectual history of the problem of state governing capacity and ensuing delegation in the post-war period it offers, together with the re-conceptualisation of some basic dilemmas of constitutional law and theory.

Finally, *The Cosmopolitan Constitution* by Alexander Somek is, in a sense, an analysis of the constitutional imagination of the West, moving from the American revolutionary ‘we the people’ constitution to the constitution of human dignity represented by the post-war German Basic Law. For Somek constitutionalism represents a ‘project of emancipation’, first from the received feudal hierarchy through the constitution of negative liberties, where the market is the source of freedom and the state always suspicious, and later, after the World War Two, emancipation from the sources of un-freedom originating from within the market society. The present form of constitutionalism, ‘cosmopolitan constitution’ denotes the third stage in the development of the constitutional idea. It refers to ‘the constitution of the nation states under conditions of international engagement’ and is deeply ambivalent: it acknowledges that

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24 Ibid, 10-11.
constitutional authority is dependent on the national constitution’s embeddedness into the international system (through supranational projects of European integration or human rights adjudication by the ECHR). The realisation of this authority is however still dependent on the state. People in the state, however, do not act in a way comparable to the ‘we the people’ constitution – such acting is deeply suspicious for the cosmopolitan constitution Somek presents in his book. Instead they yield to administrative authorities and do not act in a meaningfully ‘political’ (collective) way.

Somek’s book offers a powerful reconstruction of the constitutional idea and a critique of its present actualisation. It necessarily draws with a broad brush (ranging from the American revolution of the 18th century until today’s experience of Europe). It does not explicitly examine the EU and its constitutional ideology, particularly the people who have construed its constitutional imagination and their ideas. In that respect Somek can provide a very important philosophical orientation for a project that would be more EU-specific and focussing on what has been written on the EU.

As suggested above, ideology critique is also dependent on a careful historical reconstruction. ‘Towards a New History of European Law’ was the title of a special issue of Contemporary European History, which included numerous contributions from the recently established field of study, which uses legal historians’ methods to examine the field of EU law. Some of its protagonists aim ‘to treat the purported “constitutionalisation” of the European legal order as a historical problématique in need of a healthy dose of disciplined analysis based on archival research’. As such, this scholarship contributes to undermining the tendency of the ‘constitutionalisation thesis’ to dominate the discourse on the nature of the EU and its law

26 Think of the present fear of populism – no matter how much populism can get misrepresented in the present discourse. For an important corrective to the present trend to designate as ‘populist’ everything that challenges the present order see Jan Werner Müller, What Is Populism? (Philadelphia: University of Pennsylvania Press 2016).

27 ‘Towards a New History of European Public Law’ is also the title of a research project led by Morten Rasmussen at the Saxo Institute, University of Copenhagen (see http://europeanlaw.saxo.ku.dk, last visited on 10 August 2017). There is of course far more contributions to the history of European law, all emerging in the last decade. Besides this kind of research, there are interesting collections of reflections on the ‘dark legacies’ of European law, emerging from a collective project led by Christian Joerges: see Navraj Singh Ghaleigh and Christian Joerges, Darker legacies of law in Europe: The shadow of National Socialism and Fascism over Europe and its legal traditions (Oxford: Hart 2003) and ‘Special Issue - Confronting Memories’ (2005) 6(2) German Law Journal.

among lawyers, although it is remarkably weaker today than it was at its the peak, that is before the rejection of the Treaty establishing a Constitution for Europe in 2005.\(^\text{29}\)

The New History scholarship (together with a more sociologically oriented research I will discuss below) helped to turn attention to a whole new range of actors: the Legal Service of the Commission, which appears as the true champion of constitutionalisation pushing it against a much more reluctant ECJ,\(^\text{30}\) assisted by transnational networks of professional jurists and academics in and around FIDE.\(^\text{31}\) Legal historians also helped to open the ‘Pandora Box’ of national responses to the ECJ’s constitutionalising efforts – Bill Davies’ *Resisting the European Court of Justice: West Germany’s confrontation with European law, 1949-1979*\(^\text{32}\) is path-breaking in the attention it gives to the internal debates in the German government, public opinion and academic debates.\(^\text{33}\)

However, there are strong disciplinary limitations, openly acknowledged by the leading figure of the New Legal History movement Morten Rasmussen:

> it is important to point out that the methodology of the discipline of history is fundamentally different from either law or the social sciences. The focus of historians is less to promote an explicit theoretical approach. Rather, it is to identify the best possible documentary and oral evidence to analyze the historical processes that shaped European public law.\(^\text{34}\)

This does not need to mean that historians’ work cannot speak to the present: to the contrary, Davies mentions the ongoing debate among (particularly US) legal historians on whether the purpose of their work ‘revolves around the relevancy and importance of the distinction between “applied” and “pure” legal history and whether legal history must address contemporary

\(^{29}\) For a prominent voice among EU academic lawyers, who argued against the constitutionalisation thesis, see Bruno de Witte, ‘The EU as an international legal experiment’ in JHH Weiler and G de Búrca, *The Worlds of European Constitutionalism* (Cambridge: CUP 2011), 19-56 and the ‘Dialogic Epilogue’ with Joseph Weiler, 262-270


\(^{32}\) Cambridge: CUP 2012.


structures’ and discusses advantages and pitfalls of both. The problem rather is the lack of interest in, and one is even tempted to say, of competence to engage complex questions of constitutional theory, that are the necessary building blocks of constitutional ideology.

Sociological research drawing on Pierre Bourdieu’s ‘field theory’ emerged at about the same time as the ‘New Legal History’ scholarship. The field is a place for struggle between different agents, a sort of marketplace where different positions are held due to the amount of capital (economic, cultural, social and symbolic) that agents possess and which determine their potential influence on the functioning of the field.

Actors hold different symbolic power, another crucial category of Bourdiean analysis of law: ‘It is the power to transform the world “by transforming the words for naming it, by producing new categories of perception and judgment, and by dictating a new vision of social divisions and distributions”’. Through such power actors can exercise symbolic violence and become dominant – something that is at the centre of the critical analysis of ideology.

Antoine Vauchez’s recent book is the most comprehensive study of the field of EU law. It explicitly acknowledges the existence of the ‘constitutional paradigm as the inescapable frame of the EU polity in the face of diplomatic big bangs and centrifugal forces that have periodically attempted to reopen the space of political possibilities in Europe’. The book’s claim is that

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37 See particularly Antoine Vauchez, Brokering Europe: Euro-lawyers and the making of a transnational polity (Cambridge: CUP 2015) and Antoine Vauchez and Bruno de Witte (eds), Lawyering Europe: European Law as a Transnational Social Field (Oxford: Hart 2013). In the introductory chapter to the latter Vauchez notes the indiscriminate use of the term ‘field’ in the European studies, from the rather metaphoric and spatial to rigorously ‘Bourdian’, using the related conceptual vocabulary.

38 Madsen and Dezalay, n 36, 192.


40 Vauchez, n 37, 11.
in the European Union, even more than anywhere else, there is no possible distinction between the ‘law’ and the ‘society’. There are no areas of Europe’s politics, economics, bureaucracy or civil society that have not been produced or co-produced to some extent by lawyers, whatever their guises may be. Legal Europe is co-extensive with Europe itself, and it is hardly possible to think about the Union and its ‘system’, its institutions and their ‘logic’, its markets and their ‘functioning’, its civil society and its ‘causes’, without delving into the impressive corpus of ad hoc legal theories and methodologies of Europe.\(^{41}\)

Yet, despite this almost omnipotent role given to law the whole approach misses an important dimension: that of ideas (and ideologies) and the agency they can exercise, which my Project seeks to examine. If Vauchez’s book ‘inserts living, acting people into what has so far tended to remain a disembodied narrative of reified actors (‘the Court’, ‘the Commission’) pursuing abstract goals and \textit{ex ante} defined interests’,\(^{42}\) ideology critique should examine their ideas and what these ideas can do – to the ‘external world’ (as part of the cultural capital contributing to the symbolic power in the Bourdiean sense), but also from their holders’ internal point of view – in other words, what these ideas can do to them.

Now, if we focus on the ideas hold and promoted by European constitutionalists, what kind of constitutional ideology do they have? The first objection can of course be that there is no cohesive group of ‘European constitutionalists’ and that the ideas of say, Joseph Weiler on the one hand, and Koen Lenaerts on the other, have differed markedly, as they professional backgrounds. But one can agree with Vauchez that what

\[\text{we can conveniently place under the banner of ‘the constitutionalization of Europe’}\]

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.\(^{43}\)

This will of course do a great injustice to all other departments of EU law at European (and other) universities, which took the idea of European constitutionalism seriously – and a proper study of European constitutional ideology would need to take these into account too. But in the

\(^{41}\) Ibid, 4.
\(^{42}\) Ibid, 7.
\(^{43}\) Vauchez, n 37, 202. The home has moved to Villa Salviati in August 2016.
concluding part of this paper I would like to highlight what this strand of European constitutionalism has always missed: the ideological effects of its ideas, in the sense of concealing domination enabled by such kind of constitutionalism, especially in the form of economic power.

The importance of the “c-word” or ‘why we cannot do [constitutional] theory without political economy’

The use of the vocabulary of liberal democracy in much of the European constitutional discourse has been stripped of its economic/social dimension: as if constitutional democracy in the EU travelled back before its post-war transformation analysed by Somek as the ‘constitution of human dignity’. Mattias Kumm’s idea of ‘legitimatory trinity’ of global public law (which he applies in the context of international law and EU law too), according to which human rights, democracy and the rule of law have become the largely uncontested criteria of law’s claim to legitimate authority, illustrate this well. One is reminded of another trinity: liberté, égalité, fraternité, where the last can be translated as solidarity, to realise the contrast here.

It is true that there has been a very important strand of EU constitutional scholarship, which takes the economic (and implicitly social) dimension seriously – in fact putting it at its heart: European Economic Constitutionalism, introduced into the European constitutional language by a long-time professor at the EUI, Christian Joerges. It was him who complained, as late as in 2015, about a ‘benign neglect of the constitutional importance of the economy’ in the constitutional debate of the last two decades.

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45 ‘Legitimatory trinity’ was the term used by Mattias Kumm in a presentation at the LSE, European Public Law Theory seminar, 19 January 2012.
Joerges’ scholarship thus crucially contributes to the examination of European constitutional ideology proposed here. There has been no ‘Great Forgetting’ of questions of constitutional political economy which our colleagues in the United States have recently discovered in their discourse.49 The point of ‘ideology critique’ suggested here is however different: to look into those contributions to the constitutional debate which ‘benignly neglected’ the questions of political economy and still were able to dominate the constitutional debate – in fact for more than twenty years identified by Joerges.

There is one more, and more serious, reservation to Joerges’ analysis of the European Economic Constitution, however. It appears remarkably conservative in its acceptance of the ordo-liberal philosophy of the ‘original’ economic constitution with its division of labour between the supranational level, which would be responsible for establishing the market and protecting free competition on it, and the member states, which would remain responsible for social policy. In other words, Joerges seems to believe in at least theoretical possibility of having ‘social market economy’ in the EU, despite the dynamics between negative and positive integration and more widely, between unbound capitalism using the freedoms of the Internal Market to free itself from the ‘red tape’ of national regulation, and the state, which is defined by fixed borders and is dependent on their continued existence.50 What we need in Europe, according to Joerges, is a ‘conflicts of law’ constitutionalism, which would be able to proceduralize multiple conflicts in the EU.51 In Joerges’s view, ‘law cannot do more than provide procedures and principles which foster constructive cooperation’.52

Proceduralisation of conflicts shares some basic premises with Habermas’ procedural paradigm of law and democracy outlined in his magisterial Between Facts and Norms.53 There is no place to discuss it in detail, just to note that there is an important gap in Habermas’ analysis, noted even by his ‘sympathetic readers’.54 There are social pathologies generated by the capitalist political economy, maintain even by the procedural paradigm of law, which escape Habermas’

50 For this analysis see Fritz Scharpf, Governing in Europe: Effective and Democratic? (Oxford: OUP 1999).
52 Joerges (2014), n 47, 777.
conceptualisation. In the European context, Wolfgang Streeck has become the most vocal critic of capitalism and its ties to European integration, to the extent that he was called ‘nostalgic’ by no one else than Jürgen Habermas.55 In a bitter response to Habermas, Streeck observes:

Unlike Habermas, I do not believe we can speak meaningfully about the future of democracy, in Europe or elsewhere, without at the same time speaking about the future of capitalism. Put otherwise, we cannot do democratic theory without political economy.56

A good start for a critique of European constitutional ideology would be to consider the economic dimension of constitutional theory and the theory of European constitutional law in particular. And to realise the importance of the “c-word” – not the constitution, but capitalism and include it into our analysis of the European constitution.57

**EU constitutional imagination in the member states**

Most of the EU constitutional scholarship focuses (perhaps naturally) on the EU level.58 We do not know much about national debates concerning European legal integration and its relationship to domestic constitutions: the published work concerns primarily conflicts between national highest courts and the European Court of Justice.59 The broader intellectual debate among constitutional scholars in the member states (who very often have engaged in public and policy debates) is missing from the picture.

56 Wolfgang Streeck, ‘Small-State Nostalgia? The Currency Union, Germany, and Europe: A Reply to Jürgen Habermas’ (2014) 21 Constellations 213-221, 218, emphasis in the original.
58 With few exceptions – see Davies, n 32 2012 for Germany or Julie Bailleux, Penser l’Europe par le droit: L’invention du droit communautaire en France (Paris: Dalloz 2014) for France.
I think it is a mistake which calls for a remedy.

In its examination of national debates, we shall put a particular emphasis on post-communist Europe. The experience of post-communist Europe (below also called the Other Europe) from both before and after 1989 is more important for EU constitutionalism than the common view suggests. The mainstream picture focuses on the process of transformation of the post-communist states into future members of the Union, seeking to comply with the political and economic criteria on EU membership. However, the fall of communism in 1989 was also transformative for the Old Europe. The image of the Union as a guarantee of democracy and freedom from foreign domination, widespread in the Other Europe, brought about changes in the deep structure of the Union as a whole. Most existing constitutional law scholarship does not capture this.

I suggest that 1989, the ‘year of miracles’, made a particular version of constitutional imaginary of the EU particularly dominant. It was promoted by Joseph Weiler and his colleagues at the European University Institute in Florence. It is an imaginary which mostly borrows from liberal, United-States-inspired constitutionalism which resonated also globally at the time. It was a structure for a new world order at the ‘end of history’. It put emphasis on individual freedom, its juridical guarantees, and a free market economy.

In the context of the EU, this liberal constitutional imaginary functioned as a utopia: something that still was not true for the EU at the time but was widely considered worth pursuing. Utopias are important in that they give normative orientation to political actions and undermine the existing status quo. They call for alternatives – and are important especially at times when there (seem to be) ‘no alternatives’. In the absence of other utopias, liberal European constitutional imaginary was presented as one. In the Old Europe liberal constitutional imaginary represented the utopia of ‘an Ever Closer Union’. In the Other Europe the same imaginary marked the return

61 For an exception see Luuk Van Middelaar, The passage to Europe: How a continent became a union (New Haven: Yale University Press 2013), 181-201; compare to e.g.: Christopher J Bickerton, European Integration: From Nation-States to Member States (Oxford: OUP 2012), which also has a historical ambition but does not examine the relevance of 1989 for its thesis.
62 See n 43.
63 Francis Fukuyama, The end of history and the last man (London: Hamish Hamilton 1992); see, critically, Marks, n 10, 33-37.
Constitutional imaginaries are however Janus-faced: as already mentioned, they also function as ideologies: something that conceals the negative impact of their central ideas – even on those who subscribe to them. To use an example from the post-1989 transformation: there was a widespread agreement in the societies of the Other Europe on a single goal: the ‘Return to Europe’ (see Komárek 2014). That meant, however, that whatever ‘Europe’ (or the EU) prescribed was very difficult to contest. At a micro level this e.g. meant the promotion of institutional structures that proved quite disastrous for the independence of the judiciary, which was undermined, rather than strengthened by the establishment of judicial councils promoted by European institutions.

At a macro level this led to an abdication of the Other Europe’s reformist energies, captured by Václav Havel’s desire that the Other Europe ‘could approach a rich Western Europe not as a poor dissident or a helpless, amnestied prisoner, but as someone who also brings something with him: namely spiritual and moral incentives, bold peace initiatives, untapped creative potential, the ethos of freshly gained freedom, and the inspiration for brave and swift solutions’. Instead 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.

The Prime Minister of Hungary called for building a democracy which ‘is not necessarily liberal’. It was the same person who in 1989 led the student protest movement against the Communist Party. Ryszard Legutko, the Polish philosopher, former dissident and now politician for the Law and Justice Party argued that both communism and liberalism are in many respects similar ideologies – the latter just ‘becoming more dense and more impenetrable than before’.

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One reason for this disenchantment with European liberal constitutionalism lies in that its negative effects, e.g. on the state-based solidaristic structures or the structure of post-communist societies, were rarely discussed. It seems, moreover, that in this case the disillusionment of the Other Europe only preceded that which is now visible in parts of the Old Europe. The success of the anti-EU populist parties in the European Parliament elections in 2014 followed by the Brexit vote in June 2016 show that today it is almost impossible to see EU constitutionalism, with its central value of unity, as a utopia. Instead, in many spheres of the European society EU constitutionalism is currently perceived as an oppressive ideology: prescribing austerity and promoting the interest of one member state over the others.69

A close attention to constitutional imaginaries of Europe in the member states – both of the ‘Old’ and ‘Other’ Europe is therefore imperative if we want to understand the dynamics between once motivating utopia and the present oppressive ideology. We also need to explore various constitutional imaginaries created by other thinkers than those who have dominated the constitutional debate of the past decades.

**Conclusion**

I am not interested either in ‘myth-breaking’ or creating new utopias (and ideologies). My main ambition is to take ideas – whatever their origin or prominence - seriously. It is imperative to understand why, in the different periods of European integration, European constitutionalists hold particular views about the constitution (both conceptual, referring to the realm of constitutional theory, and empirical, related to their understanding of the ‘really existing’ constitution of the EU). Through this ambition, we can fill a gap in our knowledge about EU constitutionalism.

This will require the following:

- No matter how hackneyed this sounds, we need to take ideas and their authors seriously – not as ideologues or power-grabbers, but as people who truly believe(d) in their ideas about the EU constitutionalism and sought to promote them primarily in the academic discourse;

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• A close attention to various political ideologies behind different European integration projects – and what form of constitutionalism they have promoted;

• Related to the above, different relationship between such ideologies of constitutionalism and political economy on which they have stood;

• Finally, taking a comparative perspective – examining not only the EU-level discourse, but also how EU constitutionalism has been conceptualized in different Member States.