THE EU CRISIS AND THE MULTIPLE CONSTITUTIONAL PATHS OF EUROPEAN DEMOCRACIES

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Abstract

The article elaborates on Ackerman's proposed diagnosis of the European crisis. Precisely, the fact European democracies have arisen from different "constitutional paths" can help in understanding the crisis of legitimacy that afflicts the European Union. Starting from this perspective the Author discusses the role of Courts in the EU composite legal space and the "EU trilemma" of rights, identities and legitimacy.

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1. Introduction

Constitutional democracies in many countries in different regions of the world are seeing a rise of populist movements and the affirmation of autocratic trends. Many reasons, both endogenous (country specific) and exogenous, have been advanced by legal scholars and political scientists to explain the current crisis of constitutional systems[1].

Bruce Ackerman's latest book contributes to this debate with an original comparative understanding of constitutional systems around the world, arguing a better understanding of the current predicament can be achieved by going back to their foundational moments, when their power won legitimacy. In Ackerman's words

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[1] See M.A. Graber, S. Levinson, M. Tushnet (eds.), *Constitutional Democracy in Crisis* (2018); T. Ginsburg T, A. Z. Huq, *How to Save a Constitutional Democracy*. (2018).

"a deeper understanding of the past is especially important at this moment. With constitutional crises erupting throughout the world, it is tempting to believe that all of them are symptoms of the same disease, so-called populism - and can be cured in similar way. This is a mistake. Countries that have travelled down the three different paths to constitutionalism confront very different crises[2]".

After radically innovating the narrative of the genesis and development of constitutional change in America, marked by what have been defined as "constitutional moments"[3], Ackerman adopts a more global perspective and compares the founding moment of different constitutional systems - i.e. the moment in which power acquires legitimacy - identifying three "constitutional paths" (or ideal-types): the first, the subject of this work, is defined as "revolutionary constitutionalism", by virtue of which the origin of the constitutional order is ascribed to the work of a revolutionary movement and a charismatic leader who broke with the previous regime, giving rise to a new constitutional experience; the second path, contrastingly, sees the origin of a new constitutional order as the work of establishment "insiders" who pragmatically intercept and satisfy the requests that arise from the social body; and finally, the third ideal-type path sees the origin of the constitutional order in a construction by elites, who acted in a context without popular claims.

It is on the first, fascinating, but at the same time oxymoronic path (revolutionary constitutionalism)[4] the volume in question focuses, with Ackerman challenging - with his very specific form of acumen - the traditional categories and methodologies of the phenomenon of the origin of power.

At a time in history when the term 'revolution' evokes dark scenarios filled with the affirmation of populist and even autocratic movements rising up against elites and established powers, Ackerman's serious investigation "challenges us to take revolutions seriously as a legitimate paradigm of constitutionalism, rather than a mere threat to it."[5] As Ackerman argues, "I am to show that

[2] B. Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law* (2019), 2.
[3] B. Ackerman, *We the people. Foundation* (1991).
[4] For an in depth analysis of the phenomenon of constitutional revolution, see G.J. Jacobsohn, Y. Roznai, *Constitutional Revolution* (2020).
[5] M. Hailbronner, *Introduction: Defending "democratic populism"?,* in International Journal of Constitutional Law, Volume 17, Issue 2 (2019) 681.

revolutionary constitutionalism has been a dynamic force in the twentieth century and remains a powerful present-day reality."[6]

In Ackerman's reconstruction, revolutionary moments were at the origin of the constitutional experiences in India, South Africa, Italy, France, Poland, Israel and Iran. Obviously the author recognises the specific and heterogeneous social and economic contexts of these different countries, as well as their varied legal and political cultures; however, this awareness does not prevent him from tracing a common thread that binds these experiences together, such that they ultimately represent "variants" of the same phenomenon: "*Revolution on a Human Scale*".

Ackerman's investigation is not only relevant to explain the challenges faced by the individual countries, but it is also – and even more fascinatingly – a lens through which we can look at the crisis – or better, the multiple crises – of the European Union.

In Ackerman's words, if "the leading countries of Europe emerge from different constitutional pathways, these differences should be treated with respect if the European Union is to sustain itself as a vital force in the coming generation"[7].

This piece will focus on the implication of Ackerman's theory for the debate about the EU's current crisis and its legitimacy. However, before reflecting on the EU case, it is important to look at how Ackerman's reconstruction challenges some of the traditional methodological assumptions, especially as these constitute some of the most significant aspects, in terms of constitutional theory, of the work in question.

The first aspect is the approach Ackerman uses to examine "constitutional change" as his approach differs, at least in part, from traditional investigations that start from positivistic assumptions. Like positivists, Ackerman investigates revolutionary events regardless of their moral assessment because they all face the same problems of legitimising power, regardless of their nature. However, Ackerman's analysis stands out because of the very definition of a constitutional revolution: "the positivist does not ask how a regime legitimates itself. He simply wants to identify the

[6] B. Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law,* cit. at 2, 43.

[7] B. Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law,* cit. at 2, 2.

fundamental rules by which a particular regime distinguishes law from non-law."[8]

The not strictly positivistic approach of Ackerman's investigation is also reflected in the extensive use of the study of political science, history and sociology[9], which makes the work a true fresco of comparative constitutional history, as well as a reference point for studies on the theory of constitutional change.

The second noteworthy methodological aspect, which also relates to the unique approach of Ackerman's research, is the overcoming of the dichotomy between civil law systems and common law systems: India and South Africa share the common law tradition; Italy, France and Poland have systems rooted in civil law. The different legal traditions undoubtedly played a role in defining the approach of revolutionary regimes in the face of the challenge of legitimising revolutionary power even if, in Ackerman's argument, this role was completely secondary. The outcome of the revolutionary experience depended pre-eminently on how political actors and parties continued along the "revolutionary path" and completed the process of legitimising power. It is this "larger framework" that looks at the role of political actors and institutions as a whole that must be considered for the study of the different constitutional paths. From this assumption comes another unique aspect of Ackerman's investigation: criticism of traditional approaches that tend to place the role of the courts at the centre of reflection and, in particular, the dialogue between them. According to the author, this approach often overlooks the fact the courts are, like other institutions, involved in the process of legitimising power and, depending on the constitutional path taken, judges faces different challenges for legitimacy. In Ackerman's words, "much recent work obscures these differences, and treats constitutional courts as if they were engaged in a worldwide conversation about the meaning of 'free speech' or 'human dignity'. This is a mistake[10]".

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[8] *Ibidem*, 36.

[9] As Ackerman argues, "We must turn from economics to sociology for interdisciplinary insight. Over the past generation, the study of social movements has gained a central place in the discipline – which has already led to a promising series of boundary-crossing conversations with legal scholars. I very much hope that this book will encourage a more intensive collaboration in the future", *Ibidem,* 43.

[10] *Ibidem,* 38.

2. The EU crisis in the lens of Ackerman's theory

The crisis of the European Union has become a sort of *topos* for studies on the EU integration process. The recent history of the EU is certainly a story of different crises: the constitutional crisis in 2005, the economic crisis in 2008, the rule of law crisis, the refugee crisis, Brexit and last but not least the pandemic with its effects on institutions, economics and above all people's lives. All these different crises have questioned the very nature of the EU, its mission and its raison d'être vis-à-vis the sovereignty and identity of Member States. The multiple EU crises act as catalysts of a profound crisis, which has its roots in the EU's foundation and legitimacy.

The issues of EU legitimacy have attracted the attention of many EU law scholars, leading to an overwhelming mass of literature analysing the EU democratic deficit, the democratic disconnect, the technocratic nature of the EU and the lack of proper accountability for EU institutions.

I do not intend to deal with such an important stream of research, but I do want to stress Ackerman's original contribution to this debate, partly looking at how he fits with some of the most insightful contributions on the topic.

Ackerman's reflection starts from the unique, hybrid nature of the EU - caught between an international organisation and a federal state, inevitably resulting in many inconsistences in the exercise of power and in the relations between the EU and its citizens. The EU cannot be considered a proper state and it has developed along a unique path, but these aspects do not prevent Ackerman from examining it in the prism of his theory about the three paths of constitutionalism.

Ackerman seems to correctly address issues of the EU legitimation process as a double tiered process: one related to the legitimacy of the EU per se and one related to the relationship between the EU and the multifaceted constitutional patterns of its Member States. It is from this twofold perspective that Ackerman sheds light on a still quite underexplored aspect of EU integration. Coherently with the method applied to the States considered – looking at the foundational moment when power gains legitimacy – Ackerman traces the EU legitimacy crisis back to the different paths taken by EU Member States: "the leading nations of Europe

come to the Union along different paths: the Constitutions of Germany and Spain are elite constructions; France and Italy and Poland have moved down the revolutionary path; Great Britain emerges from the establishmentarian tradition. Little wonder these countries have trouble finding a common pathway to a more perfect Union[11]". After the failure of the EU Constitutional treaty, with the rejection of the Treaty by voters in France and the Netherlands, the EU seemed to have taken the elite-driven path: "both the Lisbon agreement and later accords were elite constructions that tried to avoid self-conscious consideration of their merits by ordinary citizens[12]". As with all the elite constructions in Ackerman's theory, the EU is also facing the problem of "authenticity" - the lack of popular legitimacy earned by revolutionary constitutionalism.

The problem of legitimacy is key to explaining the rise of populist movements that contest EU authority and it may be interesting to briefly recall the tripartite concept of legitimacy which has been used to understand the multiple crises of the EU. As Weiler argues in his enlightening contributions on the EU crisis[13], the so-called input legitimacy, the democratic participation in a constitutional enterprise, is not in the EU's DNA[14]; the very essence of EU institutions - the Commission and the Council - is non-political and where there is no politics there is no democratic deliberation[15]. The EU construct was born in a functionalist paradigm so the EU's primary source of legitimacy would be found into the results, that is, the "goods" it would provide (output legitimacy)[16]. Such a functionalist approach might have seemed to work well in a period of economic growth, but its weaknesses became all too clear when the EU was hit by the 2008 economic crisis. The EU suddenly became not the provider of wealth, peace and stability among nations, but the main agent of austerity

[11] B. Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law*, cit. at 2, 21.
[12] *Ibidem,* 23.

[13] J.H.H. Weiler. *Europe in Crisis – On 'Political Messianism', 'Legitimacy' and the 'Rule of Law, in* Singapore Journal of Legal Studies 248–268 (2012). J.H.H. Weiler, *The Crumbling of European Democracy*, in M.A. Graber, S. Levinson, M. Tushnet (eds.), *Constitutional Democracy in Crisis* 629*, (2018).*
[14] J.H.H. Weiler, *The Crumbling of European Democracy*, cit. at 13, 638.
[15] As Weiler argues, "Democracy without politics is an oxymoron", Ibidem 635.
[16] Ibidem, 634.

measures, impinging on Member State sovereignty, national democratic circuits and ultimately on constitutional rights. Even the EU's shift from an economic community to a community of rights was not enough to make up for the lack of a true European polity. On the contrary, the faith in a pan-European language of rights had the opposite effect, leading to a reaction at local and national level.

Even if we look at the third source of legitimacy – the telos legitimacy or political messianism[17] – we see it has progressively vanished in the EU landscape. In political messianism, "the justification for action and its mobilising derive not from 'process' as in classical democracy, or from 'result and success' but from the ideal pursued, the destiny to be achieved, the 'Promised Land' waiting at the end of the road[18]".

The promised land of a union of the People of Europe, of different types of State relations, a Union of prosperity and peace, is still far away and the contingent and multifaced problems the EU is facing exacerbate the distrust in the EU project and even cause anger at the failure of a "promised revolution". This perfectly reflects Ackerman's account of the EU's current status, troubled by the "rise of protest movements to portray the European Union as an alien force dominated by harsh technocrats, with EU politicians serving as pseudo-democratic ornaments[19]".

The constitutional tensions the EU is facing have to be analysed in the light of where EU integration stands at present: a context characterised by a growing narrative challenging EU authority, as an illegitimate constraint over the expression of national sovereignty and identity[20]. These tensions, which to a certain extent can be considered inherent in a multitier system, need to be analysed within the broader trend of a re-emergence of constitutional dissent and conflict among local, national and global

[17] Ibidem, 637.
[18] Ibidem, 637.
[19] Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law,* cit. at 2, 23.
[20] R. D. Kelemen, L. Pech, *Why autocrats love constitutional identity and constitutional pluralism. Lessons from Hungary and Poland*, Working Paper No. 2 — September 2018, www.reconnect-europe.eu. G. Halmai, *Abuse of Constitutional Identity. The Hungarian Constitutional Court on Interpretation of Article E) (2) of the Fundamental Law*, Review of Central and East European Law 23, 43(1), 36 (2018); L. Pech and K. Lane Scheppele, *Illiberalism Within: Rule of Law Backsliding in the EU*, 19 Cambridge Yearbook of European Legal Studies (2017).

actors. As Hirschl argues "when understood against the backdrop of formidable centripetal forces of political, cultural, and economic globalisation, the rise of a new trans-national constitutional order and judicial class and the corresponding decrease in the autonomy of 'Westphalian' constitutionalism, as well as an ever-increasing deficit of democratic legitimacy, counter pressures for preserving a given sub-national unit's, region's, or community's unique constitutional legacy, cultural-linguistic heritage, and political voice seem destined to intensify, not decline[21]".

3. The role of Courts in the EU composite legal space

In this context of distrust towards EU institutions, it seems particularly interesting to look at the role played by the judiciary on the three paths of constitutionalism. In this perspective, Ackerman's aim is to explore "the dynamic process through which courts might – or might not – play an increasingly legitimate role in the evolving system over time[22]."

Such a perspective is especially intriguing for the European Union. The Court of Justice of the EU (CJEU) has become a pivotal actor in the evolution of EU integration as a multilevel constitutional system. More recently, after the entry into force of the Nice Charter, it further strengthened its influence, becoming not only the Court for conflicts which may arise between EU and national law, but also a human rights adjudicator[23].

The CJEU has acted as a centripetal force in the context of the EU integration vis-à-vis Member States, developing the concept of the direct effect of EU Community law, introduced in 1963 by the notorious Van Gend and Loos decision[24]; in 1964 in Costa v. Enel[25], it affirmed the primacy of EU law over domestic law; and in many areas of law - even in the most sensitive and "political" issues, such as for citizenship - the Court expanded the influence of EU law over national law.

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[21] R. Hirschl, *Opting Out of "Global Constitutionalism"*, in *Law & Ethics of Human Rights* 12 (1), 5 (2018).

[22] Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law,* cit. at 2, 38.

[23] G. de Búrca, *After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator?*, *Maastricht Journal of European and Comparative Law,* 20(2), 168–184 (2013).

[24] CJEU, Van Gend & Loos, Case 26-62 (5 February 1963).

[25] CJEU, Costa v ENEL, Case 6/64 (15 July 1964).

This role of the CJEU is not surprisingly in Ackerman's framework: in an "elite" construction a key role in the legitimation process is played by the courts. For the EU, however, the dominant effect of the CJEU in the EU integration process has been more of a sort of counter-effect. The "constitutional" turn in the EU, fostered by CJEU case law on the primacy of EU law and on its direct effect, ultimately "accentuate the enduring legitimacy crisis of the Union[26]".

With its revolutionary jurisprudence, the CJEU has produced a shift in the balance of power from the Member State to the EU. Initially, the Court's agenda focused on market integration and, in these terms, it is a story of success. But "the economic success has a legitimacy drawback", which "manifested itself when the public became aware of the fact that the object of integration was no longer the economy alone but also the political, yet without the people or their representatives having a chance to influence it[27]".

The shift of power from political actors to non-political bodies (EU judiciary and administrative bodies) is even clearer with the new CJEU jurisprudence on fundamental rights, after the entry into force of the Charter of Nice, which was awarded the same binding force as the Treaties.

The passage of the CJEU from an international court to a quasi-constitutional court seemed to be completed with the new competences for fundamental rights adjudication and with a broad interpretation of art. 51, Treaty on European Union (TEU), which gives the CJEU jurisdiction in each dispute in which EU law is at stake.

It is certainly true that without the CJEU, the EU would have remained an international organisation like many others, maybe with more power but without become the unique entity it is today[28]. However this uniqueness came at a cost: "many citizens cannot identify with the outcome. The judge-driven development was not supported by the political will of those affected by it. Their opinion

[26] J.H.H. Weiler, *Van Gend en Loos: The individual as subject and object and the dilemma of European legitimacy, International Journal of Constitutional Law*, Volume 12, Issue 1, 94–1035 (2014).
[27] D. Grimm, *The Constitution of European Democracy* (2017).
[28] Ibidem.

was not asked, and they have responded by withdrawing legitimation."[29]

On a more institutional level, the centripetal force of CJEU jurisprudence, the erosion of the political sphere by non-political actors, the downside of representative institutions, and the creeping erosion of Member State competences have all contributed to generate increasing tension and highlight the contrast between the EU integration path and respect for national sovereignty and constitutional identity.

Such tension is clearly evident when looking at the well-known Bundesverfassungsgeright (BVerfG) jurisprudence on EU integration, from Maastricht[30] to the recent Weiss decision[31]. From a diachronic perspective, the most recent "nullification" by the BVerfG in the Weiss case is the outcome of a jurisprudence in which the Court has built a kind of "German Compact Theory", starting from the Maastricht Urteil, where the BVerfG clearly emphasised the nature of the EU compact, which is "an association of sovereign states with a view to achieving an increasingly close union between the peoples of Europe – which are organised as sovereign nation states[32]." The EU is seen as an association with limited powers, conferred by sovereign States. This conception laid the grounds for the limits to EU integration: "if European bodies or organs were to implement or add to the Union Treaty beyond the scope of the treaty instrument on which the act of approval was based, the resulting legal acts would not be binding within the German sphere of sovereignty[33]." The courts themselves claim such a power, framing the so-called *ultra-vires* control: "the Federal Constitutional Court reviews whether acts of European bodies and organs remain within the limits of the sovereign powers transferred to them or whether they exceed such limits[34]".

[29] Ibidem.
[30] BVerfG, 2 BvR 2134/92, 2 BvR 2159/92, Judgment of 12 October 1993.
[31] BVerfG, 2 BvR 859/15 - 2 BvR 1651/15 - 2 BvR 2006/15 - 2 BvR 980/16, , 5 May 2020. See M. Poiares Maduro, *Some Preliminary Remarks on the PSPP Decision of the German Constitutional Court* (2020), https://verfassungsblog.de/some-preliminary-remarks-on-the-pspp-decision-of-the-german-constitutional-court/
[32] BVerfG, Judgment of 12 October 1993 - 2 BvR 2134/92, 2 BvR 2159/92, par. 188.
[33] Press Release No. 39/1993 of 12 October 1993, Judgment of 12 October 1993 - 2 BvR 2134/92, 2 BvR 2159/92.
[34] Ibidem.

Turning to the concept of constitutional identity, the landmark case is the Lissabon Urteil[35], where the BVerfG identified the core areas of State sovereignty in which intervention by the EU would have been considered *ultra vires* in violation on the national constitutional identity.

The BVerfG jurisprudence is grounded on the conception the EU is a "union based on the multilevel cooperation of sovereign states[36]" which retain the right to declare void an act of the EU institutions if the latter exceed their conferred competences and threaten the national constitutional identity.

As has been argued, "in marking this red line (..) the Court, by implication, retained control over the expansion of the scope of conflict in the European legal arena in order to avoid, if that is its preference, a constitutional revolution of the sort that fundamentally transformed the American constitutional polity through the nationalisation of its federal structures of power. Indeed, because its constitutive choices are not dictated by a higher legal authority within a single sovereign entity, it can afford to take risks by encouraging an expansion in the scope of legal contestation[37]".

The use of the Identität-Kontrolle by the BVerfG is guided by the idea any "fundamental reorientation in constitutional essentials can have revolutionary consequences and further that these may come about through an incrementally fashioned pathway[38]".

It is in this approach, which is hostile to an open revolutionary path, that one clearly finds the elitist ideal-type to which the German experience belongs and which may explain the German attitude towards the EU integration process, particularly its resistance to any change that might lead to a revolutionary outcome.

4. The EU trilemma: rights, identities and legitimacy

The focus on the role of the CJEU in the EU integration process and the resistance to the expansion of EU power in spheres

[35] BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 -, par. 248 – 249.
[36] BVerfG, Judgment of the Second Senate of 05 May 2020 - 2 BvR 859/15, par. 111.
[37] G. J. Jacobsohn, Y. Roznai, *Constitutional Revolution*, cit. at 4
[38] Ibidem, 9.

that belong to the core of national sovereignty bring us to another interesting terrain of confrontation for EU studies.

The CJEU and the European Court of Human Rights (ECHR) have created one of the most advanced systems of protection for fundamental rights: individuals can claim their fundamental rights have been violated by State authorities in front of these two supranational and international courts. Indeed, judicial review in the EU has been considered "an important way of redressing some of the 'democracy deficit' within that political order, providing a voice for citizen interests and individual redress against powerful and relatively unaccountable institutional forces[39]."

However, conceived as a way to deal with the supranational democratic deficit, the judicial review and the centrality given to rights adjudication – partly following a more global trend – has turned into a bone of contention and disagreement in the EU. We are witnessing growing resistance and opposition to the phenomenon of global constitutional convergence, and to the supranational influence on national spheres of powers, driven especially (but not exclusively) by populist politicians. In a recent work, Pin argued convincingly the growth of transnational and supranational judicial fora "may have triggered or facilitated populism, its threats to the rule of law, and its illiberal agenda[40]". More broadly, the "general trend towards political and constitutional convergence, globalism and supra-nationalism have spawned an array of localist counter-movements that profess to represent a given polity's, region's or a community's 'genuine' identity. As such, the more expansive constitutional convergence trends are, the more apparent the paradox of global constitutionalism becomes as the likelihood of dissent and resistance increases[41]".

The counter reaction to global and transnational actors is particularly evident, although quite paradoxically, in the field of rights protection, the most "convergence prone area of

[39] G. de Búrca, *Proportionality and Wednesbury Unreasonableness: The Influence of European Legal Concepts on UK Law*, 3 *European Public Law* 561-562 (1997).
[40] A. Pin, *The transnational drivers of populist backlash in Europe: The role of courts, German Law Journal* 20, 225–244 (2019).
[41] R. Hirschl cit. at 21, 35.

constitutional law"[42], where CJEU intervention, especially after the Charter of fundamental rights, has been prominent.

The idea the diffusion of pan-European human rights discourse could help save the European constitutional path, creating popular commitment and recognition within the EU, was soon revealed to be an illusion. Human rights adjudication may contribute to redefine the boundaries of social conflicts, having the potential to exacerbate them and ultimately having a divisive effect. As Pin argues "they divide people: between losers and winners; between ordinary people and experts; between individuals and collectivities[43]."

The focus on rights and their judicialization, on one side, further marginalises the political and representative domain – exacerbating the EU's democratic deficit – and, on the other, helps to frame rights discourse in terms of merely individual claims, without any reference to questions of duty and solidarity.

Moreover, beside this hyper-individualisation, pan-European rights discourse also has the potential to cause a "flattening of political and cultural specificity, of one's own unique national identity[44]", handing a powerful argument to populist anti-European campaigns.

In light of the context I have tried to portray, highlighting the EU's multiple contradictions and tensions , Ackerman's diagnosis of the EU crisis paves the way for further, original reflections about the EU's history thus far. In particular, Ackerman invites us to look beyond the surface of the EU process and beyond the epiphenomena that we can see, in search of the more profound

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[42] As Hirschl argues, "whereas the wording of constitutional bills of rights around the world look more similar than ever, and a supposedly apolitical, Esperanto-like interpretive method of proportionality has become widespread, there is no jurisprudential (let alone political) consensus concerning the predominantly liberal "global constitutional canon" with respect to morally contested matters such religious expression, gay rights, reproductive freedoms, or the right to die. In fact, when one turns her gaze beyond the dozen or so "usual suspect" jurisdictions often referred to in comparative constitutional law to explore constitutional rights jurisprudence in the EU "periphery" or in U.S. states, let alone in the so-called "global south" or the "Islamic world," divergence from, and at times resistance towards, "global constitutionalism" is quite common", Ibidem, 3.

[43] A. Pin, *Comparative Constitutional Law, Rights, and Belonging in Europe* (2020) at https://www.resetdoc.org/story/comparative-constitutional-law-rights-and-belonging-in-europe/.

[44] J.H.H. Weiler, *The Crumbling of European Democracy* cit. at 13, 632.

roots of the current EU crisis and its elitist paths, being aware that "particular historical experiences may well generate counter-themes from competing paradigms."[45]

5. Conclusion

In the first book of his trilogy, Bruce Ackerman opens the way to new inquiries in comparative law – focusing on the diverse constitutional experiences in the world – and in EU constitutional law – with a new understanding of the EU constitutional crisis.

There might very well be inexhaustible and heated debate on the correspondence of the particular experiences the author examines with the ideal-types he identifies, but as Ackerman himself recognises by recalling the Weberian lesson, "no real-world polity perfectly expresses any ideal-type."[46] There is likely to be criticism and doubt about the historical reconstruction of events and their typing, starting from the conceptual schemes proposed by Ackerman. Nevertheless, Ackerman's volume offers a masterful and authoritative contribution to comparative law, and the history and theory of constitutional law.

Like all great works, it should be measured on its ability to shed light on the future, and to open up new horizons and research hypotheses, starting from a thorough analysis of the events of the past and the theoretical reflections in the doctrine. And Ackerman's work undoubtedly does this. It is especially useful in a context dominated by the effort to codify and decipher the specifications of individual constitutional realities which, however, increasingly escape the traditional categories but, at the same time, run the risk of losing sight of the context. Ackerman's work has the enormous merit of raising our gaze from the specific and inviting us to look at the phenomenon of constitutionalism as it unfolds and repeats over time and space: "My three ideal types will (..) enable a more discriminating form of transnational learning. If, as I suggest, the leading countries of Europe emerge from different constitutional pathways, these differences should be treated with respect if the European Union is to sustain itself as a vital force in the coming generation. I will also try to persuade you that my three ideal types also open up powerful insights into the dilemmas confronting

[45] B. Ackerman cit. at 2, 23.
[46] Ibidem, 23.

leading nations in Africa, Asia, the Middle East and South America - enabling comparative insights into common dilemmas that would otherwise escape the attention of national politicians transfixed by the seemingly unique features of their domestic crises."[47]

This paper has sought to further elaborate on Ackerman's proposed diagnosis of the European crisis. Precisely the fact European democracies have arisen from different "constitutional paths" can help in understanding the crisis of legitimacy that afflicts the European Union, since: "they don't even agree on the appropriate path to take in resolving the crises that threaten to rip the Union apart - with Germany, France / Italy / Poland and Great Britain predisposed to respond very differently to common problems."[48]

Ultimately, Ackerman accompanies us on a journey through time and space, giving us – the reader –tools to better understand and respond to the many phenomena that challenge contemporary democracies today, "so that citizens and political leaders might gain a deeper sense of the challenges they confront in sustaining their distinctive traditions into the twenty-first century."[49]

[47] Ibidem, 2.
[48] Ibidem, 22.
[49] Ibidem, 2.