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Around the Legal Concept of Revolution

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Around the Legal Concept of Revolution

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Summary. The question of the legal concept of revolution is a multidisciplinary one that certainly requires an interest in law, philosophy, history and political science. However, in order to maintain a purely legal vision of the concept, the intersection of these disciplines may seem counterproductive to some. There seem to be two opposing ways of thinking about revolution in the legal sense. For the advocates of legal positivism, the working methodology must be entirely legal. In this sense, they follow the teachings of Hans Kelsen, who proposes to study the legal revolution from a legal point of view (1). In reaction to this vision and in order to fill its blind spots, others have preferred a material approach, reversing the formal analysis developed by the father of normativism (2). Considering these two schools of thought, diametrically opposed in many respects, the question arises: is there a middle way? Undoubtedly, it is in this third option that we can read the work of Bruce Ackerman and others. This typology allows us to sketch the methodological possibilities of a legal interpretation of the concept of revolution, without, however, being able to offer a new and completely fresh interpretation that is independent of the presuppositions presented in this article.
Keywords: constitutional theory, revolution, constitutional revolution, constitutionalism, Hans Kelsen.

Apie teisinę revoliucijos sąvoką

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Santrauka. Teisinės revoliucijos sampratos klausimas yra daugiadisciplininis, norint į jį atsakyti reikia domėtis teise, filosofija, istorija ir politikos mokslais. Tačiau siekiant išlaikyti grynai teisinę šios sąvokos viziją, šių disciplinų sankirta kai kam gali atrodyti neproduktyvi. Atrodo, kad yra du priešingi būdai mąstyti apie revoliuciją teisiniu požiūriu. Teisinio pozityvizmo šalininkams darbo metodologija turi būti visiškai teisinė. Todėl jie seka Hanso Kelseno, kuris siūlo teisinę revoliuciją tirti teisiniu požiūriu (1), mokymu. Kiti, reaguodami į šią viziją ir siekdami užpildyti jos akląsias dėmes, pirmenybę teikia materialiam požiūriui, apverčiant normatyvizmo tėvo išplėtotą formaliąją analizę (2). Ar, susidūrus su šiomis dviem minties mokyklomis, daugeliu atžvilgių visiškai priešingomis, yra vidurio kelias? Neabejotinai būtent šioje trečiojoje alternatyvoje galime skaityti Bruce'o Ackermano ir kitų autorių darbus. Ši tipologija leidžia mums nubrėžti teisinio revoliucijos sąvokos aiškinimo metodologines galimybes, tačiau negali pasiūlyti naujo ir visiškai šviežio aiškinimo, nepriklausomo nuo šiame straipsnyje pateiktų prielaidų.
Pagrindiniai žodžiai: konstitucinė teorija, revoliucija, konstitucinė revoliucija, konstitucionalizmas, Hans Kelsen.

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Introduction

At the conference organized by the international network of doctoral studies in law, we were asked to discuss "the good, the bad and the legal: balance between stability and disruptions of law". It seemed obvious – at least to us – that the organizers wanted to explore the role of law in today's social and societal disruptions: how is law dealing with new technologies? How to (or should it) deal with artificial intelligence? Ultimately, what attitude is the legislator adopting to these new revolutions? What is the relationship between law and these revolutions in the contemporary world? The notion of „disruption" inevitably refers to the notion of „revolution". But it is possible to consider the link between law and revolution at another level of analysis, by shifting the emphasis to the field of legal theory. It is in this field of legal science – theoretical and philosophical – that the present article is intended as an enhanced and improved transcript of the conference.

Few concepts have been as widely used in the social sciences as «revolution», but paradoxically, few have been as under-theorized as the latter. Faced with this paradox, the social scientist uses – sometimes unwittingly – an ill-defined concept with a vague meaning, often directly derived from and shaped by everyday language. However, some researchers have gone to great lengths to study this concept in depth, in an attempt to define it correctly. This is how we regularly come across stories about this concept, which is originally an astronomical term designating a «periodic orbital motion of a celestial body, particularly a planet or satellite, around another of preponderant mass» (*Le petit Larousse de poche*, 1997, p. 581) and which became politically charged during the 16th and 17th centuries to define an abrupt and violent political change (« Abrupt and violent change in the political and social structure of a state, which occurs when a group revolts against the existing authorities and seizes power. » (*Le petit Larousse de poche*, 1997, p. 581).

Today, this generic notion is unanimously recognized, but social scientists are unable to reach a consensus on the conceptual consequences of this assertion. Thus, while some give the concept of revolution a profoundly positive social dimension (as Hanna Arendt appears to do so in a way (Arendt, 2013)), others emphasize its necessarily violent, irremediable political, social, or economic nature... In short, the concept of revolution allows any thoughtful observer to understand a researcher's historiography or school of thought according to the way he or she defines revolution. No social science discipline is immune to this debate, which can be found in history, sociology, geography, philosophy and even legal science. However, when it comes to the latter, the attitude of the jurist (or, more precisely, of the researcher in legal theory) differs greatly from that of his fellow sociologists, historians or philosophers.

While everyone agrees to use this concept, to study it, or to engage in controversy about it, the jurist hesitates and has little to do with it. This is easily explained by the intellectual and scientific impact that Kelsenian positivism has had on our approach to the science of law, preventing us – for better or for worse – from using external concepts in our study of legal phenomena. And even if we attach a legal adjective to it (be it „juridical" or „constitutional") – and although this is not enough to make it a legal concept – the fact remains, as Jacobsohn and Roznai point out, that "Rarely in the domain of public law has an analytical construct experienced such ubiquitous yet undertheorized application as the term "constitutional revolution". (Jacobsohn and Roznai, 2020, p. 17) Yet Kelsen himself was interested in the concept of „revolution". Rather, Kelsen developed a new concept of revolution, matching his expectations and his vision of what the science of law should be (I). After him, little has changed. Most theorists simply adopted his conceptualization without really questioning, improving or denouncing it. This attitude raised important questions about the notion of „revolution" in legal theory, and we had

to wait for a re-actualization of the notion, notably by American legal theory, to provide new avenues for reflection (II), leading us, in fine, to seek a middle way between these two ways of conceptualizing the notion of revolution, in order to highlight the two aporias and blind spots of these theories.

However, it should be pointed out that jurists have not, strictly speaking, re-conceptualized the concept of revolution by borrowing it from historians, sociologists or philosophers. Rather, they set out to develop a new concept, tied to that of the constitution and fully and entirely rooted in the field of constitutional theory. Their revolution is necessarily legal, and a fortiori constitutional. They are not trying to see the legal consequences of a political or social revolution, but rather to see whether legal science can grasp the notion of revolution and integrate it into its conceptual arsenal. It is within the science of law (and not of law) that our present study takes place, and it is ultimately a theoretical – even metatheoretical – analysis that it proposes, attempting to determine the directions in which the science of law has turned when faced with an obstacle that led it to borrow the concept of „revolution". In the end, this article will attempt to demonstrate the interest of this concept not only for legal theory, but also for legal history, constitutional law and comparative law.

1. Hans Kelsen – considering the constitutional revolution from a procedural standpoint

There is no longer any need to introduce Hans Kelsen. The Austrian jurist is undoubtedly the most well-known, and his work is taught, or at least referred to, by every law student, regardless of nationality or the lecturer's theoretical or philosophical preferences. Today, Kelsen has established himself as the epicenter of modern legal thought, and everyone is bound to think in continuity or rupture with the Viennese thinker. What are the reasons behind the success of Kelsenian thought? They stem from a number of factors, not all of which will be discussed here; the most important being Hans Kelsen's commitment to developing a perfectly cohesive framework for the study of law. By developing pairs of oppositions, which constitute perfectly intelligible intellectual links, he offers the possibility of envisioning all the legal orders and systems in our world. Another reason for the success of Kelsen's normativist thinking is his absolute rejection of all jusnaturalism, all metaphysics, in short, all elements external to law. His ambition to achieve a pure theory of law enables the jurist – and the legal theorist – to evolve in a conceptual universe of his own, fully autonomous from other social sciences. In the immense scope of his work, few concepts have not been studied and developed from a strictly legal point of view.

The notion of revolution was not forgotten, and was given particular attention in his *Pure Theory of Law* (Kelsen, 2010), when Kelsen attempted to substantiate the question of the validity of the norm (Kelsen, 2010, pp. 13–20). It is therefore necessary to understand Kelsen's approach to the chain of validity of the norm (1.1), in order to comprehend his understanding and conceptualization of the notion of "revolution" (1.2). While this preliminary analysis will provide a necessary clarification of Kelsen's acceptance of the concept, it should not prevent us from questioning this analysis and demonstrating its potential limitations (1.3).

1.1. Kelsen and the chain of validity of norms – prolegomena to understanding his concept of revolution

As mentioned above, Kelsen prefers to think and develop his theories based on pairs of oppositions (Brunet, 2019, pp. 11–12) (the best-known of which are Sein versus Sollen, or Law versus Legal

Science). This way of thinking "against" gives his theoretical framework an intellectual clarity that few theorists or philosophers can claim to have. To add even greater clarity to his work, Kelsen developed a metaphor now universally adopted: the pyramid of norms. It is within this intellectual framework that we can understand Kelsen's approach to the question of norm validity.

According to him, to put it more simply, a (lower) standard is valid if it has been adopted in compliance with the procedure laid down by a higher standard. If the procedure for issuing a norm is laid down by a norm considered superior in the Kelsenian pyramid scheme, and this procedure is followed when issuing the inferior norm, then the inferior norm is considered valid. This same standard, considered here as inferior, can then become the superior standard, laying down the procedure for issuing another inferior standard which, to be valid, must respect the procedure of the aforementioned standard. The chain of validity unfolds before our eyes. What consequences can we draw from this Kelsenian vision? First of all, the analysis of a norm is always carried out in relation to other norms.

Although it forms the fundamental component of Kelsen's analysis, the norm must always be considered in relation to others, and norms as conceived by Kelsen can and must be studied by the science of law as a unitary system. Secondly, in his conceptualization, Kelsen seeks to focus solely on the form and procedure of norms, deliberately overlooking their content. His primary aim – and the one guiding all his works – is to be able to describe any legal order or system. Consequently, Kelsen refuses to take any account of the content of a norm when describing a legal system, in order to avoid any risk of ethno-centrism or ethical cognitivism.

If we return to the metaphor of the pyramid of norms mentioned above, we can easily see its relevance to the notion of norm validity. The constitutionality block (i.e. constitutional norms or norms with constitutional value) is at the top of the pyramid of norms. Below this is the conventional block, comprising norms deriving from international law and treaties; the legislative block is next (made up of laws, which must respect the constitutional block, which often lays down the legislative procedure, and the conventional block); and finally, at the base of Kelsen's pyramid, stands the regulatory block (made up of administrative acts, which must respect all the conditions laid down in the "upper floors").

1.2. A Kelsenian understanding of the concept of constitutional revolution

When studying the chain of validity, which he regards as a cornerstone of his theory, Kelsen is confronted with two problems. The first is the question of the fundamental norm. Every norm derives its validity from the higher norm, which lays down the procedure to be followed for the adoption of the lower norm. At the top is the constitution. But how can we assess the validity of this constitution? No positive norm is superior to it, so no validity can be found in positive law. To solve this apparent problem, Kelsen sidesteps the issue and develops a concept of "fundamental norm", unfortunately not to be found in positive law, whose existence he asks us to assume (in a way, Kelsen is making a dent in his own anti-jusnaturalist theory). This concept of "fundamental norm" is both the cornerstone of his theory of norm validity and, paradoxically, its Achilles heel. The entire chain of validity is based on an assumption.

The second difficulty is Kelsen's explanation of the legal situations arising from the revolutionary movements that have marked History, most notably the turn of the eighteenth and nineteenth centuries, commonly referred to by the legal historian as the "century of constitutionalism". How can Kelsenian legal theory accommodate this legal situation, in which one constitution replaces another, rarely – and optionally – respecting the rules for constitutional revision laid down in the former constitutional text?

Either it closes its eyes and simply refers to the birth of a new legal system, immaculate and untouched by history (which it cannot afford to do, as it would break the dynamic, evolutionary aspect of its theory) – or it develops a new concept: the concept of revolution.

Kelsen (unsurprisingly) took the second approach, which he developed in his Pure Theory of Law, explaining: "Revolution ... is any modification of the Constitution or any change or substitution of Constitution which is not legitimate, i.e. which is not carried out in accordance with the provisions of the Constitution in force" (Kelsen, 2010, p. 279). In his work, which is based on a pair of oppositions, Kelsen contrasts the notion of "revolution" with that of "revision" (understood in the sense of constitutional revision). As soon as a new constitution replaces an old one without complying with the constitutional revision procedures laid down in that constitution, we are faced with a constitutional revolution. No matter how substantial the change, a simple procedural break at constitutional level is enough to qualify the change as revolutionary.

Many examples can be found in the various national constitutional histories. Revolutionary France (i.e. the period from 1789 to 1799) is perhaps the most striking. In this short span of barely ten years, France engaged in a veritable "constitutional bricolage", developing no less than four constitutions: those of 1791, 1793, 1795 and 1799[1]. The reasons for these constitutional changes were numerous: a change of regime (from monarchy to republic), a war situation rendering a constitution inapplicable, social instability ... political, historical, social (and even economic) realities all accounted for these rapid and violent changes of constitution, unencumbered by an often long and complex constitutional revision procedure. Kelsen's theory of revolution therefore provides a good account of past constitutional situations but overlooks other situations that do not fit into the revision/revolution dichotomy he proposes.

1.3. The limits of this approach

Kelsen thus develops a concept of "legal revolution" based solely on procedure, taking no account whatsoever of the substance of the norm created by said revolution. This is perfectly logical in view of the theory he developed throughout his life. Nevertheless, in his dual vision of constitutional evolution, a number of points have not been considered. Yet Georg Jellinek, another representative of the Austrian school of positivism, brilliantly outlined other ways in which constitutions evolve (Jellinek and Jouanjan, 2018)[2].

At the end of the 19th century, Jellinek proposed another opposition that Hans Kelsen did not adopt: where Kelsen opposed revision to revolution, Jellinek opposed revision to mutation. By replacing the notion of mutation with that of revolution, Kelsen deprives us of a number of intellectual possibilities to understand the constitutional phenomenon. He omits – whether deliberately or not – to mention the situation of constitutional change in the silence of the constitution. In other words, his conceptualization does not take into account the possibility of a change of interpretation of the constitutional norm. Yet a change of interpretation of a norm can have a major influence on legislative procedure, and therefore have a direct bearing on the procedural aspect emphasized by Kelsen.

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[1] Flammarion has published a book covering all these constitutions, with historical and legal contextualizations by Jacques Godechot (Godechot, J. (2018), *Les Constitutions de la France depuis 1789*, Flammarion, Paris).

[2] Most notably in his book *Révision et mutation constitutionnelles*. Originally published under the title *Verfassungsänderung und Verfassungswandellung* in 1906, this is a major work for anyone wishing to study constitutional evolution. Hans Kelsen attended Jellinek's seminars on public law at the beginning of the 20th century, and although he was not entirely convinced by Jellinek's analysis, it is possible to find references to Jellinek in his work.

Kelsen therefore seems to take into account only visible breaks in constitutional continuity. In doing so, he would either have to double his distinction with a third component: that of mutation (in Jellinek's sense) or, in our view, that of modification in constitutional interpretation. In the light of Michel Troper's work and his realist theory of interpretation, this proposal takes on its full significance.

Kelsen's theorization of the concept of revolution is ultimately in perfect harmony with the rest of his work. It makes it easier to understand the notion of the "fundamental norm" and the connections, sometimes hidden or concealed, between Kelsen's pure theory of law and its ties with the political universe. By defining and conceptualizing the notion of revolution from a purely formal point of view, Kelsen also provides theorists with an object that can be used in all possible circumstances. However, as he is often criticized for this, such a concept is limited to essentially descriptive work, and – according to his detractors – is of little interest to those who seek to go beyond this analytical and descriptive framework. This is notably the case of a number of authors and researchers representing American theory, who have sought to go beyond Kelsen by completely reversing the way in which constitutional revolution is viewed.

2. American theorists – looking at constitutional revolution from a substantive point of view

To discuss the American theory of constitutional revolution, let us take as our starting point the recent book by Jacobsohn and Roznaï, *Constitutional Revolution* (Jacobsohn and Roznai, 2020). Although this work is of considerable scope and theoretical contribution, it is nonetheless a true anti-positivist pamphlet that must be handled with care.

In its introduction, the authors suggest demonstrating or contradicting six propositions regarding the concept of constitutional revolution. Among these, two are predominant for our study. Firstly, for Jacobsohn and Roznaï the distinction between "legal transformation" and "illegal transformation" (i.e. procedural compliance in Kelsenian analysis) is not decisive if we wish to establish the existence and occurrence of a constitutional revolution. At most, this opposition makes it possible to establish a dichotomy within the concept. Secondly, the authors aim to demonstrate that any constitutional revision is accompanied by significant changes in constitutional identity; without this change in identity, there can be no constitutional revolution.

The reversal of Kelsen's perspective is clear from the introduction, and becomes explicit after a few pages, when our authors explain that it is necessary to go beyond the analysis of the Viennese master if we wish to go beyond the simple descriptive analysis of the concept of constitutional revolution (Jacobsohn and Roznai, 2020, p. 26). In so doing, by overturning Kelsen's formalistic analysis and focusing essentially on a substantive analysis of the concept of constitutional revolution (2.1), Jacobsohn and Roznaï necessarily arrive at conclusions quite different from those so far accepted (2.2).

2.1. A reversal of Kelsen's formalist analysis

As previously mentioned, Kelsen's analysis of the concept of revolution is exclusively based on form. Any consideration of content is outlawed, in keeping with the normativist positivist ideal advocated by the Viennese thinker. Here, Jacobsohn and Roznaï deliberately reverse the framework of thought, developing two major premises for their definition of constitutional revolution: firstly, the illegality of the constitutional transition is not sufficient to characterize a revolutionary transition (implying,

by the same token, that a constitutional revolution can take place without altering the constitutional framework of a state); secondly, to characterize a genuine constitutional revolution, it is necessary to focus on the substantial scope of the constitutional change (the said modification must be far-reaching and with major consequences in the legal order of the state).

In so doing, they define a constitutional revolution as "a transformation of the substance of the constitutional identity of a political entity" (Jacobsohn and Roznai, 2020, p. 35). Regardless of the transition process, as soon as the constitutional identity of a political entity is altered, the characterization of constitutional revolution is, in their view, appropriate. More precisely, what is required is a paradigmatic shift in the conceptual prism through which constitutionalism is experienced within a given state or political entity. Once again, the Kelsenian objective of being able to describe all possible legal orders and systems – past, present or future, real or imaginary – is no longer relevant here; a specific knowledge of the legal system under study is absolutely necessary to be able to find this paradigmatic shift in constitutional identity eventually. After all, not all legal orders are based on the same presuppositions or guiding principles.

2.2. A substantial analysis with differing consequences

Focusing on this new approach to define constitutional revolution, Jacobsohn and Roznaï conclude that any constitutional amendment or transition can be revolutionary. Thus, a constitutional amendment, which would never be considered a revolution under Kelsenian analysis (provided it complies with the procedure laid down in the constitution), can here – without any theoretical problems – be considered revolutionary or, more precisely, the bearer of a constitutional revolution. To illustrate their point, Jacobsohn and Roznaï take the Hungarian example, which they treat in depth, devoting an entire chapter to it (Jacobsohn and Roznai, 2020, pp. 59–101). More traditionally, and still from this new perspective, a Constitutional Court interpretation can also be revolutionary from the point of view of a state's existing constitutional order[3].

However, while the authors' analysis has the advantage of being innovative and enabling the identification of substantial ruptures in constitutional orders, it is not free of all possible criticisms. By categorically and explicitly rejecting the contributions of Kelsenian thought, it deprives itself from a rigorous theoretical framework and opens the door to potential deviations. By integrating concepts such as "major" (in the sense of major importance) or the notion of "constitutional identity", the authors find themselves faced with philosophical questions they did not seem to have anticipated: what is a constitutional identity? What is a major change in the constitutional order? Is it really a static idea? It is possible to argue the opposite.

The idea of constitutional identity can never be precisely defined, nor can it claim to be defined for the future. At most, it forms a shifting, fuzzy nebula whose framework can only be conceived in relation to a political majority which is bound to evolve in democratic systems, and which takes unequal account of minority viewpoints within it. Moreover, within a single constitutional order, a multitude of constitutional identities can be found. Those of the political majority in power are almost invariably rejected by those of the political opposition (or political minorities). And if we focus on the infra-political, or if we place the analytical cursor at the level of the citizen – and not at the level of the governing authority – we can safely assume that, once again, there is a multitude of constitutional

[3] A telling example of this is the constitutional situation and role of Supreme Court of the United States during the "New-Deal period" in the USA.

identities. The example of nationality is undoubtedly the most striking. Within the European Union, some citizens define themselves first and foremost as European, others as citizens of their national entity. Some advocate European federalism, while others reject the idea outright.

The same relativism can easily be applied to the concept of "major change". Should we simply take into account changes in the organization of powers, in the way the three branches are separated? Or, on the contrary, should we consider as major any change in the protection of fundamental rights or freedoms? Once again, it would seem hazardous to dare answer these questions with any certainty. For some, the restriction of the right to abortion in the United States of America by the reversal of the 1973 Raw v. Wade jurisprudence is a change of constitutional identity and a major upheaval of the American federal constitutional order. For others, it is simply a marginal adaptation of the jurisdictional principle, or even the rectification of a Supreme Court of the United States (SCOTUS) misinterpretation.

Ultimately, the analysis proposed by Jacobsohn and Roznaï is seductive in many respects but it can – in certain aspects – be regarded as a colossus with feet of clay. In fact, it delivers on its promise when it claims to go beyond the purely descriptive framework offered by Kelsenian theory, and allows us to identify the fault lines that emerge within constitutional frameworks. Moreover, it shows the Constitution not as an instantaneous achievement, but as a perpetual process, an unfinished construction by definition that tends, through a mechanism of "disharmonic equilibrium", to evolve towards the unattainable horizon of constitutional concord and perfection. However, this theory rests on fragile presuppositions: notions and concepts that are difficult or impossible to define, and a certain relativism that is easily condemned. Perhaps conceptualizing these vague notions would help to erase the uncertainties hovering over this theory. This is one of the possible avenues to explore after analyzing these two diametrically opposed theories. The other possibility – which we shall favour here – is that of considering our two theories as the two extreme ways of looking at constitutional revolution, extremes between which we must find a middle way to open the door to an effective and satisfactory conceptualization of the concept of constitutional revolution.

Conclusion. Thinking constitutional revolution – a middle way

The two approaches to the legal concept of revolution we have just developed are not, strictly speaking, opposed to each other. It would be pointless to engage in a frontal opposition between these two visions. Rather, these two schools of thought are driven by different objectives shaping two different concepts linked by the notion of a break in constitutional continuity: purely descriptive in Kelsen, the concept of revolution takes on an entirely different emphasis in Roznaï and Jacobsohn, who officially announced their intention to go beyond this perspective.

These two approaches to constitutional revolution also raise different issues and leave in their wake unanswered questions of various kinds. For Kelsen, procedure is everything; for Jacobsohn and Roznai, it is nothing. For Kelsen, the content of the revolutionary norm is nothing, for Jacobsohn and Roznai, it is everything. In our view, these profoundly different analyses represent the two extremes that can be developed with regard to the notion of constitutional revolution. Some – provocateurs to the core – would evoke these two theories as the two ends of an Overton window, which cannot be surpassed at the risk of falling into caricature, but between which it is necessary to navigate cautiously in order to find a middle way. This new path, while respecting the canons of Kelsenian normativist positivist thought, guaranteeing that it will be taken seriously by all, would take into account certain possibilities sketched out in Jacobsohn and Roznaï's work.

A number of authors have developed writings, theories and ideas about revolution that can be integrated and interpreted in the light of this aspiration, such as the work of Bruce Ackerman (Ackerman, 1993) or of H. L. A Hart (Hart, 2005) (although his conception of constitutional revolution seems in some respects even more restricted than that developed by Kelsen). For Bruce Ackerman (Ackerman, 1993, p. 203), a constitutional revolution is the sum total of a successful repudiation of the past and a transformation of a nation's political and legal identity by superior and new constitutional law, and for which constitutional revolution does not necessarily have to borrow the same, generally recognized, characteristics of revolution understood in the broad sense[4].

A typology of the legal interpretations of the concept of revolution could – and should? — be drawn up. Such a work would be of considerable interest not only for legal theory, but also for legal history, comparative law and constitutional law; Indeed, many academics use the concept of revolution to provide dynamic portraits of the law. Such is the case, for example, of Jean-Louis Halpérin, who, in his book *Five legal revolutions since the 17th Century* (Halpérin, 2014), uses the definition of legal revolution inherited from the work of H.L.A. Hart (crossed with a Bourdieusian analysis of law) to show revolutions as a real driving force in the history of law.

As far as we are concerned, it seems complicated, at this stage of our reflection, to claim to be able to propose – or rather counter-propose – a new definition of the concept of legal revolution. Probably too weak or too close to those already proposed, our attempts must be limited to drawing up a portrait of a few known and unambiguous legal situations (if such a thing is possible) that could be integrated into the all-encompassing concept of revolution. To begin with, we shall distinguish between revolutions as defined by Kelsen and those that take place without a break in procedural legality. Within the latter, we must once again distinguish between those which occur spontaneously, through a positive and voluntary legal act, and those which are born of constitutional practice or which take root in the silence of the Constitution (in this sense, we accept the vision developed by Jellinek, who makes constitutional mutation the real driving force behind constitutional evolution). Ultimately, this dichotomous presentation of the concept of constitutional revolution leads us to the conclusion that there is a multitude of them, which it is potentially possible to classify into a useful typology for the science of law. The aim was not to include all possible definitions and acceptances, but only to outline their contours and framework. This is the first stone in a work that can – or must – be more ambitious, and which will perhaps be completed later.

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[4] Within Ackerman's analysis of the concept of constitutional revolution, it is possible, once again, to detect a filiation with Georg Jellinek's work.

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Guillaume Deprez is a PhD student at the University of Paris Nanterre. His thesis consists of a study of constitutional law and the history of law, focusing on the analysis of constitutional revision as part of Atlantic historiography during the revolutionary era. This study attaches great importance to the practice of multidisciplinarity (public law, legal history, comparative law, legal theory as well as philosophy and political science). The thesis is entitled ‚La révision constitutionnelle à l'épreuve de l'histoire atlantique'.

Guillaume Deprez yra Paryžiaus Nantero universiteto doktorantas. Jo disertacija yra konstitucinės teisės ir teisės istorijos studija, skirta konstitucinės revizijos kaip Atlanto istoriografijos dalies revoliucijų epochoje analizei. Šiame tyrime didelę reikšmę teikia daugiadisciplininiškumo praktika (viešoji teisė, teisės istorija, lyginamoji teisė, teisės teorija, taip pat filosofija ir politikos mokslai). Disertacijos pavadinimas „La révision constitutionnelle à l'épreuve de l'histoire atlantique".