

THE EUROPEAN CONSTITUTION FROM THE  
INTERDISCIPLINARY PERSPECTIVE: PROMOTION OF UNITY  
AND PROTECTION OF DIVERSITY<sup>1</sup>

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The formation of the European constitution parallels another crucial process faced by the European Union: the process of enlargement. Both the formation and proclamation of the European Constitution and the process of enlargement, together with the ever more important processes of immigration, present challenges for the European Union in its existing form: to its institutional structure, its unity, and its identity. On the one hand, the constitutionalization of Europe means the promotion of unification and integration of the old and the new members to protect European cohesion and simultaneously to protect the core values on which the European Unions rests: human rights, principles of the rule of law and democratic government, and the four crucial freedoms expressed in the Treaty of Maastricht. On the other hand, the process of the constitutionalization of Europe confronts the growing diversity of European societies and the necessity to reflect and to accommodate it, but not lose the Union's capability of effective functioning. The constitutionalization of Europe thus has many dimensions: legal and in the broader sense institutional, political, sociological, and cultural, to mention the most important of them. Thus, the objective of this seminar was to initiate a cross-disciplinary debate on some burning issues related to further integration and unification and the simultaneous diversification and pluralization. The presentations and discussed questions contributed to clarify some crucial legal, political, and social problems the European constitution faces.

The opening presentation by Professor Grimm, Rector of the Wissenschaftskolleg, debated the legal dimension of constitutionalization from the perspective of the plurality of legal structures already characteristic of the European Union. Richard Bellamy and

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Christian Joerges further elaborated these issues, i.e. the co-existence of statutory laws and case law, the importance of the Charter of Rights and its compatibility with the European Convention of Human Rights and Fundamental Freedoms, the coexistence and accommodation of the adjudication of the European Tribunal of Human Rights with the future constitution, and also its accommodation with the adjudication of the European Tribunal of Justice. In light of Christian Joerges's presentation, the constitutionalization of united Europe is a dynamic process, and the very legal meaning of constitution is shifting: from that of the constitutional treaty – a document negotiated and agreed upon in multilateral agreements and compromises – to the constitution proper – a document founding a new political entity. In this presentation and the following debate, the question of the “constitutional moment” was debated, and the argument was presented that such a “constitutional moment” is missing. Juxtaposed with this argument was another one that such a constitutional moment is found in the EU enlargement process and the incorporation of the new member states in the already existing EU structures. As was argued, they possess considerable potentials but very peculiar experiences and expectations, not to mention much lower GNPs and living standards. Nevertheless, the enlargement confronts the European Union with huge tasks and risks and has to accommodate quite specific legal and constitutional cultures, characteristic of the new members. András Sájo raised the issues of Eastern Europeans expectations, saying that the process of enlargement and the “constitutionalization of Europe” is popularly supported in the new member-states precisely because of its legal effects: the clear and efficient legal structures hoped for. One speaks about a “pulling effect” of the constitution, its empirically effective contribution to European integration.

Challenging issues related to the EU enlargement were further debated in relation with other topics and presentations.

The second set of issues concerned the political dimension of constitutionalization, the complexity of the EU's institutional structures, – which complexity was analyzed on the basis of empirical research conducted by Rainer Schmalz-Bruns and Tanja Hitzel-Lassagnes –, the issue of sovereignty in general, and the more specific issues of the member states' sovereignty. Above all, the debate focused on the question whether the constitutionalization of Europe limits state sovereignty or redefines it in the context of the Europe's highly complex institutional construction. During the seminar, Ulrich K. Preuss proposed the concept of “shared sovereignty” as an answer to the question whether the nation-states have less sovereignty in the united Europe. The “shared sovereignty” proposition was debated with regard to internal and external domains of state power in general and in

particular to the subordination of national legal orders to European law. In this respect, the question of Eastern Europe's newly won full national sovereignty was raised, and the possible tension between "shared sovereignty" and the importance of full sovereignty for Eastern Europeans was debated. The debate also focused on the growing cultural diversity of the inhabitants of Europe – the issue raised by Christine Landfried. In her presentation, the growing plurality and diversity of the European demos and the growing presence in Europe of non-European cultures presents a challenge, but also a potential. The debated questions were to what extent cultural differences could be accepted, whether the interpretation of human rights and liberties could be at all flexible, and the degree to which the constitution should reflect the growing cultural differentiation of Europe.

The formation of the European Constitution also has an important sociological dimension. First and foremost, this dimension is related to questions of the Constitution's legitimacy in terms of the values and worldviews of the ever more diverse and plural European society. Here, a question of European identity arises. During the workshop, this question was debated in connection with the growing importance – in the consciousness of Europeans – of the European totalitarian past for its identity-forming effects. Two totalitarianisms were the subjects of presentations and debates: Nazi totalitarianism in Gesine Schwan's presentation and communist totalitarianism in Grażyna Skąpska's presentation. In contrast to the impact of totalitarianisms, a historian, Éric Brian, presented the history of the constitution, human rights, and public education in France at the end of eighteenth century in the context of the French contribution to European identity formation.

Gesine Schwan argued that the Nazi past is not yet fully overcome and still presents a caution and a lesson for Europe. The process of reckoning with the totalitarian, Nazi past still contributes to conceptualizations and the recognition of human rights and human dignity, as well as revealing the potential dark forces of fundamentalist nationalism and chauvinism. In Grażyna Skąpska's presentation, the other totalitarianism was debated as an identity-forming factor: communist totalitarianism, based on a very peculiar, so-called "scientific" ideology. Allegedly founded on the Enlightenment ideas of scientific reason and social progress, communist totalitarianism compromised these very ideas in the consciousness of Eastern Europeans, and led to the revival of local cultures and traditions, but also of Christianity as important, European identity-forming factors.

## Workshop Program

June 19, 2003. Opening of the Workshop: Dieter Grimm

### Session I

*The Historical and Sociological Dimension of the European Constitutional Treaty*

Moderator: Cornelia Vismann

Éric Brian: "Constitution, Human Rights and Public Instruction. A Reflection Based on Constitutional Issues at the End of the 18th Century in France"

András Sájó: "Europeans Without Enthusiasm"

### Session II

*The Impact of the Past on the Emerging European Polity*

Moderator: Martin Tisné

Gesine Schwan: "The Impact of the Past on the Political Culture of Europe"

Grażyna Skąpska: "European Constitution after Auschwitz and Gulag: Critical Reflexivity as Foundation of European Identity"

June 20, 2003

### Session III

*The European Constitutional Treaty and the Multiplicity of Legal Structures*

Moderator: Mahendra Pal Singh

Christian Joerges: "Europe a *Großraum*? Shifting Legal Conceptualizations of the Integration Project"

Christine Landfried: "The Political Dimension of Europe: Difference as potential in the EU"

### Session IV

*The Political Dimension of the European Constitution*

Moderator: Hilda Sabato

Ulrich K. Preuss: "What Does 'Shared Sovereignty' Mean in the Context of the EU?"

Richard Bellamy: "The Normality of Constitutional Politics: an Analysis of the Drafting of the EU Charter of Fundamental Rights"

Rainer Schmalz-Bruns and Tanja Hitzel-Cassagnes: “The Inter-institutional Development of Rights and Democracy in EU – a Deliberative Perspective”

#### Participants

Richard Bellamy, University of Essex, Colchester

Éric Brian, Wissenschaftskolleg zu Berlin and École des Hautes Études en Sciences Sociales, Paris

Christian Joerges, European University Institute, Florence

Dieter Grimm, Rector, Wissenschaftskolleg zu Berlin and Humboldt University Berlin

Tanja Hitzel-Cassagnes, Technical University, Darmstadt

Christine Landfried, University of Hamburg

Ulrich K. Preuss, Free University, Berlin

Hilda Sabato, Wissenschaftskolleg zu Berlin and Universidad de Buenos Aires

András Sájo, Central European University, Budapest

Reiner Schmalz-Bruns, Wissenschaftskolleg zu Berlin and Technical University, Darmstadt

Gesine Schwan, Europe University Viadrina, Frankfurt/Oder

Mahendra Pal Singh, Wissenschaftskolleg zu Berlin and New Delhi University

Grażyna Skąpska, Wissenschaftskolleg zu Berlin and Jagiellonian University, Cracow

Martin Tisné, Center for Policy Studies, Central European University, Budapest

Cornelia Vismann, Wissenschaftskolleg zu Berlin and Max-Planck-Institut, Frankfurt/Main

Fellows of the Wissenschaftskolleg zu Berlin, invited students