



CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



JOINT WORKSHOP: EUDO (EUROPEAN UNION DEMOCRACY OBSERVATORY), CENTER FOR STUDIES ON FEDERALISM, STALS (SANT'ANNA LEGAL STUDIES), AND MAX WEBER PROGRAMME, EUI

TREATY REFORM BEYOND LISBON?

18 March 2011, 09.00-17.00, Villa La Fonte, Conference Room

Introduction to the project

At first glance, the rejection of the Constitutional Treaty by the majority of the French and Dutch voters, and the Irish "No" to the Reform Treaty (RT), may give the impression of an inescapable constitutional crisis for Europe.

Although the RT does not include any reference to the word "Constitution", the substantial continuity between this document and the Constitutional Treaty is evident. As some scholars have stressed, a "constitutional substance" would have been "rescued" despite the elimination of some "dirty words" such as "Constitution", "Law", and "Minister" from the text of the Lisbon Treaty¹. From this point of view, as Corthaut

¹ J. Ziller, *Il nuovo Trattato europeo*, Bologna, Il Mulino, 2008, at 127.

points out, "*the Reform Treaty looks more like the (evil?) twin of the Constitutional Treaty than its distant cousin*"². Ziller³

argues that the possible major changes (the primacy clause's disappearance, for example) were just functional to overcome the risk of Member States' refusal. Despite this substantial relative continuity, other authors have stressed the sense of disappointment which would characterise the document, defining it as a (mere) "*Postconstitutional Treaty*"⁴.

The real issue thus concerns the nature of a potential Constitution for Europe: what kind of Constitution would it be? Would the idea of a Constitution as such be applicable to the European Union experience? Has the season of the mega constitutional politics ended? Should we be "satisfied" with the Reform Treaty, by limiting ourselves to the maintenance of what we got after the rejection of the Constitutional Treaty?

This workshop tries to provide an answer to this question, reading the current phase from two very different perspectives: according to the first one, the Reform Treaty will represent just a phase, another link in the chain of the semi-permanent revision of the Treaties. According to the second perspective, the Reform Treaty is a good basis for the EU and no other constitutional phases are possible after the "constitutional failure": the real issue is the implementation of the Reform Treaty (rather than its overcoming) or its "maintenance".

Given the highly interdisciplinary content of the subject of this workshop, we decided to extend the invitation to political scientists and lawyers (experts in EU and public international law, comparative and European constitutional law). All the speakers invited will provide a very interdisciplinary overview of the subject.

² T. Corthaut, "Plus ça change, plus c'est la même chose? A comparison with the Constitutional Treaty", *Maastricht Journal of European and Comparative Law*, 2008, 21-34, at 34.

³ Ziller, *Il nuovo Trattato*, cit., at pp. 27 ff.

⁴ According to Somek: "A postconstitutional ordering, by contrast, cannot settle contested issues, for it cannot find sufficient support for a clear solution. A postconstitutional norm does not speak with one voice. It is a document recording the adjournment of an ongoing debate. Maybe this is addressed by those talking about the Union's alleged lack of a *pouvoir constituant*. Ideally, a constitution is about channelling political dealings, not about postponing their resolution". A. Somek, "Postconstitutional Treaty", *German Law Journal*, 2007, 1121-1132, at 1126-1127.



TREATY REFORM BEYOND LISBON?

(18 March 2011)

9.00-9.30

Bruno de Witte

(University of Maastricht; EUI)

Paolo Carrozza

(Scuola Superiore Sant'Anna, STALS)

I

THE CONSTITUTIONAL CHANGE: CONSTITUTIONAL REFORMS AFTER THE REFORM TREATY?

09:30 – 10.10.

Chair: Heng Wang

(Max Weber Fellow, EUI)

Speakers

Giuseppe Martinico

(Centre for Studies on Federalism),

"The idea of the 'mega constitutional politics': borrowing from Canada?"

Roberto Castaldi

(Centre for Studies on Federalism)

"Why the mega constitutional politics will continue"

10.10.-10.50

Discussion

10.50-11.05

break

II

THE CONSTITUTIONAL MAINTENANCE: THE JUDICIAL "IMPLEMENTATION"

11.05-12.00

Chair: Rebecca Zahn

(Max Weber Fellow, EUI)

Speakers

Filippo Fontanelli

(Scuola Superiore Sant'Anna, STALS),

"Applying the Charter of fundamental rights of the European Union: the latest development in the EUCJ's case-law"

Giacomo Delledonne

(Scuola Superiore Sant'Anna, STALS),

"Dealing with national identities. Art. 4 EUT"

Andres Delgado Casteleiro
(EUI)

"The accession of the EU to the European Convention for the protection of Human Rights"

12.00-12.45
Discussion

12.45-14.30
Lunch

III
THE CONSTITUTIONAL "MAINTENANCE" THE POLITICAL "IMPLEMENTATION"
14.30-15.50

Chair: Giuseppe Contissa
(Max Weber Fellow, EUI)

Speakers
Emanuele Pollio
(Scuola Superiore Sant'Anna, STALS)
"External relations: new actors, new policy?"

Carlo Maria Cantore
(Scuola Superiore Sant'Anna, STALS)
"So asymmetric: the first cases of enhanced cooperation"

15.10-15.25
break

Aneta Jurska-Gawrysiak
(Max Weber Fellow, EUI)
"Challenges of the effective implementation of EU law into national law"

Edoardo Bressanelli
(EUI)
"The European Parliament after Lisbon: Political Groups Policy Position and Coherence"

16.10- 16.40
Discussion

Final Remarks

Bruno de Witte
(University of Maastricht, EUI)

For organisational purposes, please register. Contact: martinico@csfederalismo.it