

# Reconceptualising European Economic and Social Constitutionalism – a normative perspective

Panel Neo-liberal constitutionalism and  
protection of rights  
ECPR Meeting - June 2010 – Porto

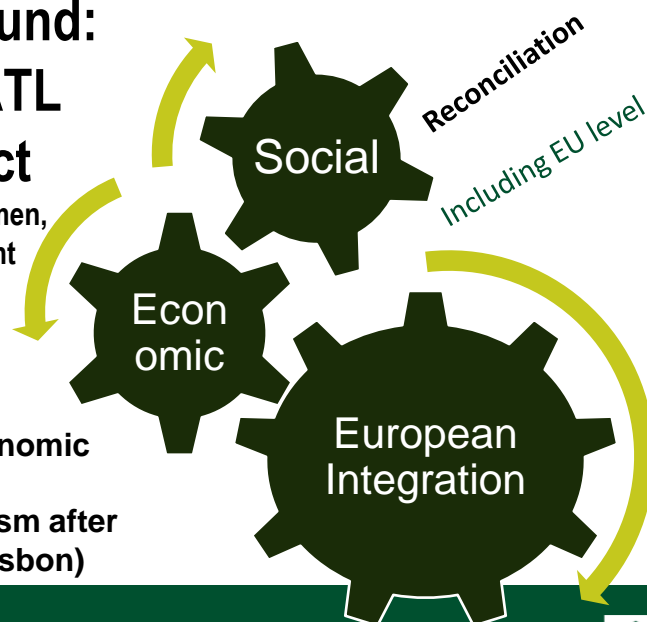
## Background:

### EESCATL

#### Project

Leeds, Bremen,  
Maastricht

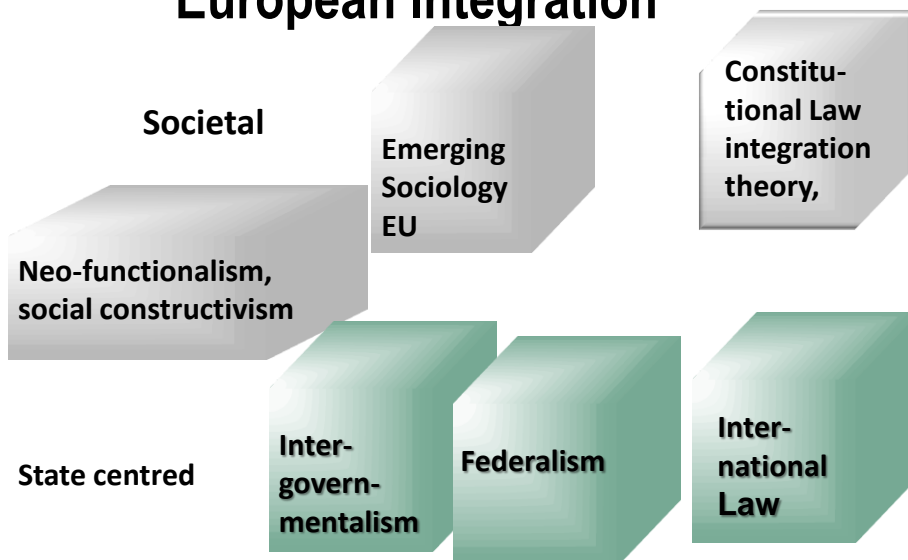
(European Economic  
and Social  
Constitutionalism after  
the Treaty of Lisbon)



# Socially embedded Constitutionalism

- Base ideas
  - EU integration from societal perspective
  - Socio-economic integration focus of constitutionalism debate
- ➔ Socially embedded constitutionalism as model for EU economic and social constitutionalism after the Treaty of Lisbon

## European Integration



## Socio-Economic Constitutionalism EU

- Economic
  - Fundamental freedoms and competition law direct effect
  - comprehensive body of secondary law
  - Economic Policy: (coordination)
- Social
  - Equal pay, citizenship direct effect
  - Less secondary law
  - Predominance of OMC

## EU Integration - normative frame

- Interrelation of economic and social integration
- Economic integration means to an end
- Treaty of Lisbon
  - Maintains this (\*except the means dimension\*)
  - Adds social aims, social mainstreaming clause, more emphasis on SGI and civil society

- European Integration -- constitutionalised

*Clash*

- European Integration – normative frame

- European Integration -- constitutionalised

**Socially embedded  
Constitutionalism  
to overcome clash**

Integration –  
normative  
frame

## Constitutionalism (within states)

- Conventional
  - Constitutional democracy: inalienable, individually enforceable rights
  - protect liberties and provide participation rights
  - tends to enhance market based stratification
- Expansion towards
  - Integrating societies
  - Rights beyond hollow formulas → substantive endowments
    - Social interpretation of liberal rights
    - Enabling rights complement liberating

## Socially embedded Constitutionalism

- *Constitutional rights to become meaningful for the social reality of many rather than protecting privileges of few*
- *Rights to contribute to enabling all to self govern their lives, if necessary collectively and cooperatively.*

# Socially embedded Constitutionalism

- Substantive rights
  - Positive state obligations of public bodies
  - Reading rights into market relationships
- Procedural rights
  - Enabling those not able to rule through market power to combine and cooperate
  - Scope for acting cooperatively rather than competitively

## EU Constitutionalism

- Neo-liberal traits
  - Constitutionalised market freedoms and competition law
  - Empowers transnational elites
  - Fails to create transnational socio-legal fields for majority of citizens
- Counterbalance
  - Normative foundations of Treaties
  - Charter of Fundamental rights
    - Includes social rights
  - ToL mainstreaming clauses
    - Social, SGI, civil society

# EU Socially embedded Constitutionalism

- Doubts
  - Piris: imbalance between EU internal market and powers to reign in any social development “not easy to correct”
  - Scharpf: asymmetry makes EU social market economy eternally untenable
- Way forward?
  - Law as social practice
  - Social embedding as interpretative principle for network of European courts
  - Opportunity to create transnational socio-legal space

## To conclude

- Socially embedded EU constitutionalism valuable contribution to bring EU closer to all its citizens
- Next steps for (socio-)legal scholars
  - Offer new ways of interpreting rights vested in individuals
  - Develop procedural rights that contribute to new modes of governance in social realms where market forces tend to dis-empower citizens
- Socially embedded constitutionalism supporting social agency of all

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Thank you for your attention!