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
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

• European Integration – normative frame

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
Thank you for your attention!