



## **Call for Papers**

### **Economic Constitutionalism: Mapping its Contours in European and Global Governance**

Thursday 14<sup>th</sup> – Friday 15<sup>th</sup> June 2018  
European University Institute, Florence

#### **Overview**

Economic constitutionalism has been remarkably influential in structuring the parameters of integration in Europe. It has made significant contributions in expanding and deepening economic relations while supplementing them with strong legal guarantees. Reflecting on the current stage of the European project, economic constitutionalism is faced with the fundamental challenge of responding to governance crises (sovereign debt crisis, the rise of economic and political nationalism, migration). The prospect and desirability of further economic integration in the European Union is at the heart of the debate regarding the future of the European project. In light of this, it is pertinent to focus on the nature and evolution of economic constitutionalism in the European and global contexts, with a view to better understanding its potential in providing a valuable basis for addressing governance failures.

The purpose of the conference is to explore the place of the concept of economic constitutionalism within broader constitutional processes in the European and global legal orders, to investigate its function and to evaluate its dynamic and evolutionary nature. The direct focus of the conference, therefore, is on two fundamental questions. The first concerns the terms under which economic constitutionalism is still relevant beyond a state-centred constitutional concept and is viable in the context of European and global governance under the current circumstances of a presumed globalisation setback. It is possible, for example, to view the economic constitution as a structural coupling between the specialised and relatively autonomous functional setting of the economy and law in order to create as well as limit economic activities. Then the second relates to whether and how the economic constitution responds to the double pressures of economic crisis and populist democracy in order to address governance failures and preserve the 'health' of the economic system.

#### **Keynote Speaker**

Professor Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations at University of Edinburgh.

#### **Conference Themes**

The conveners welcome papers that fit broadly within the theme of the conference, but in particular invite papers that relate to one or more of the following interrelated themes.

## 1. European economic constitutionalism

In the European constitutional order, the development of economic constitutionalism has enjoyed a greater degree of intensity than at the global level. This has been the result of closer economic integration through treaty reforms, judicial decision-making, institutional action and, of course, the establishment of the monetary union. In times of crisis, however, constitutional principles and mechanisms are being challenged by state and non-state actors. Some of these challenges have had desirable effects in bringing about incremental changes in legal processes such as reforms in financial and banking regulations after the financial crisis. Others seem to threaten well-established economic freedoms in Europe and jeopardise the path to economic integration which, until recently, seemed irreversible. This theme seeks to explore the relationship between European constitutionalism and public authority, as a means of addressing economic failures and crises. Therefore, relevant considerations include:

- Do economic constitutional principles in Europe provide legal safeguards or constraints in relation to the policies and legal measures that states can implement? How do these constitutional principles transform legal and political authority within states without necessarily reducing it into irrelevance?
- In light of the current challenges that Europe faces, do states have the decisional autonomy to abandon European constitutional principles in order to provide solutions for their own respective populations? Does the EU have legal tools and political willingness to enforce joint European values in non-compliant member states? Can financial sanctions be used to enforce compliance?
- Does the difficulty to identify an overarching vision and common solutions to these challenges threaten the foundations of integration? If not, how amenable is the economic constitution to conditions of uncertainty?

## 2. The role of the judiciary in European and global governance

Judicial networking between the ECtHR, the CJEU and domestic courts has long been identified as a desirable approach to judicial decision-making. This has been a welcoming avenue in order to maintain communication between different and often overlapping judicial authorities and to achieve the development of common standards of governance. Such judicial interactions have started taking place also at the transnational level, with most notable examples the investment tribunals and the WTO Dispute Settlement Body, including the panels and the Appellate Body. Nonetheless, the extent to which different transnational courts and tribunals take account of substantive and procedural principles as a genuine part of global public interest varies significantly. As a result, the legitimacy of different transnational courts has been put into question. In light of the above, this theme seeks to investigate the role of the judiciary in identifying patterns of interpretation and networking that can lead to the evolution of the law in their respective fields and to taking into account rules and interests of the global legal order. Relevant issues include:

- To what extent is judicial networking and dialogue a contributing factor to promoting patterns of governance?
- Can judicial organs take account of global values or goods while at the same time maintaining the integrity of the legal system they represent?
- How should courts resolve conflicts between market freedoms of transnational business actors and human rights?

### 3. Theoretical perspectives on economic constitutionalism

The emergence of multilevel governance transforms and opens theoretical concepts, such as *pouvoir constituant*, *pouvoir constitué* and popular sovereignty, to different interpretations in order to better explain constitutional processes at the European and global levels. For instance, the identification of the collective will of the people is a possible, though not necessarily the only, interpretation of the *pouvoir constituant*. Provided that new forms of constitutionalism in non-state settings can be identified, these traditional concepts need to be reviewed to shed light on their nature and function. This theme seeks to address broader theoretical aspects of constitutionalism that are not tied to state-centred perceptions of constitutions. It invites discussion of these issues from, but not limited to, legal and sociological perspectives:

- Who embodies the ‘economic’ *pouvoir constituant* and how is it expressed?
- Which actors and processes confer legitimacy to the economic constitution? Is the former related to forms of democratic decision-making (involving elections or referenda)? Or is it achieved through the identification of public interests (including the limitation of economic failures and economic exclusion)?
- Is economic constitutionalism in the European and global spheres compatible with varieties of capitalism?

#### Attendees and Speakers

Interested participants should submit an abstract of no more than 500 words to [econst2018@port.ac.uk](mailto:econst2018@port.ac.uk)

The deadline for submission of abstracts is 28 February 2018.

All abstracts will be reviewed by the convenors and selections announced by 31 March 2018. Full papers of no more than 10000 words (including footnotes) should be submitted by 31 May 2018. A selection of papers will be considered for publication in an edited volume on ‘Economic Constitutionalism in European and Global Governance’ after the conference.