

Future of EU Constitutionalism

New University, Ljubljana

September 23-24, 2021

On May 9 the Conference on the Future of Europe was launched in Strasbourg. The political expectations with regard to the Conference have been extremely high. It has been envisaged that the Conference would last for two years, taking the form of a comprehensive bottom up democratic exercise among EU citizens and their national and supranational institutions, which would eventually mark or at least lead to a turning point in the functioning of the European Union. After Covid-19 and all the political schisms in the European Union, on the axes running from the North to the South and from the West to the East, it is question-begging to what an extent the Conference will really live up to these high expectations, rather than just causing another crisis as a result of unfulfilled expectations. Even if we remain on the optimistic side, it is hard to expect that the Conference on the Future of Europe will produce any fundamental breakthrough. Furthermore, unlike the 2002-2003 Convention, the Conference is equally not likely to usurp a constitutional mandate, even though we might have been, for several years now, going through a de facto constitutional moment.

Does that mean that there is no real future for EU constitutionalism? That the latter will at best remain a tacit, small c constitutionalism? This is the central question that the conference is going to explore.

The conference proceeds against the normative backdrop according to which, despite the negative historical experience, nothing in the nature of constitutionalism as a concept stands in the way of the European Union eventually adopting a constitution, and so turning its tacit and silent constitutionalism into an explicit project. Furthermore, the past crises of European integration, which have been left in suspense rather than resolved, might make the case for explicit constitutionalization of the EU even stronger today. At the same time, it is by no means certain that constitutionalism is a normatively and empirically viable alternative for shaping the future of the European Union. And while this cannot be known until it is tried, the conference will question whether a refined, pluralist approach to EU constitutionalism – perhaps also within the framework of the Conference on the Future of Europe or its aftermath - could succeed in revitalizing the EU with all of its legal, democratic, political, economic and federalist conceptual novelties.

The conference will explore five main pillars of EU constitutionalism: the constitutional values, EU formal constitutional framework, its substance consisting of the EU political and economic constitution, and conclude by looking at the foundational concept of sovereignty, national and European, in a global realm.

Thursday 23.9. 2021

9:00 Opening: Gašper Dovžan, State Secretary at the Ministry of Foreign Affairs of Slovenia and a Member of the Executive Board of the Conference on the Future of Europe

9:30 Keynote and Discussion: Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh

10:45 Coffee Break

11:00 Panel 1: Constitutional Values

This panel is going to explore which constitutional values are, or ought to be, central for the viability of European integration in the future, especially in light of the crises that the EU has been subject to in recent years and that have left strong value fissures at the heart of the “EU constitution”.

Maria Cahill, Professor of Law, University College Cork

Alun Gibbs, Associate Professor in Public Law and Director of the Centre for Law, Policy and Society, Southampton Law School, University of Southampton

Matej Avbelj, Professor of European Law, New University

Chair: **Jernej Letnar Čerňič**, Professor of Human Rights, New University

12:30 Lunch

14:00 Panel 2: EU Formal Constitution

Autonomous legal order of the European Union, with its core principles of primacy, direct applicability direct effect and loyal co-operation, has for almost seven decades now served as the EU formal constitution. The latter has been well established, but its nature has also remained theoretically contested between pluralists and monists. With the Weiss decision of the BVerfG and the Commission’s announcement of the infringement procedure against Germany, the pluralist/monist dilemma, for the first time, stands the chance to be directly pronounced upon by the CJEU. What does this mean for the future of the EU formal constitution? Will its nature be finally unequivocally resolved or irretrievably broken?

Mattias Wendel, Professor of Public Law, EU Law, International Law, Migration Law and Comparative Law at Leipzig University

Giuseppe Martinico, Professor of Comparative Public law at the Scuola Superiore Sant'Anna, Pisa.

Janja Hojnik, Professor of European Law, Vice-Rector, University of Maribor

Chair: **Polona Batagelj**, Lecturer in EU Law, New University

15:30 Coffee Break

16:00 Panel 3: EU Political Constitution

In contrast to the well-established, if still contested EU formal constitution, the EU political constitution, standing for the nature and quality of the EU political regime, its structure of governance, the democratic underpinnings and socio-political objectives, remains much more underdeveloped and subject to a variety of ideological visions of Europe. What is the future of the EU political constitution and how to bring it about?

Sacha Garben, Professor of EU law at the Legal Studies Department, College of Europe, Brugges

Emilia Korkea-aho, Associate Professor in European Law and Legislative Studies, the University of Eastern Finland and Academy Research Fellow, Helsinki

Michael Wilkinson, Associate Professor of Law, LSE

Chair: **Verena Rošic Feguš**, Assistant Professor of European Law, New University

17:30 End of Day 1

19:00 Dinner

Friday 24.9. 2021

9:00 Keynote and Discussion: Peter Jambrek, Professor of Constitutional Law, President of the New University, First President of the Slovenian Constitutional Court

10:00 Panel 1: EU Economic Constitution

The EU economic constitution, that has traditionally rested upon the four fundamental freedoms of the single market, has in recent years been significantly disputed. The opinions have been divided between the neo-liberal and social Europe as well as between the means of reaching either of them within the framework of the EU multilevel economic governance. What are the lessons that we have learned from the past and the present, in particular from the EU response to the Covid-19 crisis, and what direction should the EU economic constitution take in the future?

Marija Bartl, Professor of Transnational Private Law, Amsterdam Law School, and the Director of the Amsterdam Centre for Transformative Private Law.

Andreja Jaklič, Professor and Research Fellow at the Centre of International Relations at the Faculty of Social Sciences, University of Ljubljana

Federico Fabbrini, Professor of European Law, School of Law & Government of Dublin City University (DCU), Director of the Law Research Centre and the founding director of the DCU Brexit Institute

Chair: **Gorazd Justinek**, Assistant Professor of International Political, Economic and Business Relations, New University

11:30 Coffee Break

11:45 Panel 2: Sovereign Europe

Sovereignty has been regarded as a foundational concept of the Westphalian world order with a sovereign state as its building block. The process of European integration has led to the transformation of the national sovereignty and has spurred the calls for a European sovereignty. The latter too, however, appears to be under pressure by the process of globalization driven also by a plethora of transnational, often private actors. This raises not only the question of an on-going conceptual relevance of sovereignty, but of its location and capacity of being exercised in a global realm against public, hybrid and private actors. What is then the future of sovereignty in Europe?

Cormac Mac Amhleigh, Senior Lecturer in Public Law, University of Edinburgh

Daniel Augenstein, Associate Professor, Tilburg Law School, Public Law & Governance

Katarina Vatovec, Assistant Professor of European Law, New University

Chair: **Pietro Faraguna**, Assistant Professor of Constitutional Law, University of Trieste

13:15 End of Conference

Participants:

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