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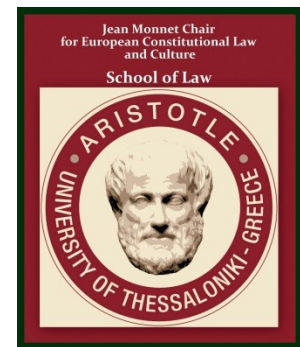
European Constitutional Law

Unit 3B: Can the European Union as a sui generis organization have a constitution?

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Περιεχόμενα ενότητας

1. What is a Constitution?
2. Are the Treaties the 'Constitution' of the Union?

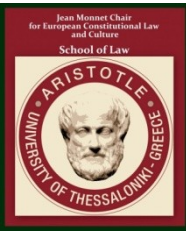


Σκοποί ενότητας

- Formal and material constitution, meaning and definitions.
- Are the Treaties the ‘Constitution’ of the Union? - Discussion and analysis.



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What is a Constitution?

What is a Constitution?

- Formal Constitution:
 - Result of the will of one or more communities to adopt a juridical act in order to regulate at
 - the highest level their relations.
 - All the other acts have to be conformed to this one which is the highest. The Constitution legitimates all the inferior norms.
- Material Constitution:
 - It's about the substance of the Constitution which comports in general two parts:
 - Rules which organize the public powers and their relations between them,
 - Fundamental rights of the people.

Ideal Constitution

- Political ideas enshrined in a legal written text with high validity.
1. Personal freedom & autonomy – liberalism (human rights, rule of law, constitutional justice).
 2. Collective self-government – democracy (political equality = one (wo)man = one vote, representation, political parties and other collective entities, deliberation, free elections).
 3. Solidarity – social state (equality, social rights, social policies).

Can the European Union have a Constitution?

- Sovereignty - Constitution without a state?
- The European people(s) & the Pouvoir Constituent.
- Democracy and Fundamental Rights.

The NO-DEMOS thesis

- In order to have a Constitution we need a politically united / organic Demos.
- There is NO such Demos in Europe.
- So, there cannot be a Constitution.
- National Constitutions remain the “Basic Norm” (Grundnorm) &
- Nation states remain “masters of the treaties” and keep the Kompetenz-Kompetenz.

The eurocratic view

- We don't have an organic demos.
- Let's make one!
- European Super-state!
- Democracy in Europe is only possible if Europe becomes a State.

The eurosceptic view

- Only Nation State has a Demos, only a Demos can make a constitution only nation states can have a Constitution.
- Europe CANNOT and should NOT have a Constitution, since it has NO demos.
- Renationalisation of competences OR denial of further expansion.
- European Law under National Constitutions OR conditional supremacy.
- Critique: Weiler, Europe's Constitutional Sonderweg, in: European constitutionalism Beyond the State, Weiler/Wind (eds), CUP 2003: *“One of the great fallacies in the art of federation building, as in nation building, is to confuse the juridical presupposition of a constitutional demos with political and social reality. In many instances, constitutional doctrine presupposes the existence of that which it creates: the demos which is called upon to accept the constitution is constituted, legally, by that very constitution, and often that act of acceptance is among the first steps towards a thicker social and political notion of constitutional demos. Thus, the empirical legitimacy of the constitution may lag behind its formal authority – and it may take generations and civil wars to be fully internalized- as the history of the USA testifies”.*

Critique

- ✓ Sovereignists and supranationalists are both state-centric.

The new sense of the word Constitution here

- Hybrid sense because as the European Union is not a State but a particular entity which can not have a real Constitution.
- The Treaty establishing a Constitution for Europe remains a Treaty which refers to international law but the Constitution refers to domestic law that's why it's confusing.
- The difference is between the form (international law) and content (internal law with some characteristics of a constitution).

Are the Treaties the 'Constitution' of the Union?

- YES! Organization of the Political System of the EU, higher legal validity, secondary community law may be invalidated if contrary to primary law.
- NO! Intergovernmental nature, no popular sovereignty, not applying to a State, no bill of fundamental rights.
- The deficits of the Treaties.

Bibliography

- Hermann-Josef Blanke, Stelio Mangiameli (eds), The European Union after Lisbon - Constitutional Basis, Economic Order and External Action, 2012.
- Weiler, Europe's Constitutional Sonderweg, in: European constitutionalism Beyond the State, Weiler/Wind (eds), CUP 2003.

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End of Unit

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