

Melanie Beth Oliviero
Project Director

EUROPEAN REGIONAL INSTITUTE

Steering Committee Meeting
London, UK
16 November 1988
(9:00am-4:00pm)

Advisory Panel

Tatsuo Arima
San Francisco, CA
(Japan)

Lucius Barker
St. Louis, MO

Jose A. Cabranes
New Haven, CT

Francis Deng
Washington, DC
(Sudan)

Bolivar Lamounier
Sao Paulo, Brazil

Antonio La Pergola
Rome, Italy

Donald L. Robinson
Northampton, MA

Judith Shklar
Cambridge, MA

Laxmi Mall Singhvi
New Delhi, India

ACLS Staff

Stanley N. Katz
President

Douglas Greenberg
Vice President

Steven C. Wheatley
Director of American Studies

I. Themes

1. Re-examine overall theme and topics.

2. Review paper topics and identify authors for each.

3. Establish format of discussion; i.e. commentators, moderators.

4. Determine daily schedule of sessions.

II. Participants

1. Consider areas of national and professional experience necessary to balance diversity among Steering Committee and paper writers.

2. Identify particular individuals for participation.

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Minutes
Steering Committee Meeting
European Regional Institute
Institute For Advanced Legal Studies
University of London
16 November 1988 -- London, UK

Steering Committee members present were Tony Bradley, Miriam Campanella, Wilhelm Hennis, Knud Krakau, Hans-Peter Schneider, Jordi Solé Tura, Kenneth Maxwell. Stan Katz and Melanie Beth Oliviero represented the ACLS. Louis Favoreau and Klaus Stern were fog-bound, and Professors Bröckenförde, La Pergola and Stjernquist sent their regrets.

The meeting came to order at 9:50am. Mr. Katz asked everyone to briefly introduce themselves, and he explained about those who were absent. He then gave some background on the entire ACLS Comparative Constitutionalism Project and about the proposal to the VW Foundation for funding. Ms. Oliviero described the recently completed institute for the Latin American Region and identified some of the participants.

Mr. Katz then turned to the agenda and asked that the themes which emerged from the preliminary planning meeting be considered. The need for perspectives from the socialist states was mentioned. Mr. Kraukau agreed based on his recent experience in Poland. Mr. Hennis conjectured that we could eliminate Day 2 and put in socialist states, but pointed out that we cannot do everything. He also suggested there was not enough time to organize good papers from Eastern European participants. Mr. Solé Tura agreed that changes in the East are significant but that time did not permit a change in focus on integration. Ms. Campanella suggested that "integration" was too strong a word, and that "Between Cooperation and Integration" might be a better statement of the theme. Both Mr. Krakau and Mr. Bradley pointed out that socialist perspectives might be most interesting on Day 1 and Day 3.

Mr. Katz summarized, noting the importance of having Eastern European participation but without changing the structure of the program. He explained about the ACLS sources of contacts through IREX and Hungarian Minister of Justice Kulscar and the commitment of the Soviets to send two representatives.

The discussion then turned to the specific themes. After brief consideration of alternative titles such as state constitution-making, constitutional reorganization, the theme for Day 1: "Constitutionalism since 1945" was amended to include: "Reconstruction and Reappraisal." Ms. Oliviero reported the thoughts of Mr. Favoreau from her earlier telephone conversation with him. He, too, was concerned with the activities that are transforming constitutionalism in Western Europe. He spoke of the problem of constitutional courts in particular and their impact on civil and criminal law.

At this point, Mr. Katz reviewed the basic design of the daily program. Ms. Oliviero pointed out that to do justice to a range of topics, presentations by the paper writers must be very brief. Mr. Bradley suggested the alternative of three sessions: one long morning , and a shorter afternoon session with break out sessions in the evening. Mr. Hennis noted we should leave one evening free for a reception. Mr. Katz suggested that a more elaborate public event might be advisable, with press and a more general audience. It was determined that the language problem would best be resolved by holding the Institute in English alone.

The discussion then turned back to focusing the themes to fit the timetable. For Day 1 there was agreement that a general overview paper on the topic was necessary and that a social scientist or historian was preferable. There was a consensus that Ralf Dahrendorf be asked to write this paper. The sub-topics then emerged; Mr. Hennis suggested **the crisis of parliamentarianism since 1945** as well as a focus on **constitutional courts and human rights.** Mr. Katz mentioned **the Iberian case and the examples of state reformation.** Mr. Solé Tura urged a fourth topic on **federalism and regionalism,** which was expanded to consider decentralization generally. There was some restatement of the theme and sub-themes and consideration was given to the sorts of individuals who might be best suited to prepare working papers.

The discussion then turned to Day 2. There was further consideration of whether integration adequately described this issue of the national/supra-national situation. The theme was therefore restated as "Constitutionalism: The European Community and State Sovereignty." Mr. Bradley said that the first paper should focus on the constitutional significance of European integration. Mr. Schneider added a topic on the legislative function assumed by the administration of the EC. The others agreed the **nature of the bureaucracy** was an essential issue. This led to another discussion of the crisis of parliamentarianism and the sort of political system being built in Europe. This emerging supra-national constitutionalism was articulated by Mr. Hennis as **"three branches in search of constitutionalism."** Mr. Schneider agreed, pointing out the horizontal relationship among countries of the EC versus the vertical one between the EC and its member nations. It was concluded that the economic dimension would be sufficiently covered in the discussion of these two sub-topics, as well as the fate of state sovereignty and the pragmatic implications of state implementation of EC legislation. A fourth topic was suggested by Mr. Maxwell regarding the public view of the situation: the social and economic consequences as expressed by **public opinion.** It was also agreed to examine the institution of the **constitutional courts** and look at **human rights** in this context.

Day 3 was then considered. The term "future" was found unsatisfactory and after a brief discussion of alternatives it was restated as "Constitutionalism and Survival." In seeking to define the issues, Mr. Maxwell reflected on the limitation of constitutionalism, noting the "fortified comfort" of the European experience, as opposed to that of the Third World. Mr. Solé Tura talked about the problem of privacy and the rights of citizens. Mr. Hennis suggested constitutionalism and peace and Mr. Krakau spoke of the growing insufficiency of the state system to cope with these problems by itself. In seeking to put the discussion back in the context of constitutionalism, Mr. Hennis pointed out that institutions such as the League of Nations and the United Nations were predicated upon constitutionalism. Mr. Katz suggested that here, too, we needed one big overview paper on the relevance of constitutionalism in this changing environment. Then specific sub-topics were added: one on terrorism and internal security, another on environmental issues, one on AIDS, and one on the media, information and intellectual property, generally, as well as on the increasing presence of science and technology and social responsibility for their products. The global side-effects of governmental and non-governmental actions; the responsibility -- ethical,legal, and social -- in this interdependent situation was considered. This led to recognition that these problems were both a matter of state control and of civil liberties protection. In an attempt to formulate these questions in such a way to fit the program agenda, Ms. Oliviero suggested a problem approach with a panel of commentators to follow the overview paper. The group selected the **peace, environment, and media/information** topics for the panel.

After a brief lunch break, the discussion turned to details. The dates were confirmed as September 13, 14, 15, with a half-day on the last day. Paperwriters were suggested by theme, with back-up names [these appear on the list appended to the end of these minutes]. With regard to a deadline for the paperwriters, there was firm agreement that all papers should be submitted by May, because it is impossible to communicate during the summer. The remaining participants were then considered with attention to filling in diversity of expertise and region. [These names have been added to the master list of possible participants.] The daily timetable was determined to be 9:00am-6:00pm. [This has been condensed into the schedule appended to these minutes.] Time has been set aside for opening remarks on the morning of Day 1. The reception was thought to fit best on Day 2 or 1, rather than the last day, with an introductory dinner on Tuesday, the 12th. Ms. Oliviero pointed out that she and Mr. Krakau would be looking into these local details further in the next few days. As people had to leave to make return flights, she then thanked everyone for his and her contribution. The meeting was adjourned at 3:45pm.

THE EUROPEAN REGIONAL INSTITUTE ON COMPARATIVE CONSTITUTIONALISM
13-15 September, 1989
Berlin, FRG

Program

13 SEPTEMBER: CONSTITUTIONALISM SINCE 1945: RECONSTRUCTION AND REAPPRAISAL

Constitutionalism in Europe since 1945: Reconstruction and Reappraisal
Ralf Dahrendorf

Parliamentary Crisis and How to Strengthen Democracy
Klaus Von Beyme

The Role of Constitutional Courts in the Protection of Individual Rights
Louis Favoreu

Federalism and Decentralization in Europe since World War II
Joseph Weiler or Peter Hardi

Iberian Case Study: The Constitutionalism of Redemocratization
Jordi Solé Tura

14 SEPTEMBER: CONSTITUTIONALISM: THE EUROPEAN COMMUNITY AND STATE SOVEREIGNTY

Constitutionalism: The European Community and State Sovereignty
Thomas Koopmans

The Relationship of Community Bureaucracy to Community and National Legislative Power
Jan Elster

The Emerging Political System: Three Branches of Government in Search of Constitutionalism
Giovanni Sartori

European Courts and Human Rights
Garcia de Enterria

Constitutionalism of the European Community and Public Opinion
Alexander Von Brünneck

15 SEPTEMBER: CONSTITUTIONALISM AND SURVIVAL

The Future: Constitutionalism and Survival
Robert Badinter

Peace: Constitutional Aspects of Mutual Security
Karl Heinz Röder

The Environment
Giorgio Ruffolo

Information and Security: Internal Security, Secrecy, Press Freedom, and Terrorism
Hans-Peter Bull

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Constitutionalism in Europe since 1945: Reconstruction and Reappraisal
Ralf Dahrendorf [or Louis Favoreu]

Parliamentary Crisis and How to Strengthen Democracy
Klaus Von Beyme [or Peter Pulzer]

The Role of Constitutional Courts in the Protection of Individual Rights
Louis Favoreu [Commentator: Anthony Lester]

Federalism and Decentralization in Europe since World War II
Joseph Weiler or Peter Hardi [or Helmut Wollman] Commentator: D.N. MacCormick

Iberian Case Study: The Constitutionalism of Redemocratization
Jordi Solé Tura

14 SEPTEMBER: CONSTITUTIONALISM: THE EUROPEAN COMMUNITY AND STATE SOVEREIGNTY

Constitutionalism: The European Community and State Sovereignty
Thomas Koopmans [or Jochen A. Frowein]

The Relationship of Community Bureaucracy to Community and National Legislative Power
Jan Elster [or A. La Pergola, Eberhard Grabitz]

The Emerging Political System: Three Branches of Government in Search of Constitutionalism
Giovanni Sartori

European Courts and Human Rights
Garcia de Enterria [or Thomas Koopmans, Henry Schermers, Werner Von Simpson]

Constitutionalism of the European Community and Public Opinion
Alexander Von Brünneck

15 SEPTEMBER: CONSTITUTIONALISM AND SURVIVAL

The Future: Constitutionalism and Survival
Robert Badinter [or Hasso Hofmann, Gerald Stourzh, Harry Hinsley]

Peace: Constitutional Aspects of Mutual Security
Karl Heinz Röder [or Kinhjde Mushakoji, Laurence Friedman]

The Environment
Giorgio Ruffolo

Information and Security: Internal Security, Secrecy, Press Freedom, and Terrorism
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Proposed Schedule

13 SEPTEMBER: CONSTITUTIONALISM SINCE 1945: RECONSTRUCTION AND REAPPRAISAL

9:00-9:30
Opening Remarks

9:30-11:15: Paper Summary and Discussion
Constitutionalism in Europe since 1945: Reconstruction and Reappraisal

11:15-11:30
Break

11:30-1:00: Paper Summary and Discussion
Parliamentary Crisis and How to Strengthen Democracy

1:00-3:00
Lunch

3:00-4:30: Paper Summaries
The Role of Constitutional Courts in the Protection of Individual Rights

Federalism and Decentralization in Europe since World War II

Iberian Case Study: The Constitutionalism of Redemocratization

4:30-4:45
Break

4:45-6:00: Discussion

14 SEPTEMBER: CONSTITUTIONALISM: THE EUROPEAN COMMUNITY AND STATE SOVEREIGNTY

9:00-10:30: Paper Summary and Discussion
Constitutionalism: The European Community and State Sovereignty

10:30-10:45
Break

10:45-1:00: Paper Summaries and Discussion
The Relationship of Community Bureaucracy to Community and National Legislative Power

The Emerging Political System: Three Branches of Government in Search of Constitutionalism

1:00-3:00
Lunch

3:00-3:45: Paper Summaries
European Courts and Human Rights

Constitutionalism of the European Community and Public Opinion

3:45-4:00
Break

4:00-6:00: Discussion

15 SEPTEMBER: CONSTITUTIONALISM AND SURVIVAL

9:00-10:30: Paper Summary and Discussion
The Future: Constitutionalism and Survival

10:30-10:45
Break

10:45-11:30: Panels

Peace: Constitutional Aspects of Mutual Security

The Environment

Information and Security: Internal Security, Secrecy, Press Freedom, and Terrorism

11:30-12:30: Discussion on Panels

12:30-1:00
Closing Remarks