

# European Economic and Social Constitutionalism after the Treaty of Lisbon

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CAMBRIDGE

EUROPEAN ECONOMIC  
AND SOCIAL  
CONSTITUTIONALISM  
AFTER THE TREATY  
OF LISBON

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# EUROPEAN ECONOMIC AND SOCIAL CONSTITUTIONALISM AFTER THE TREATY OF LISBON

European studies frequently regard the economic and social dimensions of EU integration as diametrically opposed, maintaining that this state of affairs is beyond change. This edited collection challenges this perceived wisdom, focusing on the post-Lisbon constitutional landscape. Taking the multilayered polity that is Europe today as its central organising theme, it examines how the social and the economic might be reconciled under the Union's different forms of governance. The collection opens with a theoretical appraisal of its theme, before considering three specific policy fields: migration policy and civic integration; company law and corporate social responsibility; and the role of third-sector providers in public healthcare. It concludes with three case studies in these fields, illustrating how the argument can be practically applied. Insightful and topical, with a unique interdisciplinary perspective, this is an important contribution to European Union law and politics after the Treaty of Lisbon.

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## PREFACE

This book results from a 'Multilateral Jean Monnet Research Group' called 'European Economic and Social Constitutionalism after the Treaty of Lisbon: an Interdisciplinary Perspective', which took up its work in September 2008. The idea for the group originated in collaborations between Hildegard Schneider and Dagmar Schiek within the framework of the IUS COMMUNE research school, where both had attempted to establish a research focus 'Economic and Social Constitutionalism', as well as in the contacts between Ulrike Liebert and Dagmar Schiek, who had been working at neighbouring universities for quite a while, often noticing that they had some overlap in research interests, but not succeeding in teaming up for research.

The Jean Monnet Programme offered an ideal opportunity to acquire the funds necessary to intensify these exchanges. When we wrote the application in February 2008, the fate of the Treaty of Lisbon was not yet decided. However, we bravely assumed that the eternal issue of tensions between the economic and social dimensions inherent in the European integration project would remain of prominent importance, and that there was not a sufficient amount of research concerning their interrelation at different levels and with modes of EU governance. Moreover, we supposed that neither stylising the *Laval* and *Viking* cases as a conflict between the ECJ and the Member States nor to newly suggest purely procedural solutions to ameliorate the perceived subordination of the social to the economic dimension of European integration would suffice. Of course, we have been immensely fortunate to receive funding from our main sponsor, the European Commission, based on those ideas. We also acknowledge Leeds University School of Law for having provided some additional funds during the project's lifetime, as well as the research support structures at Leeds, the home base where the leadership and organisation of the project resided.

We are deeply appreciative of the participants to a conference in Leeds in September 2009 for discussing our ideas and framework, among them

several who later turned their contributions into book chapters, while other contributors joined in later. Our greatest thanks, however, go to our research team, which initially consisted of three research officers (Stephie Fehr (LL.M) at Leeds, Dr Sandra Kröger at Bremen and Dr Sergio Carrera at Maastricht). Sergio Carrera was subsequently joined by Dr Anja Wiesbrock in Maastricht, while Andrea Gideon (LL.M) took over the role of the Leeds research officer when Stephie Fehr went on maternity leave. She was joined by Sadana Perera, combining project administration and research assistance; Dr Ida Wendt, authoring the Leeds case study; and Dr Wendy Guns and Richard Butterworth (MA), acting as editorial assistants in the preparation of the publication. All of them have tremendously contributed to the project and the results would not have been possible without their engagement.

Final thanks go to Sinéad Moloney at Cambridge University Press, who supported our publishing proposal from the start and, together with Elizabeth Spicer, provided smooth editorial support for this project.

## ABBREVIATIONS

ACVZ	Adviescommissie voor Vreemdelingenzaken (Committee for Advice on Foreigners' Affairs, the Netherlands)
AIRAANZ	Association of Industrial Relations Academics of Australia and New Zealand
AOF	Annual Operation Framework
AWBZ	Algemene Wet Bijzondere Ziektekosten (General Act on Special Health Expenses, the Netherlands)
BITC	Business in the Community
CAI	Contrat d'Accueil et d'Intégration (Welcome and Integration Contract, France)
CAIF	Contrat d'Accueil et d'Intégration pour la Famille (Family Welcome and Integration Contract, France)
CBPs	Common Basic Principles of Immigrant and Integration Policy
CCP	Common Commercial Policy (EU)
CEEP	European Centre of Employers and Enterprises Providing Public Services
CEPS	Centre for European Policy Studies
CESEDA	Code de l'Entrée et de Séjour des Etrangers e du Droit d'Asile (Code on Admission and Residence of Foreigners and on Right to Asylum, France)
CFI	Court of First Instance (EU until Nov. 2009, now: General Court)
CiMU	Committee on Circular Migration and Development (Kommittén för cirkulär migration och utveckling)
CME	Co-ordinated Market Economies
<i>CMLRev</i>	<i>Common Market Law Review</i>
<i>Columbia JEL</i>	<i>Columbia Journal of European Law</i>
<i>Columbia JTL</i>	<i>Columbia Journal of Transnational Law</i>
<i>CompEurPolit</i>	<i>Comparative European Politics</i>
CPB	Centraal Plan Bureau (Central Planning Office, the Netherlands)
CQC	Care Quality Commission
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility

DGB	Deutscher Gewerkschaftsbund (Trade Union Congress, Germany)
DGIS	Directoraat-Generaal Internationale Samenwerking (General Office for International Co-operation, the Netherlands)
DVBl	<i>Deutsches Verwaltungsblatt</i>
EC	European Community (also used as abbreviation of the EC Treaty)
ECB	European Central Bank (EU)
ECJ	Court of Justice of the European Union (EU)
ECOFIN	Economic and Financial Ministers Council (EU)
ECR	European Court Reports (EU)
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights (Council of Europe)
EC Treaty	European Community Treaty
EEA	European Economic Area
EEC	European Economic Community
EIOP	<i>European Integration Online Papers</i>
EIRonline	<i>European Industrial Relations Observatory Online</i>
EITI	Extractive Industries Transparency Initiative
ELJ	<i>European Law Journal</i>
ELRev	<i>European Law Review</i>
EMMI	European Modules for Migrants Integration
EMS CSR Forum	EU Multi-stake Forum on Corporate Social Responsibility
EMU	European and Monetary Union (EU)
EPL	<i>European Public Law</i>
EPP-ED Group	Group of the European People's Party (Christian Democrats) and European Democrats in the European Parliament
EPS	<i>European Political Science</i>
ERT	European Round Table of Industrialists (EU)
ESM	European Social Model
ETUC	European Trade Union Congress
ETUI	European Trade Union Institute
EU	European Union
FOC	Flags of Convenience
FOII	Office Français de l' Immigration et de l'Intégration (French Office of Immigration and Integration)
FSU	Finnish Seamen Union
FTSE	Financial Times Stock Exchange
GCIM	Global Commission on International Migration (UN)
GDP	Gross Domestic Product

GP	General Practitioner (England, Wales)
<i>IJGLS</i>	<i>Indiana Journal of Global Legal Studies</i>
<i>ILJ</i>	<i>Industrial Law Journal</i>
ILO	International Labour Organisation
IMI	International Migration Institute
IND	Immigratie-en Naturalisatie Dienst (Immigration and Naturalisation Service, the Netherlands)
<i>InfAuslR</i>	<i>Informationsbrief Ausländerrecht</i>
IOM	International Organisation for Migration
ISTC	Independent Sector Treatment Centre (England, Wales)
ITF	International Transport Worker's Federation
<i>JCMS</i>	<i>Journal of Common Market Studies</i>
<i>JEPP</i>	<i>Journal of European Public Policy</i>
<i>J Law &amp; Soc</i>	<i>Journal of Law and Society</i>
<i>Jnl Soc. Pol.</i>	<i>Journal of Social Policy</i>
LHB	Local Health Boards (England, Wales)
LME	Liberal Market Economies
<i>LS</i>	<i>Legal Studies</i>
<i>LSI</i>	<i>Law &amp; Social Inquiry</i>
MEP	Member of the European Parliament
MIDA	Migration and Development in Africa (IOM capacity-building programme)
<i>MLR</i>	<i>Modern Law Review</i>
MOIA	Ministry of Overseas Indian Affairs
MPI	Migration Policy Institute
MPIfG	Max-Planck Institut für Gesellschaftsforschung (Max Planck Institute for the Study of Societies, Cologne)
MS	Member State(s) (EU)
MVV	Machtiging tot voorlopig verblijf (Provisional Leave to Remain, the Netherlands)
NCP	National Contact Point
NGO	Non-governmental Organisation
NHS	National Health Service (England, Wales)
Nma	Nederlandse Mededingsautoriteit (Competition Authority, the Netherlands)
<i>NTER</i>	<i>Nederlands tijdschrift voor Europees recht</i>
Nza	Nederlandse Zorgautoriteit (Authority supervising the care sector, the Netherlands)
OCI	Overseas Citizenship of India
OECD	Organisation for Economic Co-operation and Development (UN)
OFT	Office of Fair Trading (UK)

OJ	Official Journal of the European Union
<i>OJLS</i>	<i>Oxford Journal of Legal Studies</i>
OMC	Open Method of Co-ordination (EU)
PbR	Payment by Result
PCT	Primary Care Trusts (England, Wales)
PWD	Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Posting of Workers Directive)
QMV	Qualified Majority Voting (EU)
<i>Qual Saf Health Care</i>	<i>Quality and Safety in Health Care</i>
<i>RTDE</i>	<i>Revue trimestrielle de droit européen</i>
SE	Societas Europaea
SER	Sociaal Economische Raad (Social and Economic Council, the Netherlands)
<i>SEW</i>	<i>Sociaal-Economische Wetgeving – Tijdschrift voor Europees en Economisch Recht</i>
SGEI	Services of General Economic Interest (EU)
SME	Social Market Economy
TCN	Third-country National
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ToL	Treaty of Lisbon
UK	United Kingdom
UN	United Nations
US	United States
VoC	Varieties of Capitalism
WAG	Welsh Assembly Government
WIB	Wet inburgering in het Buitenland (Integration Abroad Act, the Netherlands)
WMG	Wet Marktordening Gezondheidszorg (Act on creating a Market in Healthcare, the Netherlands)
WWII	World War II

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