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Details of Europaeum activities are given in Annex A at the back of this pamphlet.

**A EUROPAEUM LECTURE**  
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**Democratic**  
**Transitions and a**  
**Common**  
**Constitutional Law**  
**for Europe**

**DR DAVID ROBERTSON**

## Dr David Robertson



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*“A government above the law is a menace  
to be defeated.”*

**Lord Scarman in: Why Britain Needs a  
Written Constitution (1992)**

# Democratic Transitions and a Common Constitutional Law for Europe

It is now more than 10 years since the *annus mirabilis* of 1989. Almost overnight virtually every East European nation created for itself a strong democratic constitution, attached to it a far reaching Bill of Rights, and set up a powerful Constitutional Court to ensure these constitutional provisions and these rights. Only a few months ago did the United Kingdom falteringly put its foot on the same ladder, when the *Human Rights Act 1998* finally came into force, incorporating, though rather weakly, into British law the *European Convention on Human Rights*. On the Monday this act came into force, the *Daily Mail*, one of the country's more respectable mass circulation newspaper welcomed this event with a two page spread headed, in bold, '**The Great Human Rights Bonanza**' which they described as: 'A charter that puts foreign laws first and strikes at the very fabric of British Society'

Even the government which legislated this development cannot quite make up its mind – though the Home Secretary boasted that it constituted the greatest change to the British constitution since Magna Carta, the man who actually steered it through, the Lord Chancellor, has several times reassured the public that the UK government will have no hesitation in ignoring court rulings it disapproves of.

Constitutional courts or Tribunals were amongst the first things these newly self liberated states thought of writing into their new constitutions. This seems obvious to us now, but there was no particular reason they should have done so. They were not, for example, in the situation of South Africa, which, when it rescued itself, did at least have a weak tradition of constitutional overview. Constitutional courts are

not, though it seems hard to believe this nowadays, actually *definitional* of democracy. The new states could perfectly well have followed the alternative, French and British conception of democracy, the all powerful parliament, the populist approach to constitutionalism. They could have taken note not of the usual position in American constitutional law, but instead of the growing minority view that constitutional review has not been for the best, and should be truncated. If they had done so, no one in particular would have blamed them, or thought their democracy to be fundamentally incomplete. Certainly the British could not have criticised them. We may now have a Human Rights Act, but no British court begins to have the power which, everywhere in theory and in most countries actually, Eastern European courts have. Nothing in Britain has even the influence of the French Conseil Constitutionnel. (And even Romania, with its long tradition of cultural admiration for France, when modelling its new constitution on the French Fifth Republic, actually gave its constitutional court more powers than the French Conseil.) Indeed the Human Rights Act is so weak that it offers us a potentially absurd situation. A British court now has the duty to interpret legislation in keeping with the human rights incorporated from the Strasbourg convention. But if it cannot find a way of making an English Statute compatible with these rights, it may issue a Declaration that the statute is in breach of the Human Rights Act. But it must then apply the statute. Effectively it must turn and say to a citizen complaining that the state is trampling over his rights – ‘Yes, we agree, the state should not do that to you, but we must allow it to do so nonetheless’. All that follows from the issuance of such a declaration is that the Government may, if it wishes, but need not, amend the act without the usual parliamentary delays.

Though I cruelly caricature the HRA here, there are, of course, some respectable arguments for democracy without any form of constitutional limitation on what Parliament can enact. In truth the British and French history of respect for human rights is better than most. I stress

this not because I think the UK's position is acceptable but because it is important to recognise that the choice made by the new East European democracies was indeed a choice. There is nothing automatic about having constitutional tribunals.

Indeed from some perspectives one is tempted to ask whether or not such tribunals are a luxury which new states cannot afford. It is often overlooked, for example, that the French Conseil Constitutionnel was an ineffective puppet of De Gaulle's for the first ten years or more of its existence.<sup>1</sup> Anyone tempted to criticise a constitutional Court in Eastern Europe for political cowardice would do well to reflect on the way in which the French Conseil refused to challenge De Gaulle when he altered the constitution's provisions for election of the Presidency with a wholly *unconstitutional* referendum in 1962. The President of the Conseil said, at the time, that it was not for them to argue with the man who wrote the constitution. The classic model of judicial power, the US Supreme Court, is often seen as the great exemplar in this field. Everywhere students are taught the famous 1803 case of *Marbury v Madison* where Chief Justice Marshall invented the power of the court to overturn the legislation of the Federal Congress. What is much less commonly taught is that it was over half a century after that case before the Supreme Court next overturned a federal statute and when it did, their decision in the *Dredd Scott* case was a major factor in precipitating the country into the Civil War.<sup>2</sup> And indeed it was not until the 1958 case of *Cooper v Aaron*, that the doctrine was finalised to rule that other branches of government were bound by the Supreme Court's interpretations.<sup>3</sup> This was hurriedly announced when Governors of southern States declined to obey the educational desegregation decision of *Brown v Board*. There are still eminent, if conservative, constitutional scholars who think *Cooper* was wrongly decided.

In many of the academic discussions of the East European politics over the last decade one will find the statement that the Hungarian

Constitutional Court is amongst the most influential in the world. On the one hand this is a miracle, and most admirable. On the other hand it is very strange, and, just possibly, not as desirable as it may at first seem. Can, should, a new democracy invest so much of its popular support in an agency whose role is negative, to restrict its government? It is also worth noting that by 1998 not a single one of the judges who made its reputation had been reappointed to the bench, and its new President has gone on record as saying that its days of adventure are over.<sup>4</sup>

One might, perhaps, argue that a written constitution does, almost tautologically, require *some* sort of judicial review mechanism. But the new democracies did not just tack on any old form of review – in nearly all cases they opted for a particular model, which one can, for convenience, call the Austro-German model. It is important not to overstate the similarities of the new constitutional courts and tribunals. The variety and range of constitutional review powers which can be provided is enormous. One recent study of constitutional courts has listed 15 main headings, most with several subheadings. No single court in their list of nearly 100 sovereign states has every single one of these powers, and some have rather few. One category though, the power to render ‘abstract’ rulings on the compatibility of statutes with the constitution before they are promulgated is shared by over 90 of these courts.

There are three curious apparent omissions from the list of institutions covered, which highlights one great communality to all the new constitutions, and which is axiomatic not only of the Austro-German model, but of the Continental European model, including the French. The three most important countries omitted entirely from the list are the USA, Canada, and Australia – in other words, the common law world. They are omitted because, of course, they do not have constitutional courts. This statement may seem strange – how can one say the world’s first

country to discover judicial review has no constitutional court? How can one say the Canadians, whose *Charter of Rights and Freedoms* has, in the last 15 years judicialised most domestic policy, have no constitutional court? But they do not have constitutional courts in the sense understood in Europe, the sense apparently taken by the framers of the new eastern European constitutions as implicit in democracy. What they have, what none of the new democracies appear to have wanted, is the power in *all* the courts to apply the constitution. The US and Canadian Supreme Courts and the Australian High court are simply the highest courts in the ordinary structure of the judicial system. And none of these court systems have the power of abstract prior judicial review – the power to say of a statute, *before it is promulgated*, that it is incompatible with the constitution.

Why then, we can ask, did the new Eastern European democracies not only all add a constitutional review capacity to their constitutions, but one of a particular sort?—Constitutional courts in this continental mode are not only more powerful, but more distinctly special political institutions. Why did these new democracies all seem to think it more or less automatic that a democratic constitution should contain such a creature? Sometimes the answer is unproblematic, the result of deep thought and relevant experience; especially in Hungary, and to a lesser extent in the Czech Republic and Poland, members of the constitution-making group had experience in Germany and had seriously studied the working of the *Bundesverfassungsgericht*.<sup>5</sup> But most of the constitution makers in all countries knew very little about such courts, and their hopes and expectations were much less concrete. The basic motive was, indeed, much like the one that had insured the German court in the first place, and for similar reasons. It was a desperate fear that the past might be repeated if one did not use every conceivable trick in the book. They can be summed up well in the words of one member of the Bulgarian constitutional drafting team – ‘We thought a court would *civilise* the legislation’.

It was not just a fear of government *per se*. The UK's lack of interest in real constitutional law comes about because our history allows us not so much to trust the government, but to trust the electorate. Elsewhere the fear is both that a government may be uncontrolled, but also that popular political forces may not even wish to control the government – it is both a fear of traditional tyranny, and also a fear of Tocqueville's tyranny of the majority. There are strands of thought throughout the new European constitutions which show a less than complete trust in majorities – notably with the rules for constitutional reform, where the use of the referendum is usually banned. Instead super majorities in both houses of the legislature are usually preferred. For example, the Slovakian constitution specifically prohibits plebiscites on human rights issues (Art. 93.3).

But, of course, these new democracies distrusted something else as well. They distrusted the remnants of the old societies. They trusted neither the personnel in the existing courts, nor the legal system as a whole. Law had failed them. Communist – in Germany, Nazi – judges had never used even what powers they did have to restrain the state. How could review of the legislation to come out of the new parliaments conceivably be entrusted to such men? In fact the preference for a constitutional court entirely divorced from the ordinary courts of the land, which follows from the Kelsen model of the Austrian constitutional court of 1924, is based on an even deeper distrust. Kelsen and his admirers distrust judges *per se*, regarding the judiciary in Code Law system as unfitted by training and by their own role conception to handle the more subtle and conflictual matters of constitutional review. This mistrust marries the French revolutionary hatred of judicial interference in politics to make, in this one respect, for agreement between the drafters of the 1958 French Constitution and the post war German constitution. For both the European traditions constitutional review is too important to be left to judges – and by definition it cannot be left to the politicians.

I believe this to be a mistake, as I shall later argue. But to return to the main question. Why were constitutional courts thought necessary at all? Let us return, indeed, to that Bulgarian aspiration – “we thought that a court would ‘civilise’ legislation.” That seems to me to put the whole point of constitutionalism in a nutshell, and I shall adopt it here as the main theme. Constitutionalism is more than a technical description of the organising rules of the state – it is a basic political aspiration based on distrust of politics. Constitutions seen from this perspective, and constitutional courts as their engines, are devices for limiting political actors. There are really two basic things a constitutional court does. Fundamentally a limit is imposed on: (1) what the state can do and (2) how or by who it can act.

The essence of constitutionalism is control over the legislative activities of politicians. Fundamentally constitutionalism is a distrust of politicians. Which makes it all the more remarkable that politicians were prepared to draft constitutional courts into the new European constitutions. Perhaps it was because most of those drafter, from the various Round Tables and Civic movements were, at that stage, only embryo politicians; those who were not, of course, were members of the old regime who had every reason to distrust the newcomers. It is clear, for example, that the communist leaders in Poland sought a strong constitutional court to protect them from revenge. Everywhere in Eastern Europe the courts have been active in constraining the desires of the new rulers to prosecute the old rulers, and have tried to moderate the process know as ‘lustration’, the examination of past records and the cleaning up of the political class.

Certainly, once the drafters became experienced politicians they often regretted, at least mildly, having given those courts these powers. It might indeed be a rule of political science that powerful limiting constitutions will be written only by two sorts of people – those who do not yet know themselves, and those who know themselves too well.

Sometimes in discussing constitutionalism a different, less restrictive definition is used – in English it is the idea that the essence of constitutionalism is ‘the rule of law’ – and to the drafters of the new constitutions it was more familiar in the German, as the creation of a ‘Rechstat’ – the idea being that the sins of the communist and Nazi past can be seen as the consequence of the state being simply beyond or above the reach of law. This, with its very positivist undertones is attractive to those especially who fear that any alternative definition involves the acceptance of a Natural Law perspective. This is a misleading interpretation of what the more thoughtful constitution drafters were involved in, and a misleading view of the constitutional jurisprudence the new courts started rapidly to create. Because it turns out that the Rechstat/Rule of Law conception in their minds is not at all limited to positivism. Instead the rule of law turns out to have a considerable substantive content. Passing legislation that affronts human dignity – the most frequently used example – is not simply a matter of doing something bad – it is, *eo ipso* and however properly the law has been passed, to create something other than law. It is a matter of much importance that the preambles or introductory sentences of most of these new constitutions do indeed begin with something like the Romanian constitution’s:

ROMANIA Ț, ROMANIA Ț 1, ROMANIA Ț 3:

Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.

In fact substance will always creep into even the most apparently procedural of concepts. Certainly it did in the jurisprudence of the US Supreme Court. The 14<sup>th</sup> amendment to the US Constitution on first

reading is purely procedural – it guarantees to citizens ‘due process of law’. Yet late in the nineteenth century, and for nearly half a century, the Court had no difficulty in holding that some forms of government economic control were forbidden by the constitution, which says nothing about the matter whatsoever, because they breached the idea of what the Justices decided to call ‘Substantive Due Process’.<sup>6</sup> However it may be, constitutionalism is inherently a double limitation – of what can be done, and how it must be done if it is to be done at all. The importance of these substantive prefaces, which commit the constitution to an overall aim will become apparent in the final sentences of this lecture, as well as at this stage while I consider the interpretation of Bills of Rights.

The limitation on what may be done is, of course, primarily the business of the Charters or Bills of Rights attached to constitutions, or adhered to through international agreements like the European or international conventions on human rights. One must not think only in terms of the classic Liberal negative rights like freedom of speech or assembly. Whether it was wise or not, many of these new Bills of Rights included positive rights, for example to welfare or education. Even where the constitutions did not expressly grant such positive entitlements, the courts often used the classic language of rights to guarantee some economic protection. This may well have been unnecessary and dangerous. For example, while I admire the courage of the Polish Constitutional Tribunal in maintaining that Poland’s 1991 Pensions Act was unconstitutional, it probably does not help much to have to translate such a policy argument into that of rights. The Polish constitution overtly required the government to do social justice, and the court perhaps properly insisted on the government so doing, even though the consequence was to saddle the state, by 1995, with Tribunal-created obligations to compensate almost 10 million Poles in the amount of nearly \$2.84 billion. Because the government does not have sufficient funds to pay this huge sum, it will be paid out in government bonds. It seems to me

improbable that anyone has a right to a pension of any specific value at all – though I can accept that very idea of a rule of law simply limits governments from retroactive policy which tramples over expectations.<sup>7</sup> But Poland is not the only country where the constitutional court has interfered with such policies – certainly it has happened in the Czech Republic to a considerable extent, and to some extent elsewhere. No Western Government, facing much less severe economic problems has ever had to face court interference with economic policy. The last time that was tried was in America in the 1930s, and the Supreme Court backed down when President Roosevelt threatened it.

Lists of desirable rights are relatively easy to concoct, particularly if the constitution writers have no editorial limitations on the length of the document – (there seems to be one inexorable law of constitution writing – they get longer with history – the US bill of rights is only two hundred words, the Romanian bill of rights goes on for 20 pages). But even the most verbose bill of rights is easy to write because such statements are inherently vague, and often amount, originally, to merely a few pious cautions. Indeed the more concrete elements of bill of rights are often the limitation clauses, the part which tells one the government probably can, actually, do what the first part of the article says it can't. Take, as an example, the *European Convention on Human Rights*: Article Eight presents a right that is more and more made the focus of constitutional concern everywhere – the right to privacy as it is often called:

Article 8: Everyone has the right to respect for his private and family life, his home and his correspondence.

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

That bit was easy to say, and succinct. But look at what comes next:

2. There shall be no interference by a public authority

with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

There are so many excuses presented in clause 2 that only a very unimaginative lawyer could fail to defend a government which breached the right to privacy.

The problem of course is this. Except in the farthest reaches of legal philosophy, there are few absolute rights. Even the right to life, though pronounced as absolute in most constitutions, requires much interpretation. It was not clear to many in Hungary, for example, that there was originally an incompatibility between the first guaranteed right in their new constitution, the right to life and human dignity, and the existence of capital punishment laws – it took the constitutional court, in an early and rather brave ruling to make that clear. The first draft of the British Human Rights Act sought not to include the European Convention's own anti-death penalty protocol, even though it incorporates the convention's first article, right to life, and even though the death penalty has been illegal, outside war time, since 1968. For over two hundred years the US Constitution has forbidden 'Cruel and Unusual Punishment', but the death penalty has never been abolished. What does a constitution mean when it declares human life is sacrosanct?

So if rights cannot be absolute, exception clauses have to be written, and yet the exception clauses cannot really be any more precise than the clause granting the right, the clause which imposes the limitation on what may be legislated. Indeed they are bound to be imprecise, because they can be no more than an intuitive guess that there may be circumstances when granting the right would be absurd. Such guesses

are made the harder precisely because the rights themselves are often, as I have said, merely intuitions about what governments should not be allowed to do. Or the framers may have been very clear in their own minds about what they were trying to prevent; Title II, Chapter 1, Article 32 of the Romanian Constitution states that ‘The autonomy of the universities is guaranteed’. We all know, here, today, what that meant. The fear was that another regime would try to abolish the teaching of philosophy and the social sciences as was done in this country in the 1970s. The fear was that an unacceptable control over scholarship would be re-imposed. But once one sets up a right, it has a life of its own, not restricted by the specific conditions and concerns of the drafters. In all European societies there are governmental controls over the details of university organisation. When does such a control become a breach of Article 32? Far less serious controls than the one’s which concerned the drafters of your constitution may well be argued before a court in twenty years time as such a breach. It will not be sufficient just to say – ‘Oh, that’s not what we meant, that is too trivial to be a protected right’. Rights develop and emerge. In the USA, even if the death penalty is not forbidden, courts have used the ‘cruel and unusual punishment’ clause to control how powerful a light bulb prisoners must be allowed in their cells – yet electric lighting had not been invented when the American constitution was written.<sup>8</sup>

One good way to think about the role of constitutional courts in exercising the substantive limitation role, when they apply a bill of rights, is to see them not as judges, which they really do not much resemble – at least in the Continental European model which I have already hinted I do not fully support - but as professional political theorists. Because what is really involved in applying a bill of rights is the writing of an essay about what a particular drafter’s intuition actually means in practice. Just what is entailed in the idea that people have to right to freedom of expression, to property, to privacy, to freedom of religion? There are, of course, no answers to these questions, and certainly the consti-

tution drafters cannot have any clear idea about what they mean. This is not to say that constitution drafters are intellectually inadequate; it is logically impossible to know what a right means out of context. There is, in fact, a broader version of this impossibility, which has much troubled some jurists on the new courts, and which comes directly from the choice of the German model. Many of the courts are empowered, and some only empowered, to carry out what is known technically as ‘abstract review’. This means that one of the officers of state so entitled refers an act of parliament, or it may even be an as yet unpromulgated bill, to the court and asks it to judge whether some clause, merely from its wording, is unconstitutional. Laslo Solyom, the first president of the Hungarian Court, and arguably Europe’s most distinguished constitutional lawyer, always deeply regretted having to make decisions in this way. He would vastly have preferred to give constitutional adjudications in the context of a real life conflict replete with facts and stories, as happens in those systems which allow ordinary courts to halt their procedures and refer a challenge to the constitutionality of an act which has come up in the routine litigation of a real grievance. This is why those courts of the common law world left off the list I discussed earlier have no power to carry out abstract review, and indeed, in most cases may not even give an advisory opinion – rights cannot, without serious danger of creating more trouble later, be defined outside specific examples. But I would take Solyom’s criticism further. Not only should rights be decided in the terms of a concrete example, a real law case – they should be decided by the men and women the state trains and trusts to handle all legal conflicts between citizens, and between citizens and the state, the ordinary judiciary. There are several reasons for my strong preference for this, the model of rights protection in the Common Law world, and I hope it is not just because I come from that world. They are all part of the same basic idea. Citizen rights need to be part of everyday life; every and any conflict can have a rights aspect, and the tribunals which deal with the more trivial of conflicts

should be just as attuned to rights as they are to laws on property, contract, civil negligence and minor criminality. Secondly as many state officials as possible should be sensitised to rights problems – every judge, no matter how junior, should be forced to think about rights as often as possible; a state which charges only a few exalted people – 9 in Romania, 12 in Poland, and so on, with the duty to humanize the state is a state risking indifference to rights on the part of most of its agents of justice. In fact judges from lower courts are often more adventurous, more willing to experiment with protection of their society. It is the lower courts in Germany, for example, who send most cases to the European court of Justice (the EU's court), not the higher federal courts; in Italy it was the lower magistracy which started the 'Pulite Mane' (Clean Hands) campaign which swept away the corrupt First Republic about the time the Romanian people were sweeping away their old system. Finally, the power of the courts depends on public legitimacy; what is most needed in the new states is the creation of a civic culture, indeed of a civil society. This begs for rights to be handled at the level of everyday citizen concern by the lower as well as the higher levels of state power.

I would suggest that the best way of thinking about a right, when it comes to asking what limitation on legislation is actually implied by some article of a bill of rights, is that the inclusion of a right in some language in such a bill does little more than establish the initial terms of a negotiation between a citizen and the state, carried out in the court house, with the court as the arbiter who will finally choose a compromise between the state's account of what it is doing and the citizens. The court will not be deciding what a 'right to property' actually means, let alone what it meant in the mind of the person who drafted the final version of the text: it will be imposing a decision on limitation. It is sometimes difficult to realise just how far a litigant may spread a set of words in a bill of rights. Let me give a small, homely example which I treasure, and which makes the point more clearly than some of the

more grandiose examples.

My wife is a practising lawyer. She has, *qua* lawyer, roughly zero interest in human rights – she is the very paradigm of a capitalist, an American Wall Street Corporate lawyer whose clients have the annual incomes of some small states. She has, however, recently become very interested in Article 10 of the European convention, as incorporated by the UK’s Human Rights Act.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Some of her clients have started to worry that this admirable article, which we otherwise associate with the great humane values and the struggles of someone like the current President of the Czech Republic, has a much more mundane implication. Does it mean, in fact, that employers will no longer be able to impose a dress code? Will young executives be freed from the requirement to wear a suit at work? Will the secretaries no longer have to wear skirts? And if so, is this not an infringement on the right of the corporation, itself a legal individual, to express its own personality?

My point is simple. No one actually knows what the right to freedom of expression means, because it is meaningless out of context. The constitutional courts have the completely creative job of refereeing a clash between ideas and interests every time they interpret such a clause. Are laws of defamation breaches of the freedom of expression? Of course not, one might say – and in those constitutions which also recognise a right to privacy or a right to personal honour, one might

be all the more sure of that answer. Yet it does not seem to actually follow from anything in the words of the article. Again on just this point the Hungarian Court brought off a great intellectual coup – asked to say whether the prohibition on insulting or defaming a state officer was a breach of the constitution they borrowed from an American tradition on the law of defamation and utterly inverted the prohibition – their argument was that a member of the state apparatus, or anyone who willingly engaged in the public political arena was less entitled to such protection, not more, than the ordinary citizen. And who knows better about the conditions of the work place – a judge routinely involved in employment law, or a professor of law appointed to the constitutional court after a lifetime in academe?

One crucial reason for widening the range of people who deal with these matters becomes evident when one considers how, in principle, one has to think in order to decide what an abstract right means in practise. I have likened it to writing an essay in political theory. Essentially one has to ask why a society values the right at all. A very great deal of shared history, philosophy and moral sense is required – a great deal of communality of thought, because otherwise the reasons for valuing X will not adequately reflect the inner spirit of the society. This is one reason why rights are not really as universal as their declarations claim. It has been argued well, for example, that the rather divergent understanding of free speech rights between the European Court of Human Rights and the US Supreme Court follows from such a philosophical divergence.<sup>9</sup> In the USA, it is suggested, the reason for valuing freedom of speech is largely limited to what is probably the original reason – to guarantee an informed citizenry who will be able to carry out their control over the scoundrels in government because they will know all they have done; freedom of speech makes for rational electorates. This was equally clearly the logic that lay behinds some surprisingly bold decisions of the both the British House of Lords and the Australian High Court in the mid nineties. In both these cases courts

were able to derive freedom of speech protections not from bills of rights, neither country had one, but from the very logic of the overall national commitment to competitive party democracy. But European courts regularly go further in defending freedom of expression because they also understand it in terms of a different answer to the ‘Why value it at all?’ question. For Continental Europeans, freedom of expression is valued also because the goal of the full development of the human personality or spirit is a crucial part of the shared culture, and thus freedom which have nothing to do with a citizen’s political role, and which may offend many, will be protected. Those who overthrew the communist dictatorships had their reasons to flocking to the public squares of their cities in 1989. Why were they there? Why did they detest their regimes? Only a broad spectrum of the new societies can know, and thus only they can give an answer to *why* do we value Human Right No 99; all a court can do is to try to guess the answer to this question ‘Why?’, in order to answer the constitutional question of its meaning.

When I said above that the Hungarian Court borrowed from an American tradition, I should have noted that American constitutional argument is actually only rarely the influence on these new courts, though the extensive use of borrowings is typical. In this half of their job of constitutional interpretation courts are working from a mass of common European understandings. As noted above, the German model has been tremendously influential. This is so in more than just the institutional design. The Bundesverfassungsgericht has by now accumulated over 100 volumes of case law on the interpretation of the human rights aspect, the first 29 articles, of the German Basic Law. Added to this is the huge case law of the European Court of Human Rights on the European Convention. What this has begun to mean is that the answers to what a right should be taken to mean in any context, or, if necessary in response to an abstract query, need not depend on the imagination of a handful of judges, though fine tuning, and specifically

translation into the politics of the country and time still requires great creativity.

There is the beginning, in other words, of Europe-wide common constitutional law, a shared understanding of the ways in which power must be limited, all growing from a cultural convergence. The idea that the substantive limitation on government increasingly leads to, and increasingly depends on, this Europe-wide common law of the constitution is attractive, and may be vital. On this point I should say that what I find most valuable about the British Human Rights Act is that it instructs British judges to be guided by the case law, not only the past, but the ongoing case law, of the European Court. (This is precisely what the *Daily Mail* objects to when it complains that the act will make the fabric of British society vulnerable to foreign laws.) While the *Daily Mail* hates the idea of foreign law having any impact in the UK, its objection highlights the advantage of a common constitutional law. Constitutional Tribunals are seldom enormously popular when they uphold rights, because those whose rights are being protected are almost automatically society's underdogs. Protecting them involves restricting the better off or better integrated. Constitutional law is very often the protection of minorities. As such the tribunals can benefit enormously by showing that obedience to their judgments is required by a transnational perspective – it empowers a constitutional court to be seen as applying internationally held values, because the fear of international opprobrium can be very strong. Such Tribunals often need to be insulated from their own political forces. (Ironically it was just this fear of international shame that motivated the British government to pass the Human Rights Act – the UK has one of the worse records for losing cases before the ECHR. It was hoped that allowing UK judges to apply the convention in their own courts would limit the number of embarrassing appeals to Strasbourg.)

But so far I have talked only about the substantive limitation of power

inherent in constitutionalism. Does the idea of a common constitutional law have any application when one turns to procedural aspects? What of these procedural aspects, the way in which constitutions limit how power may be exercised and by whom? How can these questions be answered by a constitutional court? Are such questions not merely technical questions of institutional design? Above all, is the art of constitution writing in this respect overwhelmingly the art of designing institutions round highly local political conditions? Can there be general theoretical answers to such questions, or must they be simply the result of conflicts of political forces in the period of constitution design?

In general it seems clear that the new courts have, in varying degrees, thought in terms of a constitutional common law (though being entirely Code Law countries, they would not use such terminology.) It has been said of the Hungarian constitutional development, for example, that:

The constitutional history that goes with this prevailing constitutional conception emphasizes that the current, democratic regime acquired power from a non-democratic one through a “rule-of-law revolution” in which the principles of legality were never violated in the move from the party-state to the republican one. The rule of law, here, stood for continuity of legality, and that meant treating all Soviet-era laws as valid unless they conflicted with the new Constitution. Hungary’s 1989 Constitution takes its inspiration from internationally respected norms of human rights and the Hungarian Constitutional Court frankly adopted the precedents of other European constitutional courts in deciding what the Hungarian Constitution meant. This has led to a dominant “transnational constitutionalism,”

in which the principles of the Hungarian constitutional order are assessed against the backdrop of internationally agreed-upon ideas of what a constitutional, rule-of-law democratic republic should be. ....In fact, the Court's current president, Janos Nemeth, has argued that the Court's current, relatively passive role in Hungarian politics stems from the fact that the prior Solyom Court already did what was necessary to make the legal system a fully constitutional one and so there is relatively little constitutional work left over for his court.<sup>10</sup>

Certainly it would seem that such a transnational development is as relevant to structural as to human rights matters. The questions to be answered are common currency; consider just a few. Why does a constitution prescribe a particular relationship between a presidency and a prime minister? If such a constitution is vague about whether or not the President can dismiss the Prime minister, or whether the Prime minister needs presidential approval to appoint or dismiss another minister, can a court possibly answer the questions? These are real questions which you will recognize as having occurred in one way or another in new European democracies in the last few years. Here are just a few more:

- (i) In Hungary the question arose as to whether the President must appoint the nominees of the Prime Minister to certain posts, where he is the formal appointing officer, or is he merely required to consider the candidacies?
- (ii) Again from Hungary: can a parliamentary rule of procedure restrict membership of parliamentary committee seats only to those whose party groups have at least 15 members in the parliament?

- (iii) From Bulgaria. The constitution forbids the creation of a political party along racial, religious or ethnic lines. Could the MRF, a party predominantly organised to protect the interests of the Turkish minority, take up the seats it had won in the election?
- (iv) From Bulgaria again: does the government or the President have the power to appoint the head of the National Intelligence Service and the ambassadors; can the government rather than the president take control of the National guards Service?
- (v) Poland: The President has the power to appoint the Chairman of the Television and Radio Commission – but can he fire him?
- (vi) A 1995 act of the Polish parliament gave itself the right to veto proposed sales under the privatisation programme. Was that a breach of the separation of powers doctrine?

How can such questions conceivably be answered in the abstract by a constitutional court? Should they, indeed be put to a court at all? There is a serious argument to be made that, as least as far as these structural matters go, the new democracies have turned their courts on too early. Every political scientist knows that a constitution is not just the words on paper, drafted by lawyers. It is a living entity which contains the ‘rules of the game’, what in England we call the ‘constitutional conventions’, which emerge over time as the result of political conflicts and compromises. Such *de facto* rules take much longer to emerge than the *de jure* rules of the written constitution. One reason the French Conseil Constitutionnel is so effective nowadays is that it did not make any serious constitutional decision until 1972, 14 years after the publication of the official constitution of the Fifth Republic. The Italian Constitutional Court was largely passive, because of political dominance by the governing Christian Democrats until the last 15 years or so.<sup>11</sup> As I have already said, the US Supreme Court was largely quiet about federal power for half a century. Similar stories can be told of many of the world’s more stable influential courts.

Nonetheless we can hardly turn off the eastern European constitutional courts and tell them not to wake up until their politicians have finished fighting over the ground rules. I have argued that a court settles questions of what a state can do substantively by creating a political theory of what a right must mean in practical contexts largely by considering why we value the right at all. Can anything like that apply to these structural questions? Let us look at two recent and typical questions, one from Hungary, one from the Czech Republic.

The Hungarian government, in 1998, used its parliamentary majority to produce an change in the rules of parliamentary procedure which drastically reduced the number of days each week in which the chamber could sit and debate government policy. The opposition challenged this before the Court, claiming it broke the general spirit of the constitution, though there was no specific text on the point.

In the Czech Republic the minority governing party agreed with the largest opposition party to force through new electoral laws last year. They will have the inevitable effect of drastically reducing the number of parties able to win seats in Parliament. The bill passed both Houses of Parliament, but President Havel vetoed it. On July 10, parliament voted to override Havel's veto. The president then appealed to the Constitutional Court, claiming that the new law the democratic nature of the Czech Constitution. The Court has not issued a ruling in this matter yet. The Constitutional Court will have to rule on another of Hovel's appeals against a new law on party financing. This legislation doubles the state allocation to political parties according to the number of deputies they have in the Chamber of Deputies. President Havel vetoed the law, fearing that it would favour the large political parties. Again parliament overrode the presidential veto, prompting the President to turn to the Court, arguing that the law violated the constitutional principle of free competition between political parties by favouring larger parties with more parliamentary representation.

How, even in principle, can these questions be answered? It is no use to say, as one school of American constitutional thought would answer, “by seeking to find out the intention of the original drafters of the constitution.” For one thing those drafters are not safely and conveniently dead by 200 hundred years, but are probably sitting on either side of the political conflict that has lead to the court being seized with the question. The questions arise precisely because the drafters either did not think the matter out properly in the first place; or because there was some much conflict over the issue that it was deliberately left vague to gain consent to the overall document. It was the first President of the Court of Justice of the European Union, a former Italian politician who had been involved in the drafting of the Treaty of Rome who said, acerbically of the idea of finding the intention behind legislation, that the words legislated more often have the aim of hiding the intent than of specifying it. To some, probably small extent, the current judges of East European republics may seem to have an advantage in as much as some of them were either involved in the original constitutional drafting, or close to those who were. The first members of the Australian High Court had been in this position, and could therefore try in their early structural decisions to complete the work of their constitutional convention. Whether this gives especial legitimacy is another matter. Why should people who were unable to get their way in convention now be entitled to do so as judges? This is not to say that they should not vote according to their earlier preferences – they will do that anyway - but that the arguments they must use cannot be of the ‘original intent’ kind. And this is what it is all about – what general sorts of arguments are legitimate in constitutional judging on structural matters?

There are only two ways one can go about solving such problems. One is overtly political – to identify a medium term political goal, let us say cabinet stability, work out what institutional arrangement will best serve this, and deem it to be constitutional. To invent a context for the

Hungarian example, the court could assert that ministerial security in office is crucial to political stability, that this will best be served if parliamentarians do not have very long in the chamber each month to query ministers, and that it is therefore constitutional to restrict the parliamentary meeting schedule. In a similar vein, the Czech Court might adopt the desires of the two largest parties of the Czech Republic – to alternate in office as majority governments, as their own. They might do so because, thinking as political scientists, they conclude such parliamentary stability and predictability to be desirable. Manifestly a constitutional court can do no such thing. Which is why, because politicians can do such a thing, I suggested earlier that the courts may have come on line too early. For courts to take such an approach would be tantamount to saying that any procedural change that a majority wants is constitutional. And that may be precisely what the courts should do, though I do not think that. It would be justified only if the constitutional culture held a very strong doctrine of judicial restraint, an extreme version of the US Supreme Court's doctrine of 'the political question'. What it would mean is that constitutional courts effectively abstained from such issues. There seems to be no good reason for having Constitutional courts if they are to be thus limiting. In the particular Hungarian case one might note that the constitution specifically puts parliamentary rules within the jurisdiction of the court, a non-obvious inclusion, presumably because the drafters realised how important they could be.

Sometimes they get very close to such self-restriction. What the Hungarian court actually did was simply to observe that parliament certainly had to pass a law regulating the schedule because there was none, and the constitution required one. The Hungarian court has the rather rare power of noting what are called 'constitutional omissions' and commanding the government to remedy the omission. So they solved their problem by finding an omission, ordering its rectification, and saying that it was a matter of constitutional unimportance *what* the

rule should be! Though remember this was the new Hungarian court, the one appointed to replace the one which had so early won fame for its activism.

Many Hungarian constitutional scholars have found this a very weak response. They have noted that in its great days before its personnel was completely replaced in 1997/8, the old court would have acted differently. It is the way they are though likely to have acted which helps us with our puzzle here, about how a court can in fact, acting as a court and not as political opportunists, perhaps solve the institutional questions of power limitation that constitutionalism requires them to do. The suggestion is that the old court would have done very much what courts do in interpreting articles of bills of rights. It would have gone to the foundational assumptions of the constitution itself – that the constitution was intended to enshrine a democratic rule of law. It would then have attempted to work out what rules of parliamentary timetabling were specifically mandated by this assumption. It would, in other words, have *constructed a theory of democracy*. Because our problem is analogous to the ones discussed earlier. The constitution drafters could all easily agree that the new societies should be parliamentary and electoral democracies, just as they could easily agree that the freedom of speech must be protected. They could do so easily because they did not need to contextualise the idea, to cope with the costs and benefits of any detailed explications of those commitments.

Let us speculate on how one might go about solving the problems President Havel gave the Czech Constitutional Court. One might have started from the undeniable point that the Czech Constitution was and still is intended to protect electorally based democracy.<sup>12</sup> One might then have pointed out that the new laws, which raised the threshold of votes needed before a party could have any seats in Parliament, and changed the size and number of electoral districts, would have cut down the range of opinions represented in Parliament, and would render mute

the voices of citizens who voted for small parties. None of this could be denied, as it was precisely the intention of the coalition of the governing and major opposition parties who put forth the proposals. The court could then have considered exactly what democracy required. And in so doing, they would have to raise the other question parallel to dealing with the jurisprudence of basic rights – why do we value democracy? The Australian High Court managed to solve a not dissimilar problem in 1992, even though the Australian Constitution has no appended Bill of Rights.<sup>13</sup> The question was the validity of a parliamentary statute which restricted the purchase of broadcast time during elections, to prevent rich parties swamping smaller parties with campaign messages. The Australians ‘imputed’ a freedom of speech right that denied that Parliament could so restrict campaign broadcasting. Their logic was that Australia was that sort of democracy which relied on competitive party politics; such party competition required a fully informed electorate, and no steps aimed at reducing the flow of information to the voter could be justified constitutionally. It is not necessary to agree with the decision, and indeed equally democracy-based arguments can be made for the opposite decision. What is clear is that the Australians could only solve their problem by becoming political theorists, which is what the Czech Court would have to become to solve an analogous attempt to interfere with the dynamics of party competition.

There are plenty of perfectly respectable democratic theories to choose from, of course. Schumpeter’s classic definition in his seminal *Capitalism, Socialism and Democracy* would perfectly suit the current Czech government.<sup>14</sup> He defined democracy as a system by which once very few years the electorate were allowed to choose which of two competing alternative governments would have power for the next few years. That is, presumably, not President Havel’s preferred theory of democracy. My question is this – when Romania, the Czech Republic, Poland, East Germany, Albania, Bulgaria and Hungary all threw

off dictatorship for democracy, why did they do it? What form of democracy fits the desires that fuelled those revolutions? Can a constitutional court answer that question? If they cannot, no one else can. As I said earlier, the constitutions are not just procedural devices – they give at least substantive hints as to why the old regimes were overthrown. Sometimes these are overblown in language to a 21<sup>st</sup> century Western European eye, but they were real aspirations, and must be the stuff of constitutional jurisprudence. Return to the Romanian Constitution as just one example:

Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.

This is actually quite meaty – far more than the Australian High Court had to go on, rather more even than the US Constitution provides as a guide in its famous preamble, where 'WE THE PEOPLE OF THE UNITED STATES, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty...' established the constitution. These and other preambles can be woven together into a general theory of democratic values far richer than those in the political theory text books. Most other areas of law are merging, even over the great Common Law/Code Law divide. It is urgently required that Constitutional Law do so as well, on its procedural as in its substantive dimensions. Having shown the world how bravely they can adopt legal constitutionalism in less than ideal circumstances, and how rapidly they can make it productive, the East and Central European courts would seem ideally placed to lead.

## Notes

- 1 See John Bell, *French Constitutional Law*, Oxford Clarendon Press, 1992.
- 2 Don E Ferenbacher, *The Dred Scott Case: Its Significance in American Law and Politics*, New York, OUP, 1978.
- 3 *Cooper v Aaron* 358 US 1 (1958).
- 4 Kim Lane Scheppele, 'The New Hungarian Constitutional Court', *East European Constitutional Review* Vol 8, No 4, Fall 1999.
- 5 Much of my understanding of the Eastern and Central European Courts is based on a magnificent and very timely study, *The Struggle for Constitutional Justice in Post-Communist Europe* by Herman Schwartz, Chicago, Chicago UP 2000. The best source for up-to-date information on constitutional decision making in the region is the journal *Eastern European Constitutional Review* published by New York University School of Law, which is available on the Web at [www.law.nyu.edu/eecr/](http://www.law.nyu.edu/eecr/). The nearest thing to raw material for those of us who do not read the relevant languages is the invaluable study of the case work of Hungarian Court by its first President, Laslo Sólyom and Brunner, Georg, *Constitutional judiciary in a new democracy: the Hungarian Constitutional Court*, Ann Arbor, University of Michigan Press 2000.
- 6 The extent to which the original Bill of Rights was meant to be purely procedural, and the post 1866 tradition has changed it, is of course endlessly debated. See Akhil Reed Amar *The Bill of Rights: Creation and Reconstruction* (New Haven, Yale UP, 1998) for a recent and powerful version of this argument.
- 7 For a general examiniatin of post 1989 Polish constitutional history, see Mark F Brzezinski, *Struggle for Constitutionalism in Poland*, New York, St Margaret's Press, 1998.
- 8 This is a genuine, if extreme example of how a constitutional phrase can develop a life of its own. I take the example from Feeley's valuable study of such constitutional development into policy in: *Judicial policy-making and the modern state: how the courts reformed America's prisons*, Cambridge, CUP, 1998.

- 9 Christopher McCrudden, 'The Impact on Freedom of Speech' in Basil S Markesinis (Ed) *The Impact of the Human Rights Bill on English Law* 1998, Oxford, The Clarendon Press.
- 10 Kim Lane Scheppele 'The Constitutional Basis of Hungarian Conservatism', *Eastern European Constitutional Review*, Vol 9, No 4, Spring 2000.
- 11 Mary L Volcansek, *Constitutional Politics in Italy: The Constitutional Court*, New York, St Martin's Press, 2000.
- 12 In fact it is even supposed to protect 'proportionality' in Parliament, but it is unclear exactly what this means.
- 13 *Australian Capital Television Pty v Commonwealth* (1992) 177 CLR 106. Even more impressive, of course, was the invention of Aboriginal land rights in Mabo even though there was more than a century of contrary common law; *Eddie Mabo and others v Queensland* (1992) 175 CLR 1.
- 14 Joseph Schumpeter, *Capitalism, Socialism and Democracy*, (6<sup>th</sup> Ed) London, Unwin, 1987.

# The Europaeum Record

## I. Academic Conferences

- 1993 Oxford** ‘Are European Elites Losing Touch with their Peoples?’
- 1994 Oxford** ‘Europe and America after the Cold War: the end of the West’
- 1995 Bonn** ‘The integration of East Central Europe into the European Union’
- 1996 Geneva** ‘Defining the Projecting Europe’s Identity: Issues and Trade-Offs’ at Geneva
- 1997 Paris I** ‘Europe and Money’
- 1998 Leiden** ‘Human rights, with particular reference to plight of immigrants and immigration policy in Europe’
- 2000 Bonn** ‘The Implications of the new Knowledge and Technology’ at Bonn
- 2001 Berlin** (projected) ‘Borderless Education: Challenges for the new Europe’

## II. Student Summer Schools

- 1994 Leiden** ‘Concepts of Europe’
- 1995 Bologna** ‘The Problem of Political leadership between History and Social Science’
- 1996 Bologna** ‘The Civic Nation and the Ethnic Nation’
- 1998 Budapest** ‘Risk Policy Analysis’
- 1998 Oxford** ‘Human Rights’
- 1999 Paris I** ‘NATO and European Defence’
- 2000 Bologna** ‘European Policy and Enlargement’
- 2000 Oxford** ‘Church as Politeia: the political self-understanding of Christianity’
- 2001 Oxford** ‘Human Rights and the movement of people: Meeting the Challenges of Racism, Migration and Displacement.’

### III. Joint Teaching, Courses and Programmes

- 1992- Oxford** *European Law Studies* involving joint teaching and study, and student exchanges linking Oxford, Leiden and Sienna.
- 1999- Paris** *Economics of European Integration* Europaeum module for undergraduates and graduates.
- 1999- Bologna** *Political Cultures and European Political Systems* joint programme linked to Oxford and Leiden.
- 2000- Geneva** *International Refugee Law* joint teaching Programme linked to Oxford.
- 2001- Bonn** *Ecumenical Studies in Protestant Theology* joint programme to be linked to all Europaeum institutions, beginning with Prague.
- 2002- Leiden** *Leadership Programme in European Business Cultures* to be linked to Oxford and European industry.

□ In 1997 academics representing all the Europaeum partners in the fields of *European Political Thought, Economics of Integration, and European Modern History* met at Oxford, Paris and Bologna respectively, and agreed strategies to promote international academic collaborations.

□ New academic networks are being developed in Economics, History, Politics and Theology, to promote collaborative teaching and mobility of graduate research students. Other initiatives aim to link academic in the fields of Classics, History of Science and Environmental Science.

□ The Europaeum played the key role in the creation at Oxford of the Centre for European Politics and Society, and also in the creation of the Oxford Institute of European and Comparative Law, and a number of fellowships, most recently the Bertelsmann Europaeum Visiting Professorship in Jewish History and Politics.

## IV. Scholarship Programmes

□ The **Europaem Scholarships in Jewish Studies** provide up to six places each year for Europaem graduate students to spend a year in Oxford studying for the Diploma in Jewish Studies at the Oxford Centre for Hebrew and Jewish Studies.

□ The **Oxford-Geneva Bursary Scheme** provides bursaries for student exchanges between Oxford and the Graduate Institute of International Studies, together with other collaborative activities including joint teaching and Europaem Lectures.

Other linked scholarship schemes include the Artal, Thyssen, Kravis and Scatchard awards, all tenable at Oxford.

## V. Research and Communications Network

The **Europaem Research and Communications Network**, facilitating collaborative research and teaching over the internet, was established in autumn 2000.

The network allows continuous discussion through online forums. Each *Theme Group* seminar within the forums will be led by an Academic Director and moderated by a Supervising Editor. Informal discussion outside, and between, the Theme Groups can also take place. New Theme Groups may be created on demand, to include further subject areas.

Those participating in the forum system benefit from the prodigious database capacities of the network, which can store personal files, and references, articles and notes on each academic theme, building up academic records and sources. Documents placed on the network may be accessed and worked upon remotely, and can be made 'public' for other participants to comment or discuss. Such international collaboration promotes Europe-wide awareness and encourages the development of new perspectives.

## VI. Joint Research Projects and Support

❑ A **Research Directory** of interests of staff involved in European Studies in partner institutions is accessible on the Europaeum internet site encouraging academic collaboration.

❑ The **Europaeum Project on the Future of European Universities**, supported by DaimlerChrysler Services AG, a three-year investigation into the impact of new technology and the “Knowledge Revolution” was initiated in autumn 2000, with a first international conference in Berlin in December 2001.

❑ A **Joint Research Project** on ‘*Party System Change*’ involving members of several Europaeum universities was launched in Oxford in 1997, and in 2000 an international research project linked all Europaeum partners to look at the origins and aftermath of the Kosovo crisis.

❑ The **Europaeum Research Project Groups** scheme encourages collaborative research across the association. The following five groups received awards in 2000: The Churches and the Family; European Monetary Integration; The Kosovo Stability Pact; International Intervention; and European identity.

## VII. Mobility Programmes

❑ The **Europaeum Visiting Professors Scheme** supports the movement of academics from one partner institution to another, including the hosting of a Europaeum Visiting Professor each year at each institution.

❑ The Europaeum supports individual academics and students from member institutions participating in selected European events and activities, including conferences, seminars and summer schools.

## The Europaeum Members

### Oxford

The University of Oxford, comprising 39 Colleges and 6 Private Halls, dates its foundation officially to 1249, though teaching at Oxford is known to date back to 1096, and the first overseas scholar arrived in 1190.

**Vice-chancellor:** Dr. Colin Lucas  
**Management Committee representative:**  
Mrs Beverly Potts  
International Office  
University of Oxford  
Wellington Square  
GB-OXFORD OX1 2JD

### Leiden

Universiteit Leiden founded in 1575 by the States of Holland, as a reward for the town's brave resistance against the Spanish, at the behest of William of Orange.

**Rector:** Professor William Waagenar  
**Management Committee representative:**  
Dr. Joost van Asten  
Director of International Relations  
University Office  
Universiteit Leiden  
Postbus 9500  
NL-2300 RA Leiden

### Bonn

Rheinische Friedrich-Wilhelms-Universität Bonn founded in 1818 by Kaiser Friedrich Wilhelm III, preceded by an Academy established in 1777.

**Rector:** Professor Klaus Borchard,  
**Management Committee representative:**  
Dr. Hartmut Ihne  
Director, ZEF/ZEI  
Rheinische Friedrich-Wilhelms-Universität Bonn  
Regina-Pacis-Weg 3  
D-53113 BONN

## Bologna

Università degli studi di Bologna officially constituted in 1158 by Emperor Frederick I Barbarossa, though independent teaching dates back to 1088.

**Rector:** Professor Pier Ugo Calzolari  
**Management Committee representative:**  
Professor Paolo Pombeni  
Dipartimento di Politica, Istituzioni, Storia  
Università degli studi di Bologna  
Strada Maggiore 45  
I-40125 BOLOGNA

## Geneva

The Graduate Institute of International Studies founded in 1927, associated to, but not part of, the University of Geneva.

**Director:** Professor Peter Tschopp  
**Management Committee representative:**  
Professor Daniel Warner  
Secretary-General  
Graduate Institute of International Studies  
132, Rue de Lausanne  
P.O. Box 36  
CH-1211 Genève 21

## Paris

Université Paris I Panthéon-Sorbonne founded in the 12th Century, and formally constituted by Papal Bull in 1215, was briefly suppressed by the French Revolution between 1793 and 1808, and reconstituted in 1890.

**Rector:** Professor Michel Kaplan  
**Management Committee representative:**  
Professor Robert Frank  
Institut Pierre Renouvin  
1, rue Victor Cousin  
F-75005 PARIS

## Prague

Charles University, Prague, founded in 1348, was divided into Czech and German institutions by the Vienna government in 1882. These operated in parallel until 1939, when the Czech institution was closed by Nazi occupation. After 1945, the German institution was abolished and the Czech Charles University revived.

**Rector:** Professor Ivan Wilhelm,

**Management Committee representative:**

Dr. Tomáš Jelinek

Chancellor and Head of the Rector's Office

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## The Europaeum Lectures

Europaeum Lectures have been a part of the consortium's work since its foundation in 1992. The Europaeum now aims to publish key lectures in this series of pamphlets, examining the key issues confronting Europe today.

The series has recently included the following Lectures:

❑ **October 2000, Prague**

Dr. David Robertson of Oxford on "*A common Constitutional Law for Europe: Questions of National Autonomy versus Universal Rights*"

❑ **November 2000, Oxford**

Dr John Temple-Lang of the European Commission on "*The Commission and the European Parliament – an uncertain relationship*"

❑ **February 2001, Geneva**

Professor Ian Brownlie CBE QC of Oxford on "*International Law and the use of force by states*"

❑ **May 2001, Oxford**

Professor Philippe Burrin of Geneva on "*Strands on Nazi Anti-semitism*"

Future lectures are planned for Paris in June 2001 and Geneva early in 2002.

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