

Fundamental Rights Sub-network

Agenda of Workshop

Olivier De Schutter

REFLEXIVE GOVERNANCE

An Integrated Project supported by the 6th Framework Program of the European Community and coordinated by the CPDR/UCL

**A Fundamental Rights policy in the Public Interest:
The Decentralized Implementation of Fundamental Rights
in a Single Area**

FIRST OPEN CONFERENCE, 24 MAY 2006:
Fondation universitaire, 11 Rue d'Egmont, 1000 Bruxelles
Meeting room « Bibliothèque »

8.45 am ***Welcome coffee***

PART I. THE GENERAL FRAMEWORK

9:00 am Fundamental Rights in a Federal Setting: Diversity as an Opportunity for Collective Learning. A presentation of the aims and theoretical framework of the 'Fundamental rights and Reflexive Governance' Project, by **Olivier De Schutter**, CPDR/UCL.

PART II. THE ROLE OF FUNDAMENTAL RIGHTS IN EUROPEAN INTEGRATION

9:15 am Fundamental Rights as a contribution to the aims of European Integration: Substantive Issues.
The role of fundamental rights in the internal market and in the area of freedom, security and justice, by **Olivier De Schutter**, CPDR/UCL.

10:00 am Fundamental Rights as a contribution to the aims of European Integration: Process, Institutions and Methods.
The New Architecture for the protection and promotion of fundamental rights in the Union, by **Rick Lawson**, Leiden University, and by **Manfred Nowak**, BIM/Wien.

10.45 am ***Coffee break***

11.00 am A comment, by **Colin Harvey**, Queens University Belfast, introducing the discussion on the initial presentations.

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PART III. THEMATIC ISSUES

11.30 am Social Rights

The Contribution of Fundamental Social Rights to European Integration, by **Jeff Kenner**, University of Nottingham

Commentator: **Simon Deakin**, Cambridge University (CBR).

12.30 pm Lunch break**2.00 pm Non-Discrimination**

The Contribution of Anti-Discrimination Law to European Integration, by **Catherine Barnard**, Cambridge University.

Commentator : **Kees Waaldijk**, Leiden University.

3.00 pm Privacy

The Contribution of Personal Data Protection Law to European Integration, by **Yves Poullet**, Facultés universitaires Notre-Dame de la Paix of Namur (Belgium)

Commentator: **Serge Gutwirth**, Free University of Brussels (VUB)

4.00 pm Criminal Law

The Contribution of the Approximation of national criminal Legislations to European Integration, by **Anne Weyembergh**, Free University of Brussels (ULB)

Commentator: **Paul de Hert**, Free University of Brussels (VUB) and Tilburg University

Coffee break

PART IV. HORIZONTAL ISSUES

5.00 pm Mainstreaming Fundamental Rights in the Union

The example of the Rights of the Child, by **Patrick Trousson**, DG Justice, Freedom and Security (JLS), European Commission

The discussion following the introduction by Patrick Trousson based on his work on the rights of the child will focus on the institutional tools for the mainstreaming fundamental rights in the Union, including the potential contribution of the EU Fundamental Rights Agency and impact assessments, and on the impact of recognizing Fundamental Rights at the level of the Union on the Allocation of Competences between the Member States and the Union.

5.30 pm Fundamental Rights in European Integration and Reflexive Governance

Collective Learning and Collection Action Problem-Solving in the Union: the hypothesis of 'Reflexive Governance', by **Alberto Andronico**, University of Catania

6.00 pm – Open Discussion about the Next Steps of the Research

06.30 pm – End of the conference

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Background and Presentation**1. The 'Fundamental Rights and Reflexive Governance' research**

This research is part of the wider 'Reflexive Governance' (REFGOV) research project coordinated by the CPDR/UCL over the period 2005-2010, with the support of the 6th Research and Development Framework Programme of the European Community. This part of the research, which is coordinated by Olivier De Schutter from the CPDR/UCL, seeks to examine how the hypothesis of reflexive governance may serve to improve the coherence and efficiency of the fundamental rights policy of the Union. In the present constitutional structure, where the institutions of the Union only may exercise the powers which are attributed to them by the Member States, the implementation of fundamental rights essentially takes place at State level. Our research will analyse the limits of such a decentralized implementation of the values identified in the Charter of Fundamental Rights, and it will examine which modes of coordination may help us to move beyond these limits without implying further transferrals of powers from the Member States to the Union.

The research is divided in three phases. The first phase (June 2005-June 2006) has sought to lay down the methodological foundations: it sought to identify, in particular, the conditions under which an open method of coordination in the field of fundamental rights – or any other mechanism ensuring the adequate mix of competition and cooperation between the Member States and facilitating collective learning – can be devised and implemented in order to improve the protection and promotion of fundamental rights at the level of the Union without sacrificing the advantages of diversity resulting from the development of fundamental rights at the level of the Member States. During the second phase of the research (June 2006-June 2008), the conclusions arrived at at the end of the first phase will be tested and developed in four substantive fields: fundamental social rights, non-discrimination, personal data protection, and criminal law. During the third phase (June 2008-June 2009), we will translate into operational terms any proposals we hope to be able to formulate, and ensure a dissemination of the final conclusions.

2. The Conference of 24 May 2006

The conference organized in Brussels on 24 May 2006 arrives at a crucial moment of the research. The main working hypotheses have been defined and discussed in two preparatory seminars (Columbia University, New York, 4 November 2005; Brussels, 16 March 2006). The second phase is about to be launched. In order to ensure that the thematic researches to be conducted in the four substantive fields chosen in order to test the guiding hypotheses, it is necessary to recapitulate the provisional conclusions arrived at in the course of the research, and to identify with greater clarity what we expect, collectively, from our inquiries into the four thematic fields. These are the aims of the conference.

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The conference is divided in three parts.

The first part of the conference will examine the role of fundamental rights in the establishment of the internal market and in the creation of an area of freedom, security and justice between the Member States. We will ask which role fundamental rights have played as a limit to the process of 'negative' integration, by the abolishing of barriers to free movement and mutual recognition as a technique to facilitate integration in the absence of harmonization, and the extent to which they have served as a tool to promote 'positive' integration, through harmonization or approximation of national legislations. We will also ask through which tools, both methodological and institutional, the protection and promotion of fundamental rights can be improved in the Union, putting a particular emphasis on the relationship between the architecture for the protection of fundamental rights at the level of the Union and the role of national institutions and actors in the monitoring of fundamental rights, on the use of indicators in the monitoring of fundamental rights in the Union, and on the possible contribution of the EU Fundamental Rights Agency to the improvement of the fundamental rights policy of the Union. The introductory presentations, by Olivier De Schutter (substantive issues), Rick Lawson and Manfred Nowak (process, institutions and methods) respectively, will build on the papers presented at the first two seminars organized in this project, in order to present the main conclusions provisionally arrived at. The purpose is not to explore the details of these papers, which have been presented and discussed on previous occasions. Rather, the objective of these presentations is to introduce the participants in the conference to the themes which have dominated the research project so far, and thus to facilitate establishing a bridge between those previous discussions and the second phase of the research.

The second part of the conference will consist in a preliminary exploration of the four substantive areas which will be investigated in depth during the second phase of the REFGOV research project. The intervenors, who are all eminent specialists in these respective fields, shall be asked to address explicitly the following questions, which relate both to the substance and to the tools of European integration:

- in the debates surrounding the shape, the degree and the methods of integration – for example, the choice between harmonization or approximation of laws on the one hand, mutual recognition on the other hand –, which role have the arguments based on fundamental rights played? Have fundamental rights been presented as imposing limits to further European integration, or instead as requiring a deepening of integration? To which extent was this discussion constrained by the requirements of subsidiarity and proportionality imposed on the exercise of non-exclusive Community or Union competences?
- where the European Community / Union have adopted instruments seeking to promote fundamental rights, how was the desired level of protection defined?

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Was this defined by reference to international or European standards, in particular, by the instruments existing within the United Nations or the Council of Europe? Or was this defined by comparing the level of protection achieved by the Member States, and if so, was the choice made in favor of the largest common denominator or in favor of the best practices identifiable? Which techniques were used in order to identify the level of protection to be defined in Union law?

- in the development of instruments protecting and promoting fundamental rights at the level of the Union, what role did national actors play? Was the definition of these instruments left to negotiation by the national governments, or did we see an involvement of other actors' representative at national or European level, in particular civil society organisations, unions, experts?
- how would you evaluate the balance which has been arrived at between decentralization (the protection of fundamental rights by the Member States) and harmonization (the protection of fundamental rights at the level of the Community / Union) and how should that balance be defined in the future?

The third part of the conference will address horizontal issues. We will receive a reaction from a public servant of the Commission, who is ideally placed to comment both on the new institutional architecture being put in place for the protection and promotion of fundamental rights in the Union and on the relationship between the development of a fundamental rights policy of the Union and the division of powers between the Member States and the Community / Union. We will also relate the discussions to the guiding hypothesis of the 'Reflexive Governance' project.
