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**RECON**  
**Reconstituting Democracy in Europe**

Integrated Project  
Priority: 7 - Citizens and Governance in a Knowledge-Based Society

**Deliverable No. 31**  
**Workshop on lessons for Europe from the Canadian experience**

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Lead contractor for this deliverable:  
Partner 1 ARENA – Centre for European Studies  
University of Oslo, Norway

Final version

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Dissemination Level		
<b>PU</b>	Public	X
<b>PP</b>	Restricted to other programme participants (including the Commission Services)	
<b>RE</b>	Restricted to a group specified by the consortium (including the Commission Services)	
<b>CO</b>	Confidential, only for members of the consortium (including the Commission Services)	

## 1. Introduction

RECON Deliverable No. 31 – *Workshop on lessons for Europe from the Canadian experience* is part of work package 2 ‘The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared’. WP 2 seeks to establish the democratic merits of the emerging European constitutional order in relation to the three RECON models, taking the Laeken experience as its point of departure. WP 2 analyses the impact of the dual processes of EU constitutionalisation and Europeanisation of national constitutions on the reconstitution of democracy in Europe. WP 2 also compares the EU with Canada (a multinational and multicultural state), in an area that is particularly relevant to the present European situation: the representative and participatory character of constitution-making, and their link to constitutional failure.

One of the main tasks of WP2 is to establish democratic legitimacy aspects of parallels of the constitutional processes in the EU and Canada (M34). Both cases where intergovernmental procedures (run by political leaders and their supportive staffs) that were first opened up, failed and were restarted as closed processes. This workshop (D31) was redefined to deal with lessons from *both* the European and Canadian constitutional experience in order to establish more general democratic lessons.

## 2. Presentation of the workshop

The workshop ‘Lessons from Europe’s and Canada’s constitutional experiences’ took place on 22 and 23 March 2009 in Oslo, and gathered scholars on European integration and Canadian constitutional politics. It was organized by ARENA in cooperation with the Nordic Association for Canadian Studies (NACS) and the European Network for Canadian Studies (ENCS), co-funded by Foreign Affairs and International Trade Canada (DFAIT).



The workshop venue: Holmenkollen Park Hotel, Oslo

The purpose of the workshop was to compare the EU with Canada, as both countries have experienced constitutionalism and constitution-making in multi-national settings. The aim was to explore the potential for drawing general lessons from the constitutional experiences in both political entities. The dynamics of Canada's approach to constitution-making has important parallels with that of the EU:

- Both have seen a transition from a closed executive-style and intergovernmental approach to constitution-making to a more open and participatory style (in Canada first with the patriation of the constitution in 1981-2, and in the EU with the Laeken process 2003-4);
- The outcome fails to obtain agreement among the key stakeholders (Quebec in Canada, France and the Netherlands in the EU);
- The next effort sees a retreat back to closed, executive-style constitution making (in Canada: Meech Lake, in the EU: the Lisbon Treaty);
- In both instances this is also rejected (in Canada by Manitoba and Newfoundland, in the EU by Ireland);
- In Canada the process was re-opened and resulted in the Charlottetown Accord 1991-2 which also failed. The character and result of the further EU process is still uncertain.

The aim of the workshop was to explore the potential for drawing general lessons from the constitutional experiences in both political entities. What are the conditions of success and failure of constitutionalism and constitution-making in multi-national political entities? Accordingly, an overarching theme with relevance for both cases was to identify, first, the materialization of constitutions, and, second, identify effects of democratically inclusive participation in constitutional change processes on outcomes. The ultimate goal was to examine which of the three RECON models of audit democracy, federalism and cosmopolitanism has most relevance in analysing the constitutional processes.



Workshop participants. From left: H.-J. Trenz, P. Russell, C. Closa, G. Itzcovich and M. MacPhedran.

The workshop participants discussed three sets of aspects of the Canadian case, with direct bearing on the EU: (a) constitutional refashioning of community as a gender empowering device; (b) the effects of democratically inclusive participation in constitutional change



processes on outcomes; and (c) what constitutes constitutional failure? Here the focus is on the relation between failed reform efforts and how these can be understood in normative terms. All of these are clearly relevant to the contemporary European situation. The purpose of the workshop was thus twofold: (i) to scrutinize these for possible lessons and (ii) to reflect on the lessons for democracy and democratic theory.

The first day of workshop began with an introduction by workshop organizer and WP 2 co-leader John Erik Fossum (ARENA), who differentiated between constitutional success as of constitutional reform and constitutional success as of the constitution per se. His argument was that while success as of constitutional-reform is about the formal amendment and ratification of a constitution, the overall success of a constitution is about the materialization of fundamental principles which constitute the political entity (e.g. democracy, human rights, checks and balances). Peter Russell (University of Toronto) gave an overview of Canada's constitutional process as constitutional reform, where he emphasised that although there are striking similarities between the two cases, important differences prevail. Giulio Itzcovich (Università degli Studi di Brescia) followed up with an analysis of the European constitutional process, which was commented upon by Hans-Jörg Trenz (ARENA). Yvonne Galligan (Queen's University of Belfast) and Marilou McPhedran (University of Winnipeg) contributed with presentations focused at how the challenges of constitution-making is connected to gender and representation issues.



Workshop participants. From left: J. E. Fossum, Y. Galligan, E. O. Eriksen, C. Lord, K. Raube, C. Holst and B. Crum.

The second day of the workshop proceeded with presentations by Jeremy Webber (University of Victoria), Patrick Fafard (University of Ottawa), WP 2 co-leader Ben Crum (Vrije Universiteit Amsterdam) and Christopher Lord (ARENA). Webber pointed out that constitutional processes can be interpreted as ongoing dialogs, while Fafard argued that even though a dialogue is desirable in theory, it is unrealistic due to the absence of political leadership. Crum presented a new approach, a two-level theory of supranational democratic constitutionalism. In the last presentation, Lord pointed out that despite significant innovation and improvement in the EU's arrangements for deciding questions of institutional design, the absence of clear, consistent, principled and defensible means of dealing with rejected treaty

changes in the EU prevails. Lord's proposal to improve present arrangements is the establishment of post-rejection conventions, with mandate to recommend a procedure for dealing with the Treaty rejection after conducting a full deliberation on the reasons for rejection and responses to them.

The papers presented at the workshop will be published in updated versions as a RECON report (D42).

For a detailed workshop outline and the full text of the papers, please see the RECON website: <http://www.reconproject.eu/projectweb/portalproject/OsloMar09.html>

### **3. Participants**

See attachment

### **4. Programme**

See attachment

## List of participants

Closa, Carlos	Consejo Superior de Investigaciones Cientificas (CSIC) <a href="mailto:Carlos.closa@cchs.csic.es">Carlos.closa@cchs.csic.es</a>
Cooper, Ian	ARENA, University of Oslo <a href="mailto:r.i.cooper@arena.uio.no">r.i.cooper@arena.uio.no</a>
Crum, Ben	Vrije Universiteit Amsterdam <a href="mailto:BJJ.Crum@fsw.vu.nl">BJJ.Crum@fsw.vu.nl</a>
Dunn, Jennifer	Canadian Embassy in Norway <a href="mailto:jennifer.dunn@international.gc.ca">jennifer.dunn@international.gc.ca</a>
Eriksen, Erik O.	ARENA, University of Oslo <a href="mailto:e.o.eriksen@arena.uio.no">e.o.eriksen@arena.uio.no</a>
Fafard, Patrick	University of Ottawa <a href="mailto:pfafard@uottawa.ca">pfafard@uottawa.ca</a>
Fossum, John Erik	ARENA, University of Oslo <a href="mailto:j.e.fossum@arena.uio.no">j.e.fossum@arena.uio.no</a>
Galligan, Yvonne	Queen's University Belfast <a href="mailto:y.galligan@qub.ac.uk">y.galligan@qub.ac.uk</a>
Halsaa, Beatrice	Centre for Gender Research, University of Oslo <a href="mailto:beatrice.halsaa@stk.uio.no">beatrice.halsaa@stk.uio.no</a>
Holst, Cathrine	ARENA, University of Oslo <a href="mailto:cathrine.holst@arena.uio.no">cathrine.holst@arena.uio.no</a>
Itzcovich, Giulio	Università degli Studi di Brescia <a href="mailto:itzcovich@jus.unibs.it">itzcovich@jus.unibs.it</a>
Lord, Christopher	ARENA, University of Oslo <a href="mailto:christopher.lord@arena.uio.no">christopher.lord@arena.uio.no</a>
McPhedran, Marilou	University of Winnipeg <a href="mailto:m.mcphedran@uwinnipeg.ca">m.mcphedran@uwinnipeg.ca</a>
Raube, Kolja	ARENA, University of Oslo <a href="mailto:kolja.raube@arena.uio.no">kolja.raube@arena.uio.no</a>
Russell, Peter	University of Toronto <a href="mailto:phruss@aol.com">phruss@aol.com</a>
Stirk, Jillian	Canada's Ambassador to Norway
Trenz, Hans-Jörg	ARENA, University of Oslo <a href="mailto:h.j.trenz@arena.uio.no">h.j.trenz@arena.uio.no</a>
Vestlund, Nina Merethe	ARENA, University of Oslo <a href="mailto:ninamv@student.uio.no">ninamv@student.uio.no</a>
Webber, Jeremy	University of Victoria <a href="mailto:jwebber@uvic.ca">jwebber@uvic.ca</a>

## Programme

RECON Workshop: Lessons from Europe's and Canada's constitutional experiences  
Holmenkollen Park Hotel Rica, Oslo

Friday, 20 March 2009

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09:00-09:20      **Introduction:** John Erik Fossum  
ARENA, University of Oslo

### I – Overview of the Canadian and the European constitutional experiences

09:20-10:10      **Canada's and the EU's engagement in constitutional reform**  
**A comparative overview**  
**Peter Russell**  
University of Toronto

10:10-11:00      **Closer to the citizens?**  
**European constitutional processes, communication policy and publicity**  
**Giulio Itzcovich**  
Università degli Studi di Brescia

11:00-11:30      *Coffee break*

11:30-12:20      **Fashioning democratic constitutions for multinational entities**  
**Reflections on the comparability of the EU and Canada**  
**John Erik Fossum**  
ARENA, University of Oslo

12:20-13:00      **Discussant:** Hans-Jörg Trenz  
ARENA, University of Oslo

13:00-14:00      **Lunch buffet**, Restaurant 'De Fem Stuer'  
**Welcome by Canada's Ambassador to Norway, Jillian Stirk**

### II – Chartered constitutional refashioning of community

14:00-14:50      **Chartered constitutional refashioning of community**  
**Less thorough-going than it was projected to be?**  
**Jeremy Webber**  
University of Victoria

14:50-15:40      **European constitution making and the role of gender**  
**Yvonne Galligan**  
Queen's University Belfast

15:40-16:10      *Coffee break*

16:10-17:00      **Canadian constitution making and the role of gender**  
**Marilou McPhedran**  
University of Winnipeg

17:00-17:30      **Discussant:** Cathrine Holst  
ARENA, University of Oslo

17:30-18:00      **General discussion**

19:30              **Dinner**, Restaurant 'De Fem Stuer'

Saturday, 21 March 2009

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### III – Democratizing constitution-making

- 09:15-10:05     **Democratizing constitution making**  
**Reflections on the Canadian experience**  
**Patrick Fafard**  
*University of Ottawa*
- 10:05-10:55     **Reconceiving democratic constitutionalism for multi-national polities**  
**Do the cases of the EU and Canada point in similar directions?**  
**Ben Crum**  
*Vrije Universiteit Amsterdam*
- 11:00-11:30     *Coffee break*
- 11:30-12:20     **The complexity of the word 'no'**  
**An appraisal of the EU's procedures for Treaty change**  
**Christopher Lord**  
*ARENA, University of Oslo*
- 12:20-13:00     **Discussant: Carlos Closa**  
*Consejo Superior de Investigaciones Cientificas (CSIC)*
- 13:00-14:00     **Lunch buffet, Restaurant 'De Fem Stuer'**

### IV – Constitutional reform failure

- 14:00-14:50     **Does the world need more Canada?**  
**John Erik Fossum**  
*ARENA, University of Oslo*
- 14:50-15:40     **Integration through constitutional synthesis: The peculiar political order**  
**and constitutional law of the European Union**  
**Agustín José Menéndez** (paper presented by John Erik Fossum)  
*University of León*
- 15:45-16:15     *Coffee break*
- 16:15-17:15     **General discussion**
- 17:15             **Concluding reflections**  
**Erik O. Eriksen**  
*ARENA, University of Oslo*
- 19:30             Common departure from Holmenkollen Park Hotel
- 20:00             **Dinner, Bølgen & Moi (Briskeby)**