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RECON
Reconstituting Democracy in Europe

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

Deliverable No. 46
Workshop on institutional change in the EU
with or without the Lisbon Treaty

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Partner 17 VUA
Vrije Universiteit Amsterdam, The Netherlands

Final Version

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

1. Introduction

RECON Deliverable No. 46 – *Workshop on institutional change in the EU with or without the Lisbon Treaty* is part of the work package ‘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. The WP analyses the impact of the dual processes of EU constitutionalisation and Europeanisation of national constitutions on the reconstitution of democracy in Europe.

During the months 25 to 42 of the project, one of the main tasks of WP 2 is to determine the main lessons from the Laeken constitutional process, the Lisbon Treaty and the subsequent process, by applying the assessment criteria developed in the first two years of the project. The main objective of this workshop was to reflect upon the potential of institutional change that has emerged in the shadow of the attempts to move to a new Treaty. It did so by focussing on three sets of institutions: the European Parliament, the role of national parliaments in the EU architecture, and the European and national courts

2. Presentation of the workshop

On 15 and 16 May 2009, the Vrije Universiteit Amsterdam hosted the two-day workshop ‘With or without Lisbon: continuous institutional change in the EU’. With the Lisbon Treaty’s ratification still uncertain and the prospects for formal successful EU reform via Treaty revision looking rather gloomy in general, the workshop addressed two sets of questions. First, it asked for ‘informal’ institutional changes that might happen despite the lack of official treaty revision. The focus here was on three sets of institutions: the European Parliament, national parliaments and national courts. Secondly, the workshop discussed whether there is still a chance for formal EU Constitution-making and which procedural changes would be needed to make future reform-attempts more successful.

The first day was devoted to parliaments in Europe. After a welcome note of workshop organiser Ben Crum (Vrije Universiteit Amsterdam) and a brief introduction of the RECON project to the large number of external participants by John Erik Fossum (ARENA, University of Oslo), two papers on the European Parliament were discussed in Session I. Berthold Rittberger (University of Mannheim) probed the reasons why member states have supported Treaty reforms that empower the European Parliament, arguing that there is evidence that they do so both for strategic as well as normative reasons. In the second presentation, Sarah Hagemann



Session I (from left): Berthold Rittberger, Ben Crum, Sarah Hagemann and Gary Marks

(European Policy Centre Brussels) presented an empirical overview of the impact recent EU enlargement rounds have had on the functioning of the European Parliament. Gary Marks (Vrije Universiteit Amsterdam/UNC Chapel Hill) provided some piercing comments on both papers, after which a lively discussion followed.

Session II was chaired by Liesbet Hooghe (Vrije Universiteit Amsterdam/UNC Chapel Hill) and discussed the (changing) functions national parliaments fulfil in the EU's institutional setting today. In the first presentation, Tapio Raunio (University of Tampere) argued that national parliaments currently focus almost exclusively on 'government related' functions such as scrutinising their government, while their 'citizens related' (e.g. communicative) functions are still hardly developed. Analysing the EU-related activities of the Austrian parliament, Johannes Pollak (Austrian Academy of Science) then pointed to a discrepancy between an increase of the formal rights for national parliaments in EU policy-making and the extent to which these rights are actually used.

Taking up on Raunio and Pollak, Eric Miklin (Vrije Universiteit Amsterdam) discussed how a politicisation of EU decision-making within the European institutions might positively impact on the way parliaments fulfil both their government- and their citizens-related functions in EU decision-making. In the last presentation, Petra Guasti (Academy of Science of the Czech Republic) linked the debate back to the Lisbon Treaty and presented a case study of the debates in the Czech parliament during the ratification procedure. The papers were responded to by Jan-Jakob van Dijk, a member of the Dutch parliament and chair of its subsidiarity committee, who, drawing on his own experience, endorsed many of the findings but also raised some interesting questions.



Session II (from left): Johannes Pollak, Eric Miklin, Tapio Raunio, Liesbet Hooghe, Petra Guasti and Jan-Jakob Van Dijk

The second day started with a keynote speech by Adrienne Héritier (European University Institute), in which she outlined the evolution of the research programme on informal institutional change in the EU and presented some of her latest findings of her research project on the steady development of early agreements in the EU legislative process.

Session III moved the focus to the courts in the EU system and the way they contribute to the evolution of EU law. First, Carlos Closa (Consejo Superior de Investigaciones Científicas, Madrid) argued that, contrary to superficial impressions, national courts generally play a very constructive role when assessing the reconcilability of EU Treaty changes with national constitutions. Julio Baquero Cruz (European Commission) then discussed the effects the formal adoption of a supremacy clause (as initially foreseen in the Constitutional Treaty but abandoned in the Lisbon Treaty) might have had, arguing that while its effects might have been negligible in strictly legal terms, its political and symbolic implications might have been considerable. In the third presentation, Deirdre Curtin (University of Amsterdam) reflected

upon the implications of recent developments in the case-law of the European Court of Justice for the character of the living, ‘sedimentary’ constitution of the EU, highlighting in particular the importance of the principle of ‘legal unity’ as recently developed by the Court. As the discussant on this panel Michael Dougan (University of Liverpool) nicely linked the specific legal issues to wider political implications for European integration.



Keynote speaker Adrienne Héritier with workshop organiser Ben Crum

Session IV finally addressed the question why recent attempts to EU constitution-making have failed and what could be changed to make future attempts more successful. John Erik Fossum and Agustín Menéndez (University of León) introduced their ‘theory of constitutional synthesis’, and argued that what the EU currently needs is a process of ‘constitutional self-clarification’. Liesbet Hooghe and Gary Marks presented their ‘post-functionalist theory of European integration’, stressing the importance of identity in understanding the EU’s (future) institutional development. Arguing in favour of a process of formal constitution-making, Ben Crum suggested a ‘two-level theory of supranational democratic constitutionalisation’ as an analytical tool to learn from the failure of the Constitutional Treaty process. Again discussing possibilities to reform the reform-process, Renaud Dehousse (Science Po) in the last presentation of the workshop raised his doubts about the feasibility of any substantive treaty reforms in the future without reviewing the unanimity requirement in the ratification procedure. On this session, Thomas Christiansen (EiPA/University of Maastricht) acted as a discussant.

All in all, from the wide range of topics covered in the workshop it clearly emerged that the EU’s institutional structure continues to evolve even if formal Treaty revisions have been stalled. And while many of these changes may be incremental and go almost unnoticed, eventually they raise fundamental questions about the nature of the EU polity and its legitimacy – questions that are at the heart of the RECON project.

For the workshop outline and paper downloads (log-in required), please see the RECON website: <http://www.reconproject.eu/projectweb/portalproject/AmsterdamMay09.html>.

3. Participants

See attachment

4. Programme

See attachment

RECON workshop, Amsterdam 15-16 May 2009

List of Participants



1. Julio Baquero Cruz	European Commission	
2. Thomas Christiansen	Maastricht University	
3. Carlos Closa	Spanish National Research Council, Madrid	
4. Emma Cohen de Lara	Vrije Universiteit Amsterdam	
5. Ian Cooper	ARENA, Oslo	
6. Ben Crum	Vrije Universiteit Amsterdam	
7. Deirdre Curtin	University of Amsterdam	
8. Gareth Davies	Vrije Universiteit Amsterdam (Law)	<i>Cancelled</i>
9. Reinoud Dehousse	Sciences Po, Paris	
10. Jan-Jacob van Dijk	Parliament of the Netherlands; Chair of the Joint Subsidiarity Committee	
11. Michael Dougan	University of Liverpool	
12. Erik O. Eriksen	ARENA, Oslo	<i>Cancelled</i>
13. Tatjana Evas	Riga Graduate School of Law	
14. John Erik Fossum	ARENA, Oslo	
15. Petra Guasti	Czech Academy of Sciences, Prague	
16. Sarah Hagemann	European Policy Centre, Brussels	
17. Adrienne Héritier	European University Institute, Florence	
18. Liesbet Hooghe	Vrije Universiteit Amsterdam	
19. Danique Karamat Ali	Vrije Universiteit Amsterdam	
20. Sebastian Kurpas	European Commission	
21. Gary Marks	Vrije Universiteit Amsterdam	
22. Agustín José Menéndez	University of León (SP)	
23. Eric Miklin	Vrije Universiteit Amsterdam	
24. Trineke Palm	Vrije Universiteit Amsterdam	
25. Johannes Pollak	Austrian Academy of Sciences, Vienna	
26. Kolja Raube	ARENA, Oslo	
27. Tapio Raunio	University of Tampere	
28. Berthold Rittberger	University of Mannheim	
29. Savino Ruà	University of Tampere	
30. Anne Elizabeth Stie	ARENA, Oslo	
31. Wolfgang Wagner	Vrije Universiteit Amsterdam	
32. Pieter de Wilde	ARENA, Oslo	

With or Without Lisbon: Continuous Institutional Change in the EU

RECON workshop

WP 2 – The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared



Amsterdam, 15-16 May 2009

Venue: **Felix Meritis**, Amsterdam (<http://www.felix.meritis.nl/en/>)

Workshop convenor: **Ben Crum**, Vrije Universiteit Amsterdam

After the demise of the Treaty establishing a Constitution for Europe and the rejection of the Lisbon Reform Treaty in the referendum in Ireland, the prospects for formal EU reform by Treaty revision look rather gloomy. Even *if* the Lisbon Treaty will eventually be passed, new Treaty negotiations are unlikely to be anticipated for the first time in 25 years.

Still, it would be too quick to conclude that the EU's institutional evolution has come to a standstill. Scholarly analysis has pointed out how also in the absence of formal Treaty change, EU institutions and the norms governing them have been subject to 'informal change'. A classical case in point is the jurisprudence of the ECJ that on some rather momentous occasions rather sought to elaborate the spirit of the Treaties than to follow them by the letter. In more recent years, in particular the European Parliament but also some elements in the Council of Ministers have separately and in collaboration been remarkably active in developing new modes of operation where the Treaties remain silent.

This workshop is to reflect upon the potential of institutional change that has emerged in the shadow of the attempts to move to a new Treaty. It does so by focussing on three sets of institutions: the European Parliament, the role of national parliaments in the EU architecture, and the European and national courts. The focus on these three institutions is motivated by a particular interest in the role that normative ideas may play in driving and justifying informal institutional change. Here we think in the first place of normative ideas like the idea of 'popular sovereignty' in the case of parliaments and the idea of 'basic rights' in the case of courts, but one might also think of the idea of 'national sovereignty'.

Among the questions to be pursued are thus:

- What institutional changes have taken place since the beginning of the Laeken process? And what potential for future changes has been opened up?
- How do these changes relate to the proposals that have been part of the formal Treaty re-negotiations? Do they, for instance, anticipate them or rather respond to them?
- What causes the opportunities for institutional change to arise and to be successfully carried through? And to what extent are normative ideas essential in providing them with a normative and practical justification?
- What do these findings bode for the prospects of future Treaty change or even a renewed attempt to constitutionalise the Union on the basis of popular engagement and consent?

The workshop takes place in the framework of Work Package 2 of the RECON project on the Constitutionalisation of the EU. RECON (www.reconproject.eu) is an Integrated Project supported by the European Commission's 6th Framework Programme for Research, with the aim to clarify whether democracy is possible under conditions of pluralism, diversity and complex multilevel governance.

The about 25 participants are invited both from within the RECON project as well as from outside of it on the basis of their expertise. They are also to include some practitioners. Paper presenters are expected to be able to draw on their on-going research. Depending on the outcome of the workshop and the interest expressed, the possibility of a joint publication will be considered.

Programme

Friday, 15 May 2009

- 11:00 **Welcome and Introduction**
Chair: Ben Crum
- RECON – an overview** **Erik O. Eriksen and John Erik Fossum**
 ARENA, University of Oslo
- Plan of the workshop** **Ben Crum**
 Vrije Universiteit Amsterdam
- 12:00 *Lunch*
- 13:30-15:00 **Session I: The European Parliament: Getting Closer to the People?**
- European integration and the powers of the European Parliament**
 (Better) theory and (better) evidence
 Berthold Rittberger
 University of Mannheim
- Strength in numbers? An evaluation of the 2004-2009 European Parliament**
 Sarah Hageman
 European Policy Centre, Brussels
- Discussant:** **Gary Marks**
 Vrije Universiteit Amsterdam/UNC Chapel Hill
- 15:00 Coffee Break
- 15:30-18:00 **Session II: National Parliaments in EU Affairs**
- The gatekeepers of European integration?**
 The functions of national parliaments in the EU political system
 Tapio Raunio
 University of Tampere
- The rights of national parliaments in EU affairs**
 Much ado about nothing – at least in Austria?
 Johannes Pollak
 Austrian Academy of Sciences, Vienna
- Politicising EU issues in national parliaments: The case of the Services Directive**
 Eric Miklin
 Vrije Universiteit Amsterdam
- National parliaments in EU affairs: An East-European perspective**
 Petra Guasti and Zdenka Mansfeldová
 Academy of Sciences of the Czech Republic, Prague
- Discussant:** **Jan-Jacob van Dijk**
 Parliament of the Netherlands, Chair of the Joint Subsidiarity Committee
- 20:00 Conference Dinner

Saturday, 16 May 2009

09:30–10:30 **KEYNOTE SPEECH**

Continuous institutional reform in the EU

Adrienne Héritier

European University Institute, Florence

10:30 Coffee Break

11:00–13:00 **Session III: Legal Constitutionalisation Despite the Failure of the Lisbon Treaty?**

National courts and the ratification of EU Treaties

Carlos Closa

Consejo Superior de Investigaciones Científicas (CSIC), Madrid

Incorporating primacy in the Treaties: Would it make a difference?

Julio Baquero Cruz

Center for Political and Constitutional Studies, Madrid

The constitutionalisation of EU administrative law

Deirdre Curtin

University of Amsterdam

Discussant: Michael Dougan

University of Liverpool

13:00 Lunch

14:30–16:30 **Session IV: Is There a Future for EU Constitution-Making?**

Is the EU better off without formal constitution-making?

Ben Crum

Vrije Universiteit Amsterdam

Can EU constitution-making be avoided?

Renaud Dehousse

Sciences Po, Paris

**The constitutional path of the European political project
Lessons from Laeken and Lisbon**

John Erik Fossum and Agustín José Menéndez

ARENA, University of Oslo and University of León

**A postfunctionalist theory of European integration: from permissive consensus
to constraining dissensus**

Gary Marks and Liesbet Hooghe

Vrije Universiteit Amsterdam/UNC Chapel Hill and Vrije Universiteit Amsterdam

Discussant: Thomas Christiansen

EiPA/University of Maastricht

16:30 Drinks and buffet dinner (optional)

More information:

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