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RECON
Reconstituting Democracy in Europe

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

Deliverable No. 66
Workshop on the relation of justice, democracy and statehood

Due date of deliverable: December 2010
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Lead contractor for this deliverable:
Partner 1 ARENA – Centre for European Studies
University of Oslo, Norway

Final Version

Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
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. 66 – *Workshop on the relation of justice, democracy and statehood* is part of work package 1, which establishes the theoretical framework for the RECON project and thereby ensures integration of the research. By providing a normative assessment of three different models for reconstituting democracy in Europe, it gives a theoretical account of democratic legitimacy in the European multilevel constellation. It seeks to spell out the deliberative perspective in relation to each of the RECON models and to establish whether a post-national union with a cosmopolitan imprint is possible. Dealing with the basic questions regarding democracy beyond the nation state, WP 1 examines the nuts and bolts of deliberative democratic theory with the aim of discovering what democracy can mean under conditions of pluralism, complexity and multilevel governance structures.

One of the main aims of the fourth year was to continue the development of a political theory of the European polity by analysing the relationship between democracy, statehood and legitimacy. The findings of WP 1 in the first three years speak for a conceptual link between justice and democracy on the one hand, and democracy and certain dimensions of statehood on the other. Democracy is a claim of justice and basic principles of justice have procedural implications for a normatively valid order. Further work was therefore needed to establish what kind of substantive and procedural elements a just European democratic order has to entail. In this context, the concept of statehood would be further explicated to be able to differentiate between contingent substantive features of historically developed nation-states and specific functions that require a state-like political order to be achieved. In addition, some clarification with regard to what methodological role the models might have as ‘realistic utopias’ for future research was deemed necessary.

2. Presentation of the workshop

On 30 September to 1 October 2010, ARENA hosted the two-day workshop ‘*The European Political Order: State-less but Democratic and Just?*’, that brought together 11 RECON researchers and invited guests from Europe and the US to discuss new theoretical developments in political theory on the transnationalisation of the democratic state.

Current scholarly attention is predominantly on alternatives to state orders when exploring how the EU could be restructured into a just political order. Less attention is paid to the question of whether a state-like order might be a precondition for a legitimate organisation of a political community. Understanding what the EU system is as well as its developmental path until today requires a dynamic and reflexive view on the theoretical concepts in use. The workshop focused on theoretical groundwork, debating the concept of the state. Particular attention was paid to how the concept of state relates to the concepts of justice and democracy.



From left: Eva Erman, Jean L. Cohen and John Erik Fossum

The workshop was initiated with a public lecture at the University of Oslo by Professor Jean Louise Cohen (Nell and Herbert M. Singer Professor of Contemporary Civilization at Columbia University New York) on 'Constitutionalism Beyond the State: Myth or Necessity?'. In her lecture Cohen asked what kind of constitutionalism would be appropriate beyond the state, and what the relation among distinct and competing legal orders should be. She argued in favour of a human-rights-oriented constitutionalism, which would require a reform of the global political system. Cohen's contribution was published as RECON Online Working Paper 2010/16.

The workshop itself was opened with a paper presented by Rainer Forst (Goethe University Frankfurt) on 'transnational justice and democracy'. Forst argued in favour of a procedural view on justice that can be detracted from the Kantian tradition. Individual moral and political autonomy is based on the fundamental moral right to justification, which means that whenever procedures of justification that enables individuals to equally and effectively have a say, there must be democracy. Hence, democracy is not stopped by borders.

In his paper on 'democratic authority beyond coercion: the idea of formal statehood', Rainer Schmalz-Bruns (University of Hannover) argued from a similar perspective as Forst. Withholding that there is more to the idea of democracy than its connection to the moral right to justification, Schmalz-Bruns pointed out that moral autonomy is structurally vulnerable under real-world conditions and hence a state-like organisation is necessary to compensate for this vulnerability in order to transform it to a legally institutionalised organisation. John Erik Fossum (ARENA), commenting on Schmalz-Bruns, argued that there also is a downside to the state-organisation as assumed by Schmalz-Bruns, which lies in that the state, according to Fossum, is programmed to reinforce nationalism at the cost of other types of social ties. The crucial question for the EU, then, is how to have a state without creating a new nationalism.

Daniel Gaus (ARENA) examined some basic problems in the analysis of the concept of state in his paper entitled 'the state between facts and norms'. In the ongoing discourse about the future shape of the EU two different uses of 'the state' are prevalent: 'the state' as an abbreviation for the political communities that have developed historically and 'the state' as a normative idea. Gaus argued that there could be democracy and justice beyond the state in the first sense, without necessarily transcending the idea of the state. In her comment, Cathrine Holst

(ARENA) objected that the two different uses of the state in the literature may serve an analytical purpose. They reflect disagreements with regard to the descriptive characteristics of the state and the explanatory power of the concept of state, she argued.



From left: Erik O. Eriksen, Rainer Schmalz-Bruns and Daniel Gaus

In the last panel of the workshop, Erik O. Eriksen (ARENA) presented a paper on 'the political theory of the European Union – a rights-based state-less government'. He pointed to a specific puzzle with European integration relating to the fact that there is a high degree of

compliance with EU regulations, a compliance that is voluntary. To account for this, Eriksen proposed to make a conceptual distinction between government and state. In defining the EU as a governmental structure, the regulations could have procedural legitimacy without the need of coercion, and hence Eriksen views the EU as a cosmopolitan entity premised on state-based members. In her comment to Eriksen's paper, Cohen questioned the view of the EU as a cosmopolitan entity. She argued that if the cosmopolitan feature of the EU is only about universal values included in the treaty basis, then any democratic nation state would be cosmopolitan.

3. Participants

Jean L. Cohen	Columbia University
Ian Cooper	ARENA, University of Oslo
Eva Erman	Uppsala University
Erik O. Eriksen	ARENA, University of Oslo
Rainer Forst	Johann Wolfgang Goethe University
John Erik Fossum	ARENA, University of Oslo
Daniel Gaus	ARENA, University of Oslo
Cathrine Holst	ARENA, University of Oslo
Kjartan Koch-Mikalsen	Norwegian University of Science and Technology
Rainer Schmalz-Bruns	University of Hannover
Helene Sjørusen	ARENA, University of Oslo

4. Programme

See attachment.

The European Political Order: State-less but Democratic and Just?

RECON Workshop

WP 1 – Theoretical Framework

Thursday 30 September - Friday 1 October 2010

Venue: Johann P. Olsen's room, ARENA, Sognsveien 68, Oslo

Programme

Thursday 30 September 2010

- 14:00-14:15 **Introduction**
Erik O. Eriksen and John Erik Fossum
ARENA, University of Oslo
- 14:15-15:45 **Transnational justice and democracy**
Rainer Forst
Johann Wolfgang Goethe University
Comment: **Kjartan Koch-Mikalsen**, *Norwegian University of Science and Technology*
- 15:45-16:00 *Coffee break*
- 16:00-17:30 **The state between facts and norms. A reflection on the analysis of the concept of the state**
Daniel Gaus
ARENA, University of Oslo
Comment: **Cathrine Holst**, *ARENA, University of Oslo*
- 19:30 *Dinner at Ekebergrestauranten*

Friday 1 October 2010

- 09:30-11:00 **Democratic authority beyond coercion. The idea of formal statehood**
Rainer Schmalz-Bruns
University of Hannover
Comment: **John Erik Fossum**, *ARENA, University of Oslo*
- 11:00-11:15 *Coffee break*
- 11:15-12:45 **On the political theory of the European Union – a rights-based state-less government**
Erik O. Eriksen
ARENA, University of Oslo
Discussant: **Jean Cohen**, *Columbia University*

Open lecture

Constitutionalism beyond the state Myth or necessity?

Professor Jean L. Cohen
Nell and Herbert M. Singer Professor of Contemporary
Civilization, Columbia University New York

The Research Programme on Democracy, in cooperation with **ARENA – Centre for European Studies**, is pleased to announce the lecture 'Constitutionalism beyond the state: Myth or necessity?' by Prof.

Jean L. Cohen. The lecture will be held on Thursday 30 September 2010, 10:15-12:00 at the University library (Undervisningsrom 2, Georg Sverdrups hus). No registration is required to attend the lecture.

Prof. Cohen visits Oslo to participate at the workshop **'The European Political Order: State-less but Democratic and Just?'**, which is organized by ARENA within the framework of **WP 1 - Theoretical Framework**. The workshop will be held at ARENA after the lecture, with participation restricted to invited guests.

Constitutionalism Beyond the State: Myth or Necessity?

The emergence of global governance and global laws that directly affect individuals and regulate the conduct of states toward their own citizens raise questions about the basic hierarchy of authority among states, regional bodies and global institutions. The legitimacy of global law and governance is particularly contested when they have constitutionalism- and democracy-eviscerating effects. In this lecture, Prof. Cohen asks what kind of constitutionalism is appropriate beyond the state, and what the relation among distinct and competing legal orders should be. She argues in favour of a human rights-oriented constitutionalism, which would require a reform of the global political system.

[Download full abstract and paper.](#)

Jean L. Cohen is Nell and Herbert M. Singer Professor of Contemporary Civilization at Columbia University New York. Her research focuses on political and legal theory, and in particular democratic theory. She has contributed extensively with critical theory of feminism, pluralism and international theory. She is well-known for her book *Civil society and political theory* (1992), co-authored with Andrew Arato. Cohen is associate editor of *Constellations*, and has contributed to academic journals such as *Ethics & International Affairs*, *Journal of Civil Society*, *Critical Horizons*, *The European Journal of Politics and Political Theory*.

