



Project No.: CIT4-CT-2006-028698

RECON
Reconstituting Democracy in Europe

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

Deliverable No. 67
Conference on political legitimacy

Due date of deliverable: May 2011
Actual delivery date: 31 March – 1 April 2011

Start date of project: 1 January 2007

Duration: 60 months

Lead contractor for this deliverable:
Partner 8 JWGU
Johann Wolfgang Goethe University, Germany

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. 67 – *Conference on political legitimacy* – is part of work package 1, which establishes the theoretical framework for the project and seeks to develop an overarching theoretical approach to the study of European democracy. 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. In the last year of the project, WP1 will continue and finalise the work on democratic legitimacy in a transnational context and on the establishment of the conceptual relationship between democracy, statehood and legitimacy.

2. Presentation of the workshop

The interdisciplinary workshop ‘Political Legitimacy beyond the State’ was hosted by the Johann Wolfgang Goethe University (JWGU), Frankfurt am Main, on 31 March–1 April 2011. Workshop convenors Rainer Forst (JWGU) and Rainer Schmalz-Bruns (University of Hannover and affiliated with RECON’s JWGU team) invited distinguished scholars from Europe and the US to Bad Homburg and the Institute for Advanced Studies of the Humanities of the Goethe University. The 24 workshop participants explored some of the key concepts of RECON’s WP 1 research: democratic legitimacy beyond the state, legitimacy through legality, and the politics of legitimation; especially with regard to democratic equality and social welfare.

The welcome speech by Rainer Forst was followed by an introduction into the workshop’s topic by Rainer Schmalz-Bruns. In his view, the idea of democracy as the guiding normative principle of political legitimacy is strongly challenged. The relationship between the rule of law, human rights and democracy is under pressure by a view that decouples legitimacy and democracy and suggests a “new trinity” of moralism, non-domination and juridification.

James Bohman (Saint Louis University) explored several aspects in his keynote lecture on ‘Legitimacy in the Transnational Polity: Justice, Equality and Non-domination’. His view of transnational legitimacy is based on the principle of non-domination. He defined domination as ‘the power to modify the rights and duties of others’ and argued (contra Philip Pettit) that ‘democracies can in fact be dominators’. For Bohman, non-domination requires a democratic minimum, which he defined as the individual capacity to control one’s life and circumstances. Furthermore, he explored how transnational institutions such as the EU might contribute to non-domination. Whereas the diffusion of popular sovereignty generally minimizes domination, courts as primary means to solve conflicts potentially lessen democratic control and need to be balanced out.

In their comments, Bert van den Brink (Utrecht University) and Regina Kreide (Giessen University) both discussed Bohman’s understanding of legitimacy and its relation to democracy. David Owen (University of Southampton) reminded that not all relations of power are also relations of authority and insisted that the consequence is that a democratic

minimum for subjects of rule has to be distinguished from the democratic minimum for all affected. Finally, Miriam Ronzoni (JWGU) argued that a missing central authority at the transnational level raises the potential of domination and arbitrariness.

Mattias Kumm (Wissenschaftszentrum Berlin/Humboldt University of Berlin) started the next panel with a lecture on 'Legal, Moral or Political: Sources of the Normative Authority of Cosmopolitan Constitutionalism'. He noted that judges commonly view legitimacy deficits of international law based on the principle of popular sovereignty and, accordingly, see legitimacy as tied to democracy in states. Kumm argued that this view is deeply flawed since the simplest legitimacy problems occur in the form of negative externalities of state action. Thus, the lack of collective action at the global level becomes the main obstacle to legitimacy. Based on that, he suggested a pluralist cosmopolitan constitutionalism that acknowledges the coordination of different legal orders as one of the main legitimacy problems.

In his comment, Klaus Günther (JWGU) objected that Kumm's view suffers from a restricted understanding of legal pluralism. Legal pluralism not only refers to different constitutional orders, but includes the whole realm of private law. Regarding the latter, Günther argued, legitimacy is still dependent on the principle of popular sovereignty – also at the international level. In a similar vein, Andreas Niederberger (JWGU) stressed that Kumm's position actually rests on a premise that implies a popular sovereignty constitutionalism: namely, that legitimacy depends on the people being in control of the exercise of power.

Frank Nullmeier's (University of Bremen) lecture drew attention to the fact that political theory itself is an actor in the political-practical struggle over legitimacy. For Nullmeier, a paradigm shift in the research on legitimacy is needed. He proposed a turn to an integrated theory of legitimation that empirically analyses 'the operative criteria of legitimacy in subsystems and disciplines'.

The comments to Nullmeier challenged different aspects of his claim to focus on legitimation practices. Nicole Deitelhoff (JWGU) questioned Nullmeier's perspective on legitimation and argued that the evaluation of orders has always been paralleled by the question if and how the respective orders are accepted by the subordinates. Hubertus Buchstein (University of Greifswald) reminded of the limits of conceptual expansion. If all justificatory practices in subsystems and disciplines are taken to be legitimations, the concept of legitimacy becomes too broad. Peter Niesen (Technical University of Darmstadt) added that pre-modern legitimation practices tied legitimacy to pedigree – the right heir is legitimate. In that historical period, he noted, there was no politics of legitimation at all. Furthermore, he challenged the view that there is a detachment of legitimacy from democracy in International Relations theory.

Stephan Leibfried (University of Bremen) compared developments in the EU with typical features of the emerging federal welfare states in the formation of some of the world's largest federations. The major lesson for the EU, he argued, is that economic and political integration without social integration is unsustainable. Furthermore, he drew attention to the fact that social integration in federal welfare states has always been an afterthought. He concluded by drawing and evaluating alternative possible pathways to a social Europe.

Albena Azmanova (University of Kent) added that the EU has changed the classical legitimacy relationship between public administration and the citizens. Whereas the EU more and more regulates economy, it has freed itself from dealing with negative externalities of that

regulation. Eva Erman (Uppsala University) asked about the consequences of EU's social integration to democracy. What follows from the view of citizens as flexible, moveable, employable, 'cosmopolitan' to them being democratic agents? Furthermore, she argued that a step towards a fiscal union is necessary to turn the EU from an economic, monetary union into a political union. Finally, Stefan Gosepath (JWGU) suggested looking at the implicit ideal-normative theory that orients Leibfried's alternative models of pathways to a social Europe. Gosepath outlined such an ideal of a transnational welfare system, arguing that the idea of human rights is most effectively granted in a system of global social justice.

In the final session, Erik O. Eriksen (RECON Scientific Coordinator and leader of WP 1) and John Erik Fossum (both ARENA, University of Oslo) presented the achievements and further challenges of RECON. They focused particularly on the project's theoretical framework and three alternative models of the future of democracy in Europe. In a concluding discussion the major aspects debated during the workshop were summed up and related to the work in WP 1.

3. List of participants

Albena Azmanova	<i>University of Kent</i>
James Bohman	<i>Saint Louis University (RECON Reflection Group)</i>
Bert van den Brink	<i>Utrecht University</i>
Hubertus Buchstein	<i>University of Greifswald</i>
Nicole Deitelhoff	<i>Johann Wolfgang Goethe University (RECON WP 1)</i>
Erik Oddvar Eriksen	<i>ARENA, University of Oslo (RECON Scientific Coordinator)</i>
Eva Erman	<i>Uppsala University</i>
Rainer Forst	<i>Johann Wolfgang Goethe University (RECON WP 1)</i>
John Erik Fossum	<i>ARENA, University of Oslo (RECON WP 1)</i>
Daniel Gaus	<i>ARENA, University of Oslo (RECON WP 1)</i>
Stefan Gosepath	<i>Johann Wolfgang Goethe University</i>
Klaus Günther	<i>Johann Wolfgang Goethe University</i>
Tanja Hitzel-Cassagnes	<i>University of Hannover (RECON Reflection Group)</i>
Regina Kreide	<i>Justus Liebig University, Giessen</i>
Mattias Kumm	<i>Humboldt University, Berlin (RECON Reflection Group)</i>
Stephan Leibfried	<i>University of Bremen</i>
Heike List	<i>Johann Wolfgang Goethe University (RECON WP 1)</i>
Christopher Lord	<i>ARENA, University of Oslo (RECON WP 1)</i>
Andreas Niederberger	<i>Johann Wolfgang Goethe University</i>
Peter Niesen	<i>Technical University of Darmstadt</i>
Frank Nullmeier	<i>University of Bremen</i>
David Owen	<i>University of Southampton</i>
Miriam Ronzoni	<i>Johann Wolfgang Goethe University</i>
Rainer Schmalz-Bruns	<i>University of Hannover (RECON WP 1)</i>

4. Programme

See attachment.

Program

Thursday, 31 March

1300 – 1315 Introduction (Rainer Forst and Rainer Schmalz-Bruns)

First Panel: Beyond Democratic Legitimacy? (Chair: **Rainer Forst**)

1315 – 1400 **James Bohman** (keynote lecture)

Morality, Justice and Democratic Legitimacy

1400 – 1500 **Bert van den Brink, Regina Kreide, David Owen, Miriam Ronzoni**

Comments

1500 – 1520 Coffee break

1520 – 1635 Discussion

1635 – 1655 Coffee break

Second Panel: Legitimacy Through Legality? (Chair: **Rainer Schmalz-Bruns**)

1655 – 1740 **Mattias Kumm** (keynote lecture)

Legal, Moral or Political: Sources of the Normative Authority of Cosmopolitan Constitutionalism

1740 – 1840 **Klaus Günther, Tanja Hitzel-Cassagnes, Andreas Niederberger**

Comments

1840 – 1900 Coffee break

1900 – 2015 Discussion

2030 Dinner

Friday, 1 April

Third Panel: Politics of Legitimation (Chair: **Daniel Gaus**)

0930 – 1015 **Frank Nullmeier** (keynote lecture)

Politics of Legitimation

1015 – 1115 **Hubertus Buchstein, Nicole Deitelhoff, Peter Niesen**

Comments

1115 – 1135 Coffee break

1135 – 1250 Discussion

1250 – 1330 Lunch

Fourth Panel: Legitimacy, Democratic Equality and Social Welfare (Chair: **Heike List**)

1330 – 1415 **Stephan Leibfried** (keynote lecture)

A Sustainable European Future and the Social Dimension: Lessons from Welfare State History

1415 – 1515 **Albena Azmanova, Eva Erman, Stefan Gosepath**

Comments

1515 – 1535 Coffee break

1535 – 1650 Discussion

1700 – 1900 **Erik O. Eriksen and John E. Fossum** (keynote lecture)

Summing up: RECON – Achievements and Future Challenges

Erik O. Eriksen, John E. Fossum, Rainer Forst, Chris Lord, Rainer Schmalz-Bruns

Roundtable

1930 Dinner