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RECON
Reconstituting Democracy in Europe

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

Deliverable No. 70
**Workshop on broader theoretical-democratic
ramifications of the EU's constitutional experience**

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

Draft 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. 70 – *Workshop on broader theoretical-democratic ramifications of the EU's constitutional experience* is part of work package 2 – The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared. WP 2 studies the constitutionalisation of the EU with the goal of obtaining vital information on the prospects on supranational democracy in Europe. It analyses the impact of the dual processes of EU constitutionalisation and Europeanisation of national constitutions on the reconstitution of democracy in Europe. Taking the lessons from the defunct Laeken constitutional experience as its point of departure, it sees this in light of relevant non-European cases of contemporary democratic constitution making and tracks the constitutional dimension of the Lisbon Treaty.

WP 2 tracks the development of the constitutional dimension as it unfolds at the EU and member state levels. With the main lessons from the Laeken process having been established in the previous reporting period, work in the final project year, on the one hand, would take stock of the eventual adoption and implementation of the Lisbon Treaty and, on the other hand, seek to evaluate implications of the EU constitutional experience from a broader, comparative and theoretical, perspective. On this basis, the WP would be able to conclude on: how RECON models allow the EU constitutionalisation process to be captured and evaluated; what this entails in constitutional terms, and; establish which RECON model the European constitutional edifice best reflects.

2. Presentation of the workshop

The workshop ‘A multitude of constitutions? European Constitutional Pluralism in Question’ was organised by ARENA – Centre for European Studies as a joint event of RECON and the Research Programme on Democracy at the University of Oslo on 13-14 January 2011. Co-leader of WP 2 John Erik Fossum (ARENA) and Agustín José Menéndez (University of León) coordinated the workshop, which was one of seven parallel workshops organized within the framework of the 2nd International Conference on Democracy as Idea and Practice. The participants at the workshop discussed the merits of the theory of constitutional synthesis, developed by Fossum and Menéndez and exposed in their monograph *The Constitution's Gift*, which appeared on Rowman and Littlefield late 2010 (D22). 15 presenters and discussants took part in the workshop, 7 of these were RECON researchers and 8 of them were external researchers. The workshop was divided into four sessions that took place on two consecutive days and each session ended with a plenary discussion.

The key component of the theory of constitutional synthesis as developed by Fossum and Menéndez under RECON's WP 2 is the regulative ideal of a common constitutional law, of a constitution made up of a collective of national constitutions; which in their view makes up the deep constitution of the European Union. Constitutional synthesis of normative integration and institutional consolidation, which in turn/together establish a distinct constitutional dynamic. The workshop sought to address critical dimensions of the European constitutional experience through referencing to the theory of constitutional synthesis. The workshop provided useful critical feedback on the theory and in addition shed broader light on the overarching issues under discussion.



From left (facing): Theresa Scavenius, Fernando Losada Fraga, Tor Inge Harbo, Peter Burgess, Mikael Rask Madsen, Agustín José Menéndez and John Erik Fossum

The first two sessions, respectively chaired by Carlos Closa Montero (Spanish National Research Council, CSIC Madrid) and Mads Andenæs (University of Oslo) discussed different constitutional perspectives and the question of the EU as a polity. The first session began with a paper by Hauke Brunkhorst (University of Flensburg), member of RECON's Reflection Group, on 'Revolutionary and evolutionary constitutionalization in the evolution of the European Union'. Then followed Lars Vinx's (Bilkent University) presentation of his paper 'The incoherence of (strong) popular sovereignty'. Both papers received comments from Peter Burgess (Peace Research Institute Oslo).

The second workshop session included also two presentations of papers: 'The legitimacy of a European normative order: legitimacy through legal reasoning' by Tor Inge Harbo (European University Institute/University of Oslo) and 'Unity in diversity as Europe's vocation and conflicts law as Europe's constitutional form' by Christian Joerges (Centre for European Law and Politics, University of Bremen), also co-leader of WP 9. This time the comments were provided by Lars Blichner (University of Bergen), member of RECON's Reflection Group.

Legal perspectives were the focus of the third session which was chaired by Tor Inge Harbo. Jörg Luther (Università degli Studi del Piemonte Orientale) presented a paper 'The constitution's gift to the European Union: a donkey or a Trojan horse?' Mikael Rask Madsen's (University of Copenhagen) paper was entitled 'End of empire and the foundation of European law: the ECtHR, the ECJ and the European legal field (1950-1980)'. The last paper of this session, 'Mapping the overlapping spheres: constitutional pluralism vs. constitutional synthesis', was presented by Ian Cooper (ARENA, University of Oslo).

The final session focused upon applied perspectives and was chaired by Ian Cooper. First, Theresa Scavenius (University of Copenhagen) held a presentation entitled 'Comments on the Constitution's Gift by Fossum and Menéndez'. Fernando Losada (Centre of Excellence in Foundations of European Law and Polity, University of Helsinki, formerly University of León) discussed the future of the European integration process with his presentation 'The European Union towards administrative integration: a further step in the 'Constitutional Synthesis' theory?'.

3. List of participants

Mads Andenæs	<i>University of Oslo</i>
Lars Blichner	<i>University of Bergen (RECON Reflection Group)</i>
Hauke Brunkhorst	<i>University of Flensburg (RECON Reflection Group)</i>
Peter Burgess	<i>Peace Research Institute Oslo (PRIO)</i>
Carlos Closa	<i>Spanish National Research Council (CSIC) (RECON WP 2)</i>
Ian Cooper	<i>ARENA, University of Oslo</i>
John Erik Fossum	<i>ARENA, University of Oslo (RECON WP 2)</i>
Tor Inge Harbo	<i>European University Institute and University of Oslo</i>
Christian Joerges	<i>ZERP, University of Bremen (RECON WP 2)</i>
Fernando Losada Fraga	<i>CoE, University of Helsinki (RECON WP 2)</i>
Jörg Luther	<i>Università degli Studi del Piemonte Orientale</i>
Mikael Rask Madsen	<i>University of Copenhagen</i>
Agustín J. Menéndez	<i>University of León (RECON WP 2)</i>
Theresa Scavenius	<i>University of Copenhagen</i>
Lars Vinx	<i>Bilkent University</i>

4. Programme

See attachment.



A Multitude of Constitutions? European Constitutional Pluralism in Question

A workshop within the framework of the
2nd International Conference on Democracy as Idea and Practice

Oslo, 13-14 January 2011

A joint RECON/Research Programme on Democracy workshop

RE/CON RECONSTITUTING
DEMOCRACY
IN EUROPE

Demokratiprogrammet

A Multitude of Constitutions?

European Constitutional Pluralism in Question

Workshop coordinators:
Agustín José Menéndez and John Erik Fossum

Georg Sverdrup's Building (University Library), Blindern campus

This workshop will discuss the merits of the theory of constitutional synthesis, recently developed by the workshop coordinators, and exposed in their forthcoming monograph *The Constitution's Gift*.¹ The key component of the theory is the regulative ideal of a common constitutional law, of a constitution made up of a collective of national constitutions; which in their view makes up the deep constitution of the European Union. Constitutional synthesis is made up of normative integration and institutional consolidation, which together make up for a distinct constitutional dynamic.

The workshop is one of seven parallel workshops organised within the 2nd *International Conference on Democracy as Idea and Practice*.

There will be a plenary session on 'Democratization through Higher Education' on Thursday 13 January at 10:15-12:00 and a roundtable discussion 'A typical European way of looking at politics?' on Prof. Johan P. Olsen's recent book *Governing through Institution Building* on Friday 14 January at 12:15-13:30. For the full programme, see www.demokrati.uio.no/english/current-issues/2nd-conference-january-2011.html

Workshop 1: A Multitude of Constitutions? European Constitutional Pluralism in Question is organized by ARENA – Centre for European Studies in cooperation with the Research Programme on Democracy at the University of Oslo. It is organised as part of the ARENA-coordinated RECON project within its research cluster WP 2 – *The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared*. RECON ('Reconstituting Democracy in Europe') is an Integrated Project supported by the European Commission's Sixth Framework Programme for Research. The project seeks to clarify whether democracy is possible under conditions of pluralism, diversity and complex multilevel governance. For more information, see www.reconproject.eu.

¹ *The Constitution's Gift. A Constitutional Theory for a Democratic European Union*, John Erik Fossum and Agustín José Menéndez, to be published by Rowman and Littlefield ultimo December 2010. Further information on the book, including a table of contents is available at: [http://www.rowmanlittlefield.com/Catalog/SingleBook.shtml?command=Search&db=^DB/CATALOG.db&eqSKUdata=0742553116&thepassedurl=\[thepassedurl\]>](http://www.rowmanlittlefield.com/Catalog/SingleBook.shtml?command=Search&db=^DB/CATALOG.db&eqSKUdata=0742553116&thepassedurl=[thepassedurl]>).

PROGRAMME

Thursday, January 13th

⊕ 12:00-13:00 Lunch

Introduction

⊕ 13:00-13:30 ‘Constitutional Synthesis as the Constitutional Theory of the European Union’
John Erik Fossum, *ARENA, University of Oslo* and
Agustín José Menéndez, *University of León*

First Session: Polity Perspectives

Chair: Carlos Closa, Consejo Superior de Investigaciones Científicas (CSIC)

⊕ 13:30-13:50 ‘Revolutionary and Evolutionary Constitutionalization in the Evolution of the European Union’
Hauke Brunkhorst, *University of Flensburg*

⊕ 13:50-14:10 ‘The Incoherence of (Strong) Popular Sovereignty’
Lars Vinx, *Bilkent University*

⊕ 14:10-14:25 Comments by **Peter Burgess**, *Peace Research Institute Oslo*

⊕ 14:25-15:35 General Discussion

⊕ 15:35-15:50 Coffee Break

Second Session: Constitutional Perspectives

Chair: Mads Andenæs, University of Oslo

⊕ 15:50-16:10 ‘The Legitimacy of a European Normative Order: Legitimacy through Legal Reasoning’
Tor Inge Harbo, *EUI/University of Oslo*

⊕ 16:10-16:30 ‘Unity in Diversity as Europe’s Vocation and Conflicts Law as Europe’s Constitutional Form’
Christian Joerges, *ZERP, University of Bremen*

⊕ 16:30-16:45 Comments by **Lars Blichner**, *University of Bergen*

⊕ 16:45-17:00 Coffee Break

⊕ 17:00-18:00 General Discussion

Conference dinner at *Grefsenkollen*

Friday, January 14th

Third Session: Legal Perspectives

Chair: Tor Inge Harbo

- ⊕ 09:30-09:50 The Constitution's Gift to the European Union:
A Donkey or a Trojan Horse?
Jörg Luther, *Università degli Studi del Piemonte Orientale*
- ⊕ 09:50-10:10 'End of Empire and the Foundation of European Law:
The ECtHR, the ECJ and the European Legal Field (1950-1980)
Mikael Rask Madsen, *University of Copenhagen*
- ⊕ 10:10-10:30 'Mapping the Overlapping Spheres:
Constitutional Pluralism vs. Constitutional Synthesis'
Ian Cooper, *ARENA, University of Oslo*
- ⊕ 10:30-10:45 Coffee Break
- ⊕ 10:45-12:00 General Discussion

- ⊕ 13:30-14:15 Lunch

Fourth Session: Applied Perspectives

Chair: Ian Cooper

- ⊕ 14:30-14:50 'Comment on The Constitution's Gift by Fossum & Menéndez'
Theresa Scavenius, *University of Copenhagen*
- ⊕ 14:50-15:10 'The European Union Towards Administrative Integration:
A Further Step in the 'Constitutional Synthesis' Theory?'
Fernando Losada, *CoE, University of Helsinki*
- ⊕ 15:10-17:00 General Discussion

- ⊕ 18:30 Common departure from Rica Holberg Hotel
Workshop 1 dinner at *Bølgemøi*, Tjuvholmen