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RECON
Reconstituting Democracy in Europe

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

Deliverable No. 80
**Workshop on the political economy of the EU: towards
democracy**

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Lead contractor for this deliverable:
Partner 15 ULEON
University of León, Spain

Draft 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. 80 – *Workshop on the political economy of the EU – towards democracy* is part of work package 7 – The Political Economy of the EU. The aim of WP 7 is to analyse the relationship between public finance and democracy in the EU's multilevel political system. WP 7 starts from the assumption that there is a close connection between a polity's tax system and the purpose of public expenditure, and research in this WP links such questions to the discussion of the European social model and identifies the conception of social integration underlying each RECON model, with particular emphasis on the relationship between solidarity, justice and democracy.

In the final project period, WP 7 partners would finalise research and synthesise the findings and explore their implications for the WP as a whole. Research in the final year will aim at establishing a set of conclusions revealing the interconnectedness of policy decisions on fiscal, tax and welfare policy, and on relating substantive policy decisions to both constitutional validity and democratic legitimacy at the European and national levels. One aim of the WP in its final year was to assess the democratic implications of the design of socio-economic policies for the democratic legitimacy of the EU, focusing on the interplay of Europeanisation and judicialisation of socio-economic policies.

2. Presentation of the workshop

The University of León hosted the workshop entitled 'The European Rescue of the European Union: The socio-economic malaise of integration' on 9-10 September 2011. The two-day workshop was organised by Agustín José Menéndez (University of León), leader of WP 7, together with Edoardo Chiti (Tuscia University, Viterbo) and Pedro Teixeira (European Central Bank). It gathered 25 participants, both RECON-affiliated researchers and external paper givers and discussants.

In line with RECON's models of European democracy and options for democratic reconstitution in Europe, WP 7 explores the conceptions of distributive justice that different visions of European integration gravitate towards. This workshop explored the analytical, axiological and policy implications of this bi-dimensional understanding of the socio-economic constitution of the EU by contrasting two of the main pillars of the European socio-economic constitution: the four economic freedoms constituting the common market; and the fiscal and monetary constitutional principles underlying the asymmetric European monetary union.

A key issue identified within WP 7 is the lack of historical depth in analysis, assessments and policy proposals on the socio-economic constitution of the EU. Regardless of the underlying position taken by lawyers and political scientists, the tendency is to see integration unfolding in a given and pre-established direction. As a result, the socio-economic context in which the key principles of the European economic constitution have evolved, as well as the key decisions and non-decisions, which have shaped the actual institutional structures and decision-making processes, are lost. In that context, the opening contribution of Hagen Schulz-Forberg (Aarhus University) was particularly valuable. He combined a plea for a non-Whig historiography of the Union, capable of detaching itself from the teleological reading of a 'happy' European constitution, and an actual alternative history of European integration.

The ensuing debate revealed that getting the history wrong or sometimes simply ignoring history may in fact be one of the reasons why the EU finds itself in its present troubles.

The organisers of the event, Edoardo Chiti, Agustín José Menéndez and Pedro Teixeira presented a paper offering both an analytical framework to understand the European crisis and a reconstruction of the key constitutional decisions taken by the European Union since August 2007. They claimed that the apparent intractable character of the present crisis is closely related to its insufficiently acknowledged manifold character. One could argue that there is actually not one, but five European crises (economic, financial, banking, sovereign debt and constitutional), which overlap and reinforce each other. Apart from the well-known triggers of the financial crisis (the credit crunch starting in August 2007 and the subsequent collapse of the Lehman Brothers), they argued that other factors have received insufficient attention. The growth of fictitious capital was closely related to the long-term economic crisis of Western societies, to the falling rate of profits accelerated by the economics of turbulence unleashed by the fall of the Bretton Woods financial architecture and the reaching of the limits of the post-war model of economic growth. Similarly, insufficient attention is paid to the causal role played by both the economic and the financial crisis on the sovereign debt crisis.

The first panel of the workshop, ‘Economic Freedoms: Vanguard of European Integration or *Il Topolino Morto Partorito dalla Montagna?*’, questioned the shape and place of the internal market within the socio-economic constitution of the EU. Not only is there a plurality of understandings of what the internal market means, but EU law has also reflected different understandings over time (see RECON Report 10, Deliverable 38). Fernando Losada (University of Helsinki, previously University of León) was the discussant for the three papers in the first panel. Mads Andenæs (University of Oslo) presented the main lines of evolution of the case law of the European Court of Justice (ECJ) with a critical focus on the free movement of goods, which in his view remains the ‘core’ component of the ‘internal market’ project. Andenæs claimed that a careful reconstruction of the jurisprudence reveals that what may appear as purely legal-dogmatic ‘technical’ terms may in fact have important socio-economic implications.



Hagen Schulz-Forberg and Agustín José Menéndez (photo: Diario de León)

Agustín José Menéndez suggested that the case law of the ECJ on the four economic freedoms constitutes the yardstick of European constitutionality. While one could argue that the ECJ should play a central role in the guardianship of European constitutionality, the credentials of the Luxembourg judges are defined by the peculiar synthetic nature of European constitutional law. European judges should take seriously the pluralistic character

of Community law and also the fact that their guardianship of European constitutionality is shared with national courts. Menéndez moreover claimed that the widely held assumption that the principle of proportionality has a legitimising effect should be abandoned. Based on a proper legal-theoretical reconstruction of the ECJ's case law, proportionality could rather be used as a device to render explicit the substantive choices made by the ECJ when confronted with constitutional conflicts between economic freedoms and fundamental rights.

Christian Joerges (ZERP, University of Bremen), co-leader of RECON's WP 9, offered a renovated defence of the relevance of the third RECON model by providing a critical reconstruction of the ECJ's case law on economic freedoms from the perspective of conflicts of law as the constitutional theory of Community law (see RECON Reports 14 and 15, Deliverables 7 and 84, respectively). Joerges tested the main premises of this theory by reference to the insights of Karl Polanyi's anthropological analysis of the key tenets of the socio-economic constitution of capitalist societies. In particular, he applied Polanyi's theory about the three false commodities (labour, land and money) to selected cases of the ECJ, which led him to make another plea for constitutional modesty and the recalibration of the jurisprudence of the ECJ.

The second panel, entitled 'Asymmetric Monetary Union: Towards Fiscal Union or The House that the Euro Unmade?' saw two researchers presenting their papers. The function of the discussant was performed by Lars Blichner (University of Bergen), member of RECON's Reflection Group. Jeremy Leaman (Loughborough University) offered a cogent challenge to the authority of the European Central Bank (ECB), to what could perhaps be labelled as the emerging myth of the masterful way in which Frankfurt has come to discharge its tasks. Leaman claimed that the characterisation of 'price stability' as two per cent inflation is open to contestation, and that the ECB has failed to stabilise the growth of money, this being one of the core causes of the present pledge in which Europe finds itself. The 'privatisation' of the creation of money through the money market and the shadow banks was not a core concern of the ECB for years, to the extent that it did not follow the changes in the volume of money. The ECB's decisions since August 2007, reaffirming public power and substituting itself for the interbank market, reveal the contradiction between a socio-economic settlement which transfers fundamental powers to private actors by which they undermine the revenue basis of the state (essentially its taxing capacities), but keeps the role of the state as lender and insurer of last resort. According to Leaman, any reform of the model of European fiscal constitution would need to take this contradiction into account.

Michelle Everson (Birkbeck, University of London) concerned herself with the medium of social integration through which monetary policy is conducted in Europe, in particular with the emergence of comitology arrangements in the System of European Central Banks. Combining a reflection of the empirical evolution of these institutional arrangements with the constitutional reflection on what kind of coupling of efficiency and democratic legitimacy they stand for, Everson offered a plausible yet disturbing key to understand the constitutional self-understanding of the ECB as an autonomous international organisation, pointing to the limits of the governance paradigm itself.

The third panel of the workshop with a title of 'What to do, Spinelli?' opened with a paper by David Mayes (University of Auckland) who offered a reconstruction and assessment of the present financial crisis very much inspired by the first RECON model. In his view, the crisis has not revealed any major structural deficiency of asymmetric monetary Union, however the conduct of fiscal policy has in some instances been inadequate. Provided a satisfactory

solution is found for an exit strategy for Greece and probably also for Ireland and Portugal, it should be possible to restabilise the fiscal constitution of the Union with rather marginal tinkering with its institutional structure and substantive normative discipline. Stefan Collignon (Sant'Anna School of Advanced Studies, Pisa) expressed a rather different view. On the basis of a republican conception of democratic legitimacy (which fits partially with the third RECON model), he claimed that asymmetric monetary Union was intended as a transitional arrangement, allowing the Union to overcome the 'turbulence' associated with the famous Padoa-Schioppa's inconsistent quartet. Collignon argued that in order for the monetary union to be legitimate and efficient, the establishment of a European government is required in the long run. In the short run, this could be ensured through issuing Eurobonds and substituting the Growth and Stability Pact by a collective system of debt issuance permits. Nicola Scotto acted as a discussant for the third and last panel of the workshop.

The workshop identified six questions which are pertinent across RECON's work packages: What is, and what should be, the relationship between the fundamental principles of European constitutional law framing the internal market and the European fiscal and monetary policy? To what extent have policy proposals and reforms been based on a proper understanding of the manifold character of the European crisis? How is equality before the law of member states of individual Europeans faring during the crisis? What is left of equality beyond it being a purely formal principle? Can the EU shape its socio-economic environment or is condemned to drift? And finally, what kind of European Union is likely to emerge from the crisis?

Due to the topicality of the themes discussed, the workshop also attracted some attention by Spanish media. Two Spanish newspapers commented on the seminar: 'De la crisis financiera a la crisis constitucional?', *El Mundo*, 8 September 2011 and 'La crisis económica ha evolucionado hasta llegar a una crisis constitucional' *Diario de León*, 10 September 2011. Both articles are available in the RECON Press Room at www.reconproject.eu.

The workshop contributions have been revised and elaborated based on the workshop discussions and will appear in a volume edited by Edoardo Chiti, Agustín José Menéndez and Pedro Teixeira, entitled 'The European Rescue of the European Union', RECON Report No. 19 early 2012.

3. List of participants

Mads Andenæs	<i>University of Oslo</i>
Ricardo Bouzas	<i>University of León</i>
Lars Blichner	<i>University of Bergen</i>
Patrícia Casjau	<i>University of León</i>
Eleangela Vasque Cervilha	<i>University of León</i>
Edoardo Chiti	<i>Tuscia University, Viterbo</i>
Stefan Collignon	<i>Sant'Anna School of Advanced Studies</i>
David Ribeiro Dantas	<i>University of León</i>
Erik Oddvar Eriksen	<i>ARENA, University of Oslo</i>
Michelle Everson	<i>University of London</i>
Mercedes Fuertes	<i>University of León</i>
Christian Joerges	<i>University of Bremen</i>
Virgínia Leal	<i>University of León</i>
Jeremy Leaman	<i>Loughborough University</i>

Fernando Losada	<i>University of Helsinki</i>
David Mayes	<i>University of Auckland</i>
Adrián García Martínez	<i>University of León</i>
Agustín José Menéndez	<i>University of León</i>
Gabriel Allende Ortuondo	<i>University of León</i>
Marcelo Duarte Vaz Pereira	<i>University of León</i>
Hagen Schulz-Forberg	<i>Aarhus University</i>
Nicola Scotto	<i>Hogeschool-Universiteit Brussel</i>
Fernanda Sabah Gomes Soares	<i>University of León</i>
Gutenberg Alves Fortaleza Teixeira	<i>University of León</i>
Pedro Texeira	<i>European Central Bank</i>

4. Programme

See attachment.



THE EUROPEAN RESCUE OF THE EUROPEAN UNION

THE SOCIO-ECONOMIC MALAISE OF INTEGRATION

An international workshop
LEÓN 9/10 SEPTIEMBRE 2011



RE/CON

RECONSTITUTING
DEMOCRACY
IN EUROPE



Fundación Sierra-Pambley)

The European Rescue of the European Union

The socio-economic malaise of integration

PROGRAMME

Friday, September 9th

⊕ 09:30- 10:45 Registration

⊕ 10:45- 11:00 Opening

⊕ 11:00- 11:15 RECON at five
🗨 Erik Oddvar Eriksen, ARENA

Keynote Speech

⊕ 11:15-11:35 *Historical memory, historical oblivion, historical amnesia in European integration*

🗨 Hagen Schulz-Forberg, Aarhus

⊕ 12:35– 13:00 *Debate*

First Session: Theoretical Framework

RECON (Reconstituting Democracy in Europe) has articulated three different conceptions of the purpose and point of European integration *in polity terms*. At the same time, this specific workpackage has contributed a second dimension by means of tackling the conceptions of distributive justice that different visions of European integration gravitate towards. This workshop aims at exploring the analytical, axiological and policy implications of this bi-dimensional understanding of the socio-economic constitution of the European Union by means of contrasting two of the main *planks* of the European socio-economic constitution: the four economic freedoms and the fiscal and monetary constitutional principles under which asymmetric European monetary union has proceeded. This leads to rendering explicit the highly political character of the European socio-economic constitution and articulating a research and policy agenda that pays proper attention to questions of *democratic legitimacy* and *political stability*.

13:00-13:20 The European Rescue of the European Union

🗣 Edoardo Chiti, Pedro Teixeira, Agustín José Menéndez

⌚ 13:20– 14:00 *Debate*

Second Session: Economic Freedoms: Vanguard of European integration or Il topolino morto partorito dalla montagna?

There is not such a thing as *the* European internal market, but a plurality of understandings of what such an internal market means (a common market, a single market, a transnational market). The specific characterization of the internal market depends on the specific understanding and shape of the key principles on which the market is grounded, namely the four economic freedoms (plus the principle of undistorted competition). Historical reconstruction shows that such an understanding has varied and still varies among Member States; and has changed and been transformed (and is still in flux) at the supranational European level too. In particular, there is a sea of a difference between the common market approach (followed from the beginnings to the late 1970s) and the single market approach (followed from the early 1980s). There is thus no *one single* right conception of what is the single market or what the four economic freedoms entail, but actually many.

This section will thus consider the *internal market* project as essentially contested terrain, which is open to be shaped and defined by different conceptions of European integration, and may thus be duly influenced not only by different polity views, but also by different conceptions of distributive justice. What are the main milestones in the evolution of the understanding of the internal market? What polity implications this has had? What effects this has had on national democratic decision-making processes? And on national configurations and setups of the socio-economic constitution, and in particular, of the welfare state?

⌚ 16:00-16:20

🗣 Recalibrating Economic Freedoms, Mads Andenaes, Oslo

⌚ 16:20– 17:00 *Debate*

⌚, 17:00-17:20 Weighing and Balancing: Proportionality as Dr Jekyll and Mr Hide

🗣 Agustín José Menéndez, Universidad de León

⌚ 17:20– 18:00 *Debate*

18:00-18:30 Coffe Break

⌚, 18:30-18:50 Third Model

🗣 Christian Joerges, University of Bremen

⌚ 18:50– 19:30 *Debate*

Saturday, September 10th

Third Session: Asymmetric Monetary Union: Towards Fiscal Union or The House that the Euro Unmade?

Since the fall of the Bretton Woods system in August 1971, the European Union has faced a triple economic challenge: (1) How to ensure monetary stability without the convertible dollar anchor?; (2) How to render compatible a stabilising monetary policy with the use of fiscal policy to achieve the basic constitutional goals of the Sozialer Rechtsstaat?; (3) What is the proper means of social integration with which to undertake the government of economic policy? What is the proper mix of (political or epistocratic) discretion and (political or epistocratic) rules?

The monetary Union announced in the Maastricht Treaty and further specified in the Amsterdam Treaty and the secondary legislation making up the Growth and Stability Pact was the product of a complex compromise. It resulted in a rather atypical asymmetric form of monetary Union, characterized by a mix of federal and apolitical monetary policy *and* formally political and national fiscal and wage policies. “Governance” arrangements (such as open coordination among Member States through broad economic policy guidelines) were supposed to square the circle, and ensure that monetary policy was “technically” taken care of, while Member States retained wide discretion to set up their fiscal policies but used it in ways that took into account the “common” interest of Euroland.

The fiscal crisis of the PIGS has revealed the extent to which “governance” arrangements have not delivered (although exactly what they have not delivered is far from obvious). We seem to be now in a situation in which some degree of further integration in economic policy must happen and will happen, but can’t happen, or will only happen to an insufficient extent and rather too late. Actual room for choice in economic policy is structurally determined by the way in which decisions are framed (i.e. whether economic policy is approached as a whole larger than the parts, as used to be the case in the three first postwar decades, or as an aggregation of separate policies, an inheritance of the peculiar model of asymmetric monetary union) and by the institutional structure and decision-making setup. Democratic legitimacy is not a luxurious plus, but a very fundamental condition for the efficiency of economic policy.

Can the single market and monetary union be sustainable when the institutional setup and the decision-making processes on the two of them isolate them from political contest and political preferences? Can indeed political union be decided in an apolitical form? Can legitimacy be produced *intergovernmentally*? Or coordinated

through multilevel governance arrangements, such as the Eurogroup? Have not these options already been proven insufficient, illegitimate and inefficient?

⌚ 10:00-10:20 Good Governance of Monetary Policy?

🗣️ Michelle Everson, Birbeck

⌚ 10:20– 11:00 *Debate*

⌚, 11:00-11:20 The Size that Fits No-One: European Monetarism Reconsidered

🗣️ Jeremy Leaman, Loughborough University

⌚ 11:20-12:00 *Debate*

🤝 Discussant: Lars Blichner

Fourth Session: What to do, Spinelli?

The Maastricht cum Amsterdam socio-economic constitution may have become fully exhausted. While the Lisbon Treaty was the reform treaty to end treaty reforms, we have *de facto* already mutated the Treaties. In formal terms, a small Treaty amendment has been decided (and is pending on national ratification) at the same time that a radical and synchronized change in the material constitution of all Eurozone Member States has been agreed (the Pact for the Euro plus).

Do these changes make sense from the standpoints of efficiency and legitimacy? Will they result in a stable constitutional settlement? Are there other possible blueprints for the future of the European Union? Which are those? And how do we get there?

⌚ 16:00-16:20 Rearranging the levels of governance in Europe

🗣️ David Mayes, Auckland

⌚, 17:00-17:20 The democratic European Republic

🗣️ Stefan Collignon, Sant'Anna Pisa

Discussant: Nicola Scotto

18:00-18:15 Closing, Edoardo Chiti, Pedro Teixeira, Agustín José Menéndez