



The Sinews of Peace

Democratising the Political Economy of the European Union

International Workshop

León, 19-20 September 2008

RE/CON RECONSTITUTING
DEMOCRACY
IN EUROPE

La pesadilla del burgués, Nicanor Piñole, 1932



The Sinews of Peace

Democratising the Political Economy of the European Union

This workshop aims at reformulating the key questions of the research agenda on the political economy of the European Union. In line with the overall design of the RECON project, the workshop elucidates the democratic implications of the institutional design and decision-making processes of the policies defining the basic economic structure of the European society; the sinews of long peace that Europe has enjoyed since the launching of the European integration process; and the establishment of the welfare state. In concrete, it will seek to answer some central questions:

- Is decision-making in macro-economic policy, the design of the common market or tax policy democratic enough?
- Has the process of European integration decreased or increased the democratic legitimacy of such decisions?
- Are the democratic shortcomings connected to the particular and asymmetric way in which the strings of the purse are divided between the Union and its Member States?

The workshop will stress not only the close connection between democracy and legitimate decision-making in such key questions (very well-documented historically, but rather underplayed in recent debates), but also between the different case areas in consideration, which will be treated here as mere parts of a coherent socio-economic order. This is why the papers are not limited to the study of fiscal and tax policy as such, but particular emphasis is placed on the related policies which condition the scope of actual political choice in fiscal and tax matters, and on which public institutions must necessarily rely in order to make their decisions effective. More specifically, attention is paid to the concrete norms defining two economic freedoms (free movement of persons and free movement of capital) and to the norms governing the non-contractual liability of Member States.

By such means, the aim of the workshop is not only to discuss specific problems arising in each area, but also to define concrete policy programs to re-democratise decision-making in these areas. In doing so, special attention will be paid to the effects that the present decision-making setup has on the fostering of both a community of economic risks (a common market) and a community of public insurance (a welfare community).

- To what extent is it possible to democratise the European Union without regenerating the solidaristic foundation underlying welfare states? Are the solidaristic predispositions which support a welfare state under-mined or fostered by the process of European integration?
- Is it necessary to Europeanize the community of public insurance?

- And how could that be done without undermining national democratic structures?

The workshop will contribute to the testing of the three democratising strategies at the core of the RECON project, by means of developing concrete versions of each in the overall area of the political economy of the Union. By doing so, the workshop will also contribute to drawing the general substantive and procedural policy maps of the project.

Papers will combine the reconstruction of institutional structures, decision-making processes and substantive outcomes in each area with the exploration of policy options which would allow to re-democratise the steering of the public finances of the Union, allowing the citizens of Europe, either as national citizens, as European citizens, or as engaged cosmopolitans who happen to be resident in Europe, to have a decisive influence in the shape of socio-economic arrangements.¹ In doing so, the papers will reflect on the three underlying topics around which RECON's work package 7 is structured, namely: (1) the extent to which the democratic shortcomings of the European Union are related not only to problems pertaining to the institutional and decision-making setup of the Union or the Member States, but also to the specific combination of such features, and in particular, to the breadth and scope of the "structural democratic deficit". The latter results from the combined effects of, on the one hand, the present division of competences between the EU and its Member States (characterised by many inconsistencies, such as the federalisation of monetary policy and the de facto reinforcement of national power in the formal design of tax powers) and, on the other hand, the division of labour between decision-making processes at each level (and very critically, at the European level, between the standard Community process requiring unanimity in the Council and the co-decision process, which is biased against redistributive and market-correcting measures); (2) the peculiar interplay between the advanced Europeanisation of the community of economic risks, defined by the breadth and scope of market institutions and regulations, the very limited Europeanisation of the community of public insurance, which is institutionalised in national welfare states, and the "ghost" state of the political community of citizens, reflected in the low levels of participation in European elections, the weakness of European political party structures and the disconnection of national public spheres; (3) the transformation of the paradigm of relationships between Member States, which oscillates between political coopera-

¹ This clearly assumes that the proper realisation of the public autonomy of European citizens depends on the ability of political processes to shape economic policy. This is not only a necessary assumption of the research project, but as will be explored in the introductory section of the workshop, is also a normative assumption enshrined in the positive constitutional law of the Member States of the European Union, and consequently, is also a key part of the "deep" constitution of the European Union, i.e. the constitutional traditions common to the Member States.

tion and a model of competition “imported” from the free market literature. By means of elucidating the complex interrelationships between these key economic policies, and by means of framing the question as part of the larger one of democratising the EU’s socio-economic order, this workshop will reconnect the debate on the public finances of the Union with the one on democratic governance. The relationship between the two has been obscured by the causes underlying the “structural” democratic deficit of the economic governance of the Union, and has resulted in the construction of academic walls of separation between the present topics, which are both artificial and normatively unjustified. The fragmentation of the research and policy agendas does indeed rule out, without proper justification, a huge amount of potential political choices, and contributes to the progressive erosion of the social legitimacy of the Union’s existing policies (the ultimate test of which was the negative outcome of the referenda in France and the Netherlands in 2005) and may eventually undermine the legitimacy of the European Union itself. By means of spelling out the actual factors causing the substantive structural bias of European decision-making in favour of negative integration, and showing that these are no other than the present institutional and decision-making set up of the Communities, the workshop aims at clarifying the normative basis of the critiques and translating them into specific constitutional and policy options.

The topics dealt with in the workshop have been chosen in view of their critical importance. It may be quite obvious that fiscal and tax policies are at the core of the public finance of any political community, but it is less well noticed, and in particular in the debate and literature on the European Union, that the concrete conception of economic freedoms, which is at the core of a polity’s constitutional arrangements, has important consequences for the extent to which public finance options are open to democratic majorities. The workshop will illustrate the “cost” of economic liberties with reference to the free movement of persons and the free movement of capital. The consistency in the regulation of the movement of capital has a major influence on the cognitive resources which public institutions can rely on to monitor actual compliance with tax obligations, in particular with regard to persons whose main source of income derives from capital investments. The concrete definition of the free movement of persons, and the rights that citizens carry with them when settling in another Member State, has major implications for the expenditure of both source and destination Member State. Similarly, the standards of non-contractual liability of public institutions tend to be framed as belonging to the domain of highly technical jurisprudence. However, such standards not only have major economic consequences, but also play a key role in drawing the boundaries of the political community, and consequently, the scope of solidaristic obligations.

Agustín José Menéndez (Scientific Organizer)

Flavia Carbonell, Raul Letelier, Fernando Losada (Co-organizers)

PROGRAMME

Friday, September 19th

⌚ 08:30 09:00 **Registration**

⌚ 09:00 09:15 **Opening**

⌚ 09:30 10:45

📖 ***A new research agenda for a new democratic Union: RECON strategies applied to the political economy of the European Union***

🗣️ Agustín José Menéndez, University of León

🗣️ John Erik Fossum, Arena, University of Oslo

The paper will do three things. First, it will show why it is critical for RECON to consider the political economy of the European Union, and why normative research can help “reconnect” the different case studies to general political and scholar debate. Second, it will focus on the common agenda of the different case studies considered under this working package, and in particular, on (1) the nature of the structural democratic of the European Union, (2) the interplay between the Europeanisation of the community of economic risks, the persistence of the national character of the insurance community, and the ghostly existence of the political European public; (3) the fluctuating paradigm of political cooperation and market competition prevailing among Member States. Third, it will consider the interplay between RECON strategies and theories of European democracy, and how this can be exploited in order to elucidate indicators for each case study within the package.

⌚ 10:45 11:00 **Coffee break**

⌚ 11:00 12:15

📖 ***Can economic integration be democratic? The case of taxes***

🗣️ Marco Greggi, University of Ferrara

🗣️ David G. Mayes, University of Auckland

The founding Treaties of the Communities envisaged the establishment of a system of genuine own resources, and consequently, the transfer of collecting tax powers to the supranational level of government. This was done immediately although on a modest scale on the ECSC, and was foreseen for the mid-run in the EEC. Despite the initial opposition of the French government under De Gaulle, a genuine system of own resources, coupled with the transfer of substantive law-making powers to the European Parliament was established in 1970. At the same time, economic integration has resulted in a dramatic transformation of national tax systems, far from limited to indirect taxes such as VAT. This generates a tension between the general political perception of tax law as the 'ultimate stronghold of national sovereignty' and the legal and economic reality of deeply constrained national tax systems. What are the consequences of this state of affairs for democracy at the supranational, national and regional levels?

⌚ 12:15 13:15

📖 ***Free Movement of Capital: The savior or the nemesis of democracy?***

🗣️ Fernando Losada, University of León

🗣️ Pedro Teixeira, European Central Bank

Free movement of capitals was initially conceived as a complementary matter to the other community freedoms, i.e. as a means of payment of the transnational (European) exchanges. However, since the Member States decided to consider it as a freedom itself (directive of 1988 and Maastricht Treaty provisions) a non-restricted area for the movement of capitals has been established. From then on, its relevance has increased because Treaty provisions consacre the free movement of capitals not only in the European Union space, but also between EU countries and third ones, what reflects a liberal-capitalist conception of the freedom: it is not aimed at creating a supranational state with an European scope, but it looks at a world level transformation which allows capitals to move without restriction. Therefore, solidarity does not fit in this conception of free movement of capital, since no political intervention is foreseen and it is not possible to control capital movements. Despite that, it seems clear to us that power to adopt public decisions is not created nor

destroyed, but transformed. Therefore, when Member States have agreed to liberalize all movements of capital (even with third countries) the power to decide about it has been transferred to a particular kind of actors, financial markets, which are guided by interests different to those of the representative institutions. This corresponds to a concept of democracy which allows private and collective actors to decide upon public issues. When analyzed through the lens of the three RECON models, it will fit with the cosmopolitan one.

⌚ 13:30-16:00 Lunch

⌚ 16:00-17:15

📖 **Democratising Corporate Income Taxation?**

👤 Agustín José Menéndez, University of León

👤 Pedro Teixeira, European Central Bank

The case law of the European Court of Justice has played a decisive role in the definition of the breadth and scope of the economic freedoms. While the Court assumed a very self-restrained position until the mid-eighties, the national political changes of the early eighties and the development of the project of the Single Market fostered its decision to review the compatibility of national direct tax laws with the economic freedoms. This has resulted in a major and double structural tension, namely, for one the tension between on the one hand the creation of a single market and the tumbling down of economic borders resulting from the transfer of constitutional tax powers to the Union, and on the other hand the maintenance of legislative tax powers over taxes in the hands of Member States; for two, a tension between the massive implications of judicial decision-making in the field of taxes, and on the other hand, the embedded preference in the Community method for the preservation of the status quo. The result is the development of a structural democratic deficit, as negative integration, deregulation through uncoordinated national action is preferred to cooperative regulation. The paper analyses the roots of the problem and proposes alternative strategies to deal with it in the framework of the RECON project.

⌚ 17:15-18:30

📖 **The interaction of monetary and income policies. Rule-based wage bargaining and coordination: Is divergence a threat for the euro?**

👤 Stefan Collignon, Sant'Anna School of Advanced Studies

👤 Jeff Milley, Centre for Political and Constitutional Studies

The interaction between monetary, fiscal, and income policies is crucial for achieving simultaneously stable prices, balanced growth, and high employment. Yet, in "Euroland" the outcome of this "policy mix" is not the result of coherent policy options. Budget decisions are decentralized and taken in the context of national constituencies. The Stability and Growth Pact (SGP) provides a set of rules stipulating how each national authority ought to behave, but the aggregate European level, which matters for monetary policy, is only the sum of 15 random processes. This means that fiscal policy cannot be used as a policy tool, because a random process cannot be adapted flexibly and deliberately to changing circumstances. Given that wage bargaining has remained compatible with the stability objectives of the ECB, the indeterminacy of European fiscal policy must be a key for the euro's disappointing economic performance. There are good reasons to believe that the policy mix in Euroland is suboptimal.

⌚ 21:00-23:00 Dinner

Saturday, September 20th

⌚ 09:30-10:45

📖 **Free Movement of Persons: What community and what solidarity?**

🗣️ Flavia Carbonell, University of León

🤝 Casiano Hacker-Cordón, Centre for Political and Constitutional Studies

For identifying what ideas of community and solidarity underlie the case-law of the European Court of Justice concerning free movement of persons, this paper will focus on: first, how the allocation of competences for defining national social security systems has been, without formally being detached from the national sphere, destabilized due to the progressive extension of the right to free movement of persons; second, the evolution of the idea of community from the original community of workers as a means for reinforcing the construction of a common market to a community of citizens; third, how this later development presupposes also the redefinition of social solidarity in the light of the degree of integration of the migrant in the host member state; and fourth, how these redefinitions, evolutions and developments can be explained through the lens of democratic legitimacy. The main issue in this last point will be to interpret what conception of the European Union, in terms of the three RECON democratizing strategies, and what democratic logic stands behind the ECJ's case-law on free movement of persons.

⌚ 11:00-12:15

📖 **Democratic Forming of Labour Rights in Europe**

🗣️ Florian Rödl, ZERP, University of Bremen

🤝 Casiano Hacker-Cordón, Centre for Political and Constitutional Studies

Today, the essence of democratic government of social policy including labour relations is still located at national level. But pressure on labour standards from the internal market together with EMU has lead to a widespread call for "social Europe". The social dimension of Europea is meant to develop further with the reform Treaty coming in to force. But nor the reform Treaty brings substantial changes to the order of competences in the field of social policy. The paper shows how the continued de-tachment of the economic from the social sphere in Europe works to the disadvantage to national democratic autonomy without providing a compensation on European level. This will be demonstrated by reference to two recent judgements of the ECJ (Viking and Laval) where fundamental (national) social rights collide with (European) entrepreneurial freedoms.

⌚ 12:15-12:30 Coffee Break

⌚ 12:30-13:45

📖 **Democracy and Non-Contractual Liability in the EU**

🗣️ Raúl Letelier, University of León

🤝 Luis Medina Alcoz, Complutense University of Madrid

The paper pursues one main objective, which is to place the topic of European public liability inside a wider debate about democracy in the EU. This analysis will be developed using the democratic skills provided by RECON and from a triple perspective. It will focus on the effects of the liability both in the European design of the distribution of powers, in the process of enforcing of EU Law and the incidence of that process in the national's legal orders, and in the building of a European community of risks.

⌚ 13:45-16:00 Lunch

⌚ 16:00-17:15

📖 **Round table: Social Justice in the European Liberal State**

🗣️ Gianluca Andresani, University of Hull

The round table will analyze to what extent is possible to democratize the European Union without regenerating the solidaristic basis which underlies national welfare-states? Are the solidaristic predispositions which support a welfare state being undermined or fostered by the process of European integration? Is it necessary to Europeanize the community of public insurance? And how could that be done without undermining national democratic structures?