

Beyond Europe

Globalisation and/or democratisation?

In posing the foundational question of whether democracy is possible also beyond the nation state, RECON does not only address the EU as a confined political entity, but also as part of a globalised and increasingly interdependent world.

The world is largely integrated through a common economic legal system, and trade relations are mainly governed by the law of the World Trade Organisation (WTO). At the same time the EU is also a legally integrated economic system. In cases of conflict between these two legal systems, who has the last word? This is an unsettled issue that causes tensions which come to the fore as conflicts between economic interests and diverging policies. How does international trade law and policy affect the conditions of social regulation for constitutional democracies?

One of the issues RECON has examined in particular is the controversy on Genetically Modified Organisms (GMOs). This field has experienced an uneasy history with many reforms within the EU and with transnational conflicts under the WTO. GMO policies cannot be definitely settled by scientific expertise because of their politically sensitive, normative and ethical dimensions. So how and where should disagreements legitimately be settled? After all, the EU aspires to be a democratic organisation; this is reflected by its commitment to the principle of precaution. This is not easily compatible with the intergovernmental character of the WTO and its dedication to trade liberalisation.

RECON's third model of democracy envisions the EU as a regional-cosmopolitan vanguard. The implication is that supranational entities hold better prospects for cosmopolitanism (moral universalism with the individual as the ultimate unit of concern) than states. Is that the case? RECON has compared the EU with Canada in order to shed light on this question.

WP 9 research coordinators

Christian Joerges

Centre for European Law and Politics, University of Bremen
christian.joerges@sfb597.uni-bremen.de

John Erik Fossum

ARENA - Centre for European Studies, University of Oslo
j.e.fossum@arena.uio.no

WP 9 partners

Vrije Universiteit Amsterdam
Ben Crum, Eric Miklin

ZERP, University of Bremen
Olga Batura, Kolja Möller, Tommi Ralli, Florian Rödl

European University Institute
Poul Kjaer, Claire O'Brien, Neil Walker, Maria Weimer

Johann Wolfgang Goethe University
Rainer Nickel

European University Viadrina
Ulrike Ehling, Jürgen Neyer

Selected findings

- **Labour law and social rights have been overridden by economic freedoms in recent judgements by the European Court of Justice**
- **Trade policies in the EU and at the international level have been ‘politicised’ and forced to respond to concerns such as environmental and social protection**
- **The ongoing European reform of the GMO regulatory framework is a positive step towards conflicts resolution through decentralisation and flexibility**
- **The state form can be as conducive to cosmopolitanism as can a supranational entity, in particular under multinational conditions**
- **Comparisons of the EU and Canada show that Canada’s failure to develop a common national sense of community and identity has compelled it to develop more inclusive (or cosmopolitan) conceptions of communal belonging**



Read more on the findings in the following pages

More details and publications from the research field ‘Global Transnationalisation and Democratisation Compared’, including all RECON reports and working papers mentioned in the below, are available at: www.reconproject.eu

Tensions between trade liberalisation, risk regulation and social protection

Is the institutional design of the EU, with its emphasis on economic freedoms and control of anti-competitive practices and policies, grinding its commitment to the social market economy? Is there space in WTO law, orientated towards trade liberalisation, for non-trade concerns?

GMOs and animal cloning

RECON studies on the regulation of GMOs and on animal cloning have focused on ‘uncertain’ risks to health and the environment. Findings suggest that the ongoing European reform of the GMO regulatory framework is a positive step towards conflicts resolution through decentralisation and flexibility.

Analyses have focused on the EU’s precautionary principle and the impact of WTO law on European practices. The ongoing European reform efforts, which aim at granting the member states more autonomy on GMO cultivation, raise serious questions of EU and WTO trade law compatibility. However, they may also help resolve the current deadlocked situation in EU authorisations of GMOs.



As for animal cloning, this is a politically sensitive field and the legal competence of the EU to regulate is not clearly established. Europe’s trade partners are closely monitoring EU policy developments, as they are getting ready for exporting products from cloned animals. Trade-restrictive EU regulations would thus represent a potential for new international trade disputes in the WTO.

The studies suggest that the EU should coordinate its preferences with the regulatory authorities of its main trade partner, the US. The ongoing reform of the GMO regulatory framework is a positive step which promises to be of more general exemplary importance.

European regulatory policies and WTO law

Within the internal market, but also at the international level, trade policies have to respond to non-trade concerns such as quests for environmental and social protection. This ‘politicisation’ of trade has generated sophisticated regulatory patterns at all levels of governance.

Several RECON publications show that stronger global governance can be a chance for the EU to clarify its own *raison d’être* to the wider world. At the same time, the design of the European project is challenged by more assertive global structures, which constrain the EU’s decisional autonomy. The conflict constellations generated by globalisation and Europeanisation need to



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‘Applying precaution in community authorisation of GMOs’, Maria Weimer, *RECON Online Working Paper 2009/14*

‘Policy choice versus science in regulating animal cloning under the WTO law’, Maria Weimer, *RECON Online Working Paper 2010/29*

‘Judicialization and transnational governance’, Christian Joerges, in *The law/politics distinction in contemporary public law adjudication*, Bogdan (ed.) Eleven International, 2009

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Transnational standards of social protection, Christian Joerges and Poul Kjaer (eds), RECON Report 4, 2008

Constitutionalism, multilevel trade governance and international economic law, Christian Joerges/Ernst-Ulrich Petersmann (eds), Hart, 2nd edition, 2011

Karl Polanyi, globalisation and the potential of law in transnational markets, Christian Joerges/Josef Falke (eds), Hart, 2011

‘A hybrid within a hybrid’, Poul Kjaer, *European Journal of Risk Regulation*, 2010

be resolved within regulatory patterns which provide for the cooperation of expert communities and the inclusion of non-governmental actors in the resolution of regulatory problems and the implementation of regulatory policies.

Social protection trumped by market economy

Recent labour-law jurisprudence of the European Court of Justice (ECJ) was confronted with conflicts between the collective labour law of ‘old Europe’ and the claims of the new member states to open access for labour and service providers. The ECJ’s resort to European economic freedoms has provoked wide criticism.

Findings from RECON studies on the tensions between trade liberalisation and social protection suggest that the ECJ’s jurisprudence is a step towards the ‘hard law’ of negative integration. The search for fair compromises is underway, but it is not very likely that Europe’s market economy is corrected through ‘social market economy’, ‘social rights’ and the soft means of the Open Method of Coordination.

Read more

Human rights and transnational corporations, Claire O’Brien, Hart, 2012

‘On the “social deficit” of the European integration project and the ECJ judgments in *Viking* and *Laval*’, Christian Joerges/Florian Rödl, *RECON Online Working Paper 2008/06*

‘The *Rechtsstaat* and social Europe’, Christian Joerges, *Comparative Sociology*, 2010

Legal conceptualisation

RECON has examined the legal conceptualisation of European and transnational governance. This has generated the ‘idea of a three-dimension conflicts law as constitutional form’.

The objective is to present a new type of non-state legal framework with democratic credentials, which reflects the specifics of the postnational constellation and has the potential to orient the legal assessment of European and transnational conflict configurations. RECON researchers have contrasted this theory with sociological and political theories of global governance. Further exemplary studies examine constitutional conflicts, the generation of transnational human rights frameworks, transnational air-space security, and strategies to combat global poverty.

Read more

Conflict of laws and laws of conflict in Europe and beyond, Rainer Nickel (ed.), Intersentia, 2010

After globalisation, Christian Joerges (ed.) in cooperation with Tommi Ralli, RECON Report 15, 2011

‘A new type of conflicts law as constitutional form in the postnational constellation’, Christian Joerges/Poul Kjaer/Tommi Ralli (eds), *Transnational Legal Theory*, special issue, 2011

Jürgen Habermas, Volumes I and II, Christian Joerges/Camil Ungureanu/Klaus Günther (eds), Ashgate, 2011

Cosmopolitanism in the EU and beyond

Can cosmopolitanism contribute to set the historical record straight, to supplement and revise the dominant national account of history, the story of life as one lived within a world of distinct nation states?

This need is given impetus from the manner in which globalisation reconfigures economic, social, cultural, and political structures. Does the EU qualify as a cosmopolitan vanguard? To establish that it is necessary not only to consider how cosmopolitan the EU is, but also to make clear whether the EU is more suitable for cosmopolitanism, or better able to promote it, than other types of political or social entities such as global institutions, an increasingly globalised civil society, and states. But might also states serve as cosmopolitan vanguards? If so, what features of states would make them cosmopolitan forerunners? A comparison of the EU and Canada shows that Canada forms an alternative path to cosmopolitan democracy, and that the (hierarchical) state form, in particular when it is reconfigured along post-national or even multinational lines, is conducive to cosmopolitanism.

Read more

‘Cosmopolitanism in Europe and beyond’, John Erik Fossum, in *Rethinking democracy and the European Union*, Eriksen/Fossum (eds), Routledge, 2011

‘Review essay: A cosmopolitan constellation?’, John Erik Fossum, *European Journal of Social Theory*, 2011

‘A state-less vanguard for a rightful world order’, Erik O. Eriksen, in *Political theory of the European Union*, Neyer/Wiener (eds), Oxford University Press, 2011