

# RECON successfully concluded



The RECON project (*Reconstituting Democracy in Europe*) concluded on 31 December 2011. In the final year, RECON experienced an increased interest in its research on the prospects for democracy beyond the nation state. We aimed at widespread dissemination of research findings. This final RECON Newsletter provides information on a number of key events and publications:

- A well-attended open seminar presenting the project to a broad audience
- The academic concluding conference staged in Oslo in November
- A RECON pamphlet with 'snapshots of findings' addressing a non-academic readership
- Other conferences and workshops staged towards the end of 2011
- Recent and forthcoming publications, books and RECON Reports
- Two specialist websites which have been launched as part of the project
- An overview of project resources and where to find more information on RECON's research findings, publications and websites

RECON's Scientific Coordinator Erik O. Eriksen and John Erik Fossum discussed the future of European democracy with Norwegian Foreign Minister Støre in Oslo on 24 November 2011

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## Final expert evaluation

A review of RECON's overall performance commends the project for producing high-quality research that is of great importance for present-day Europe. The recommendations by the evaluators demonstrate the importance of the project's results: It is 'recommended that the empirical findings and the theory developed within RECON be made standard knowledge in textbooks on Europe'.



More on p. 2

### RECON partners:

Academy of Sciences of the Czech Republic, Prague  
ARENA - Centre for European Studies, University of Oslo (coordinator)  
Austrian Academy of Sciences, Vienna  
Eötvös Loránd University, Budapest

European University Institute, Florence  
Free University Berlin  
Jagiellonian University, Krakow  
Johann Wolfgang Goethe University, Frankfurt am Main  
London School of Economics and Political Science

Mannheim Center for European Social Research (affiliated partner)  
Peace Research Institute Frankfurt  
Queen's University Belfast  
Sabanci University, Istanbul  
Spanish National Research Council (CSIC), Madrid

Université Libre de Bruxelles  
University of Auckland  
University of Bremen  
University of Hamburg  
University of León  
University of Reading  
Vrije Universiteit Amsterdam

# Editorial


RECON has come to an end after five productive and intensive years (2007-2011). The project was fashioned in the wake of the Laeken process which produced the Constitutional Treaty (ECT) and a broad debate on the EU's legitimacy. This debate became all the more important after the French and the Dutch rejected the ECT (2005). These events amplified the relevance of RECON's key research question: What democracy for what Europe?

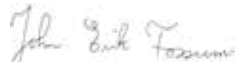
Over these five years, the more than 120 researchers that have been involved have discussed the conditions for democracy in the EU through a series of studies across a large number of policy fields and institutional realms. As the project unfolded, Europe experienced a changing political and economic environment, culminating in a deep crisis that threatens to undo the euro and perhaps even to unravel the EU. The crisis has not only exposed the democratic challenges facing the EU, it has greatly amplified them. As such, it makes RECON's research all the more important not the least because the present crisis of the euro zone questions the long-held assumption that there is a close association between integration and democracy.

The Treaty on Stability, Coordination and Governance signed in March by all EU-members (except the Czech Republic and the UK), puts much of economic policy beyond effective democratic control. In this circumstance, can further European integration proceed without putting the integrity of the democratic nation state at risk? At the same time, the integration process has fostered such a high degree of interdependence and interweaving that many argue that the only way of grappling with the crisis is through further integration – in effect, then, only a fiscal union will be able to rescue the monetary union. But the EU seems to be barred from federalising because of the strength of the democratic members. They are opposed to surrender more sovereignty to a European 'superstate'.

Hence there is a clear need for further research. The final evaluation of RECON states that: 'It is recommended that selective follow-ups to this project be considered in order to strengthen its potential influence in Academia and in public debate beyond the impressive dissemination activities already going on.'

This positive evaluation is due not only to well conducted research but also to administrative excellence. Warm thanks to Geir Kværk and Marit Eldholm.

  
**Erik O. Eriksen**  
Scientific coordinator

  
**John Erik Fossum**  
Substitute scientific coordinator

# Final review of RECON

**A review of RECON's overall performance commends the project for producing high-quality research that is of great importance for present-day Europe. It is 'recommended that the empirical findings and the theory developed within RECON be made standard knowledge in textbooks on Europe'.**

The project has been evaluated by three external academics, who have written a strikingly positive final review. In their view, RECON's output 'goes far beyond the state of the art' and also 'far beyond what is expected of a "normal research project"'. 'RECON is one of the few projects which have produced not only new empirical knowledge but also a new way of looking into the problematic of the democratic organization of the society emerging in Europe. Thus it has contributed equally to the debate on the institutional design of democracy in present-day Europe and to provoking public debate on how to strengthen a democratic Europe by developing further the link between political institutions and the people.' According to the report, RECON has succeeded in producing 'an optimal result', and 'it is recommended that the empirical findings and the theory developed within RECON be made standard knowledge in textbooks on Europe'.

The report further states that RECON has 'succeeded in formulating a new political theory of democracy which goes beyond the classic debates between inter-governmentalists and integrationists'. 'Equally important [is] the proposal of the core elements of a model of regional post-national democracy, which implies the establishment of a supranational government.' RECON's theoretical framework 'has proven to be a highly effective and innovative framework within which the partners could orient their own empirical activities and develop partial aspects of the mechanisms and processes shaping the making of democracy in Europe as a political community'.

The scientific and technical management of the project is considered to have performed 'extremely well' and been 'highly efficient'. RECON is praised for integrating 'the contributions of a considerable number of scholars across various countries and disciplines around the "RECON Models" which have successfully structured the empirical research across the selected fields'. 'In sum, RECON's results are the best witness of a very good and effective collaboration among the participants.'



Photo: Colourbox

As a project with 'a significant use potential, given the richness and versatility of the topics dealt with and the amount of research produced', RECON's efforts to reach out beyond the research community are highlighted as 'very impressive' and 'developed and realised in an expert way'. In this regard, the evaluators point in particular to the pamphlet *Reconstituting Democracy in Europe: Snapshots of findings*, where RECON research policy recommendations are stated, but also to publications 'ranging from highly academic to easy reading forms guaranteeing broader resonance beyond academia'.

Finally, the review states that the 'progress on the Gender Action Plan (GAP) has been phenomenal from the point of view of the involvement of women in RECON's activities, the prominence of gender aspects of the research undertaken, and the results which have been achieved with regard to gender equality'. The Gender Assessment Panel established by RECON to monitor the GAP 'is an exemplary solution and should be recommended for implementation in other projects.' The Panel's 'conclusions go well beyond the RECON project and could be recommended for consideration of policymakers: 1. Significant differences in salaries between women and men were found, in favor of men. 2. A high percentage of RECON partner institutions do not have instruments to promote gender balance.'

RECON was supported by the European Commission's Sixth Framework Programme for Research as one of the largest Integrated Projects within the thematic priority 'Citizens and governance in a knowledge-based society'.





# What is *Left* of European democracy?

RECON Concluding Conference, Oslo, 25-26 November 2011

RECON's concluding conference was staged in Oslo in November 2011. Key findings from five years of research were discussed and the greater, more overarching implications that this collective research effort has generated were discerned. Due attention was also paid to the most pressing issue currently facing the EU, namely the financial crisis.

The conference was organised by RECON coordinator ARENA – Centre for European Studies at the University of Oslo. The close to 80 participants consisted of a large number of RECON's researchers, as well as externally invited scholars and practitioners who contributed as paper givers or discussants, and some external researchers, students and members of NGOs.

## Europe in the time of crisis

Against the backdrop of the euro crisis, the first day was kicked off by a keynote speech by **Giandomenico Majone** (Emeritus Professor, European University Institute). He argued that the current crisis reveals the problems of the relationship between integration and democracy and the trade-off between the two in favour of the former. Integration has been promoted as an elite project without democratic anchoring. This has reduced EU law to 'thesmos', not 'nomos', that is, law for the people, not by the people. The current crisis is a symptom of the failed integration strategy, in his view, or at least of its limits.

In her comment, **Cathrine Holst** (ARENA) questioned the underlying premise of Majone's argument, namely what the notion of social embeddedness requires and how to specify and justify more precisely what the structural limits to deep or positive integration consist of. Also **Stefan Collignon** (Sant'Anna School of Advanced Studies,

Pisa) took issue with the notion of social embeddedness as a precondition for further political integration and democratisation in Europe. Instead he argued that common institutions must be established in order to allow for democratic procedures to evolve and to ensure further integration.

**Pedro Teixeira** (European Central Bank) presented a paper co-authored with Edoardo Chiti (University of Tuscia) and Agustín J. Menéndez (University of León), providing a nuanced version of the origins of the crisis. Teixeira argued that there is not just one European crisis but five interdependent crises. The European response to the overall crisis has resulted in a partial renationalisation of the EU, jeopardising the basic constitutional principles and institutional framework defined in the Treaty, and paving the way for executive emergency constitutionalism. This may finally lead to the failure of the whole integration project, either through outright collapse or through mutation into a new and different integration project. **Michelle Everson** (Birkbeck, University of London) in her comment looked at the situation from a different angle, but nevertheless agreed with the authors' basic argument that there is a problem of lack of rule of law in the EU today. The session ended with a panel debate.

## Representation after Lisbon

Whereas the focus of the first session was particularly tailored to RECON's research on the EU's political economy, the next sessions were devoted to the presentation and discussion of selected papers based on the project's broader research agenda. **Christopher Lord** (ARENA) pointed to the problems of compound representation in the EU after Lisbon. He argued that a conflict might arise between compound representation and the strategic leadership of the European Council after the entry into force of the Lisbon Treaty. Lord presented three justifica-

tions for compound representation and some minimum system requirements, resting on greater inter-parliamentary coordination. **Carlos Closa** (Spanish National Research Council, CSIC) in his comment reflected upon the question of how compound representation in the European Union is defined.

## Media as a carrier for politicisation

**Hans-Jörg Trezn** (ARENA), together with **Paul Statham** (University of Bristol) presented research on the politicisation of Europe through media discourse. They found that a mediated public debate usually takes place at a national level and challenges the national elite. As a consequence,



Hans-Jörg Trezn (speaking) and Paul Statham

national elites take different stances and are pushed towards choosing sides. The question remains what kind of Europe politicisation will lead to? And can a decensus (as opposed to consensus) become so strong that it breaks the pro-integration elite? The transformation of the public debate during the development of the European constitution was presented as an example of politicisation. Due to several factors, such as a greater divide between creditor and indebted countries, the uncontrollable development of the crisis, high media attention and the mobilisation of



Panel debate with the contributors to the first session (from left): Pedro Teixeira, Michelle Everson, Stefan Collignon, Cathrine Holst, keynote speaker Giandomenico Majone, and moderator John Erik Fossum.

public and opposition, the euro crisis also has a potential for a high degree of politicisation. **Cathleen Kantner** (University of Stuttgart), commended their rich research for placing the public sphere into the discourse, and raised specific questions about the political bias of the interpretation of the Euro crisis.

### European identity in flux?

**Meltem Müftüler-Baç** (Sabancı University, Istanbul) discussed the EU accession process of Turkey and multiculturalism. She argued that the EU's particular identity shapes its relationship with Turkey, and that this identity is challenged by multiculturalism. However, the EU, as a cosmopolitan order, can be viewed as a political project that embraces multiculturalism and Müftüler-Baç's research maps key actors in this debate and discusses how they understand the EU. She claimed that this possible enlargement may become quite defining for Europe. **Helene Sjursen** (ARENA), highlighted the importance of this research for our understanding of Europe and the EU. Sjursen however pointed to some missing voices in Müftüler-Baç's analysis – those who are in favour of Turkish accession, and moreover challenged her to reflect upon the question of borders.

### Deliberating difference

The second day was devoted to further papers presenting some of RECON's research. **Sara Clavero** (Queen's University Belfast) discussed how current arrangements in the EU obstruct or enhance the gender-democratic quality of decision-making. She presented research that applies three

ing of preferential access to lobby groups; in consultation procedures there is no follow-up of proposals or opinions once they reach the Council; and gender-equality issues are generally absent in national media. Finally, although deliberative practices in the EU with regard to the *recognition and respect* of women's claims and voices are highly formalized, gender interests are pushed to the back of the agenda. Clavero concluded that current EU arrangements place serious constraints on gender democracy. **Anne Maria Holli** (University of Helsinki) praised the methodology and its application to gender studies, but also raised the question of if and how the approach could be applied to other policy areas.

### Parliaments in security politics

**Wolfgang Wagner** presented a paper co-authored with Dirk Peters and Cosima Glahn (all from the Peace Research Institute Frankfurt) on the role of national parliaments in the case of the EU's maritime mission Atalanta. Wagner argued that parliaments are a key player for democratic control, which should be involved also in the area of security and defense. By studying national parliaments, the European Parliament and inter-parliamentary cooperation, their analysis shows that none of the parliaments were actively involved in the mission's planning process, and that there is a patchwork of parliamentary control at the national level. This in turn limits the quality of democratic decision-making. Once launched, however, the mission was actively monitored by the EP. Parliamentary assemblies were also found to provide important opportunities for national governments to exchange and gain information on a military mission. Wagner concluded that there is a democratic deficit in the defense area due to structural obstacles. **Christopher Lord** raised questions such as why the European Parliament makes such an effort in an area where it has very few formal powers, and what constrains national parliaments' involvement.

### Integration through law

**Christian Joerges** (University of Bremen) finally presented research on the future of integration through law. After giving an overview of the evolution and legacy of this research, he discussed European law as being in a state of socio-economic *malaise*. Three conflict scenarios illustrates how the law is under threat, in his view. The three examples correspond to Polanyi's categories of money, labour and land. For the money example, Joerges used the institutionalisa-

tion of the monetary union and the ruling of the German Constitutional Court on the bail-out of Greece. For labour, he referred to the European Court of Justice's labour



Christian Joerges using Munch's famous painting as an illustration

law jurisprudence and the failure of the EU to create a welfare state. And for the land example, he used the institutionalisation of nuclear energy in the EU since the 1950s. He concluded that moves are underway towards a reconfiguration of the law-politics relationship. **Inger Johanne Sand** (University of Oslo) largely agreed with Joerges' conflict of laws perspective, but from a more sociological, rather than normative perspective, she saw a crisis of regulatory asymmetries at the EU level rather than a crisis of law.

### The future of European democracy

The final panel debate on the future of the European democracy touched various topics and was as multifaceted as the RECON project itself. RECON's 'founding fathers' **Erik O. Eriksen** and **John Erik Fossum** recollected some of the main questions and challenges the RECON project set out to solve and presented what has been learned during five years of research. Responding to the need to theorize a democratic alternative to the nation state and a federation, they pointed to the cosmopolitan model, which has been developed within RECON. They summarised the innovations of RECON's theoretical framework and discussed it in the broader perspective of the challenge of European democracy from a combined normative and analytical perspective. The key arguments of their paper 'What democracy for what Europe?' are presented below.

**Hauke Brunkhorst** (University of Flensburg) and **Rainer Forst** (Johann Wolfgang Goethe University Frankfurt) discussed how the EU was originally designed as an instrumental community. Brunkhorst explained the democratic deficit by pointing to the fact that the EU was founded on an economic, not political, constitution, whereas democracy should have been part of the constitution from the outset. Forst argued that a future



Anne Maria Holli comments on the presentation by Sara Clavero

principal indicators from deliberative democracy theory to selected EU decision-making processes of gender equality. Findings suggest that there is partial *inclusion* of women's representatives in the decision-making process, partly due to the technocratic nature of EU initiatives, leading to the self-exclusion of some groups and the power imbalance between gender equality lobbies and other groups. On *accountability*, the research points to a lack of transparency regarding the grant-





Left: Agnès Hubert (European Commission) with Hauke Brunkhorst. Right: Yvonne Galligan and Rainer Forst

challenge is to invent a democratic language for the EU, as the existing one is reserved by the political elites for the national democracy.

**Agnès Hubert** (Bureau of European Policy Advisers, European Commission) expressed the concern that tighter European integration, which is being promoted by the Commission in response to the crisis, is taking place without public contestation and deliberation. She also underlined the need for creative thinkers and conceptual innovation.

**Ben Crum** (Vrije Universiteit Amsterdam) argued that although national representatives link the national public spheres together as they engage in deliberation at the European level, they are not always able to link the two levels in the demanding two-level game. He

underlined that a strong European democracy depends on strong national democracies, and that democracy at the two levels should not be played out against each other.

Providing a concrete example of executive-led processes, **Helene Sjørusen** pointed to RECON findings showing that in decision-making processes within the foreign and security area the citizens are left behind. The EU commits itself to certain principles which point in the direction of a cosmopolitan order, but agreements are made behind closed doors and executive integration without parliamentary control is taking place.

As a starting point in dealing with the democratic deficit, **Yvonne Galligan** (Queen's University Belfast) argued that to go forward with building, deepening and developing

European democracy in the future, the Charter of Fundamental Rights could be taken as basic expression of the fundamental values of Europe. The Charter defines some shared values based on the rule of law, human rights and democratic contestation, and could thus constitute a basis of popular democratic legitimacy.

### More on the conference

The conference papers, as well as a full report and photos are available at the conference web page:

<http://reconproject.eu/projectweb/portal-project/RECONConcludingOsloNov11.html>

See also RECON's Press Room for a comment by Cathrine Holst in the Norwegian weekly newspaper *Morgenbladet* (in Norwegian). She presents Majone's view that there are only two ways out of the crisis: deeper European integration or a downscaling to a more limited economic cooperation between sovereign nation states. Questioning Majone's view that the latter is a more probable outcome, she points to research findings from RECON which contradict the 'no demos' thesis.

## What democracy for what Europe?

### A framework for a regional European democratic order

In the paper 'What democracy for what Europe?', Eriksen and Fossum lay the framework of a regional European democratic order by reflectively adjusting the principle of democratic self-government to their well-considered judgments of the present political order in Europe. Building on conceptual innovations such as *state-less government*, *constitutional synthesis*, *multilevel parliamentary field*, *layered sphere of publics*, and *working agreement*, they flesh out the core elements of a model of regional democracy.

The notion of *state-less government* posits that the EU is beyond intergovernmentalism, both in polity and constitutional terms, but that it can do without the coercive means of the state. Binding political and legal decisions can be made beyond the logic of 'veto-driven' international organisations and regimes. Competences have been conferred, powers shifted, and jurisprudence codified at the European level.

The concept of *constitutional synthesis* takes as its point of departure that the EU represents the first instance of establishing a new constitutional order out of a set of already existing (and persisting) state-based constitutional arrangements. Further, it underlines that the EU was initially established through a distinct and historically specific constitutional authorisation in the sense that the member states' constitutions authorised supranational constitutional-democratic integration.

The *multilevel parliamentary field* posits that parliaments in the EU are configured in an organisational field with some element of connectedness and structural equivalence.

What keeps the field together are patterns of interaction combined with a shared function and the role perception that comes with it: that of representing people's interests in EU decision-making. The characteristic features of the EU's parliamentary field can be discerned through the character and density of inter-parliamentary interaction; the character of the field's constitutive units (parliaments); and the manner in which these two dimensions interact to give overall shape to the field.

Finally, the notion of *layered public spheres* addresses the fact that a variety of publics exist in the post-national configuration. Some are not confined to national borders. In fact, there are virtual and speaking publics, and overarching publics transcending limitations of time and space made possible by new media technologies.

These elements, together with the idea of a *working agreement* represent the core characteristics of a new conceptualisation of regional European democracy. A book is in the pipeline which will further develop this framework.



John Erik Fossum and Erik O. Eriksen

# Europe's democratic challenge

RECON Outreach Conference, Oslo, 24 November 2011

RECON organised its second open 'outreach' event in Oslo on November 24<sup>th</sup>. The public seminar was held prior to the two-day academic concluding conference and presented key findings to a broad audience.

All photos: Annica Thomsson/UiO

The aim of the conference was to reach out to the wider public, practitioners and stakeholders. It was held at Litteraturhuset in Oslo, a popular venue for public events and societal debates. The seminar was part of the University of Oslo's 200<sup>th</sup> anniversary celebration and attracted close to 200 people from Norwegian ministries, parliament and political parties, various embassies, local and regional authorities, trade unions and employer's organisations, NGOs and media, as well as students and researchers.

The main purpose was to present snapshots of findings that would be of interest to people outside academia. Selected research results from all of RECON's research fields were presented. In addition, Norwegian Minister

The EU could be seen as an experiment in catching up politically with economic globalisation, but much remains for it to be both democratic and efficient in times of crisis. Eriksen then welcomed Foreign Minister Støre by challenging him to give his views on what should be done in Europe today: Should we move towards more democratic supranationalism and less national sovereignty in a time when nation-based democracy is not capable of facing up to aggressive financial speculations, and when Euroscepticism and nationalistic sentiments are on the rise? Should more competencies and powers be uploaded to the European level or should we rather go forward with some kind of inter-governmental system, which the more recent handling of the Eurozone crisis testifies to?

## Europe's paradox

Støre emphasized the profound interconnectedness in Europe, and that we are all in the current economic crisis together. In his view, the paradox is that Europe is failing in two areas in which it should excel. First, no other region should be better equipped than Europe to develop a common currency area, as there is no other region in the world with so much tradition, skill and able economies to develop the necessary institutions. Despite this, it has not been able to develop suitable technocratic solutions. To keep the common currency, there is a need to fill the institutional gaps on how it should be run, Støre argued. Second, Europe, which is the cradle of democracy, has failed to ensure the legitimacy of decision-making. In this time of crisis we witness that actions are taken, leaders are held accountable, and decisions are made and contested at the *national* level. On this background, the key challenge to democracy in Støre's view is the people's lack of trust and confidence in politicians.

## A constitutional future for Europe?

John Erik Fossum (ARENA), co-architect behind the RECON project, started the presentations of research findings by discussing the constitutional status of the EU. Together with Agustín José Menéndez (University of León), he has developed a *theory of constitutional synthesis* in an attempt to devise an explicit constitutional theory for



John Erik Fossum spoke on Europe's constitutional future

the EU. Fossum claimed that it is necessary to establish what kind of entity the EU is and what kind of constitution such an entity can have, as there are very different readings of this. Extensive research from RECON testifies to the fact that the EU is beyond being an international organisation unfit for a constitution.

Fossum outlined three necessary requirements for a fully-fledged constitution. First, it must be *formal* – it has to be designated as a constitution; secondly, it must be *material* – it must work in social practice; and thirdly, it must have *democratic credentials* – people must understand themselves as authors of the law they are subject to. According to Fossum, the Lisbon Treaty was an attempt to save the Constitutional Treaty. Although the leaders explicitly stated that the legal order could not be understood as a constitution, it functions as one, Fossum argued, and the institutions of the Union still understand it as one. But what credibility can it have as a constitution if the leaders and the member states do not fully acknowledge it as such? The current problem is founded in this tension, Fossum concluded.

## A European representative democracy?

Christopher Lord (ARENA) discussed problems of compound representation in the EU after Lisbon. A claim often made about the EU is that whatever democratic deficits may be alleged against it, it does at least combine several different channels of representation. But according to Lord, we cannot be sure that lumping together different forms of representation will add up to good representation.

Among the findings highlighted by Lord was, first, that representative practices can be more autonomous at the European level than is suggested by formal hierarchies of political control. Second, actors and not just institu-



Norwegian Foreign Minister Jonas Gahr Støre

of Foreign Affairs, **Jonas Gahr Støre**, held an opening keynote on Europe's democratic challenges.

RECON's Scientific Coordinator **Erik O. Eriksen** (ARENA) opened the event with a short introduction to the project in the context of the current crisis. He pointed to the fact that financial speculation and capitalism is global while democracies remain national.



tions matter; the behaviour of individual members of the European Parliament does affect their chances of re-election, and they rarely appeal to purely national considerations in order to justify their arguments. Third, the public's perception of the quality of representation at the European level is overwhelmingly conditioned by their experience of representation in the national arena. Fourth, although it is comparatively easy to adapt the formal representative institutions of an accession country to EU membership, it is harder to adapt the structure of party politics or civil society relations. Finally, Lord emphasized that there are large unresolved issues as to whether it is possible to combine a form of collective responsibility with a compound form of representation.



*Ulrike Liebert presented research on EU contestation*

### Contesting Europe

**Ulrike Liebert** (University of Bremen) looked at the EU's democratic challenges from below. She presented examples of how the EU is publicly contested: in national referendums on EU accession or treaty ratification; media contesting the EU's legitimacy; Euroscepticism; European Parliament election campaigns; and public intellectual debates about Europe. Findings suggest that national parliaments have become key arenas in EU politics, also in terms of public information, communication and debates. Studies also find that mainstream political parties contest specific institutional competences and policy reforms, whereas radical and extremist political forces more often contest European integration and legitimacy itself. The research testifies to an emerging transnational pattern where political parties debate Europe at the same time and on the same issues with similar arguments – a European public sphere. A transnational space of communication can also be identified in the media coverage of EU affairs. Finally, Liebert argued that the 'no demos' thesis; which states that the EU cannot be a democracy as long as there is no European identity, and no homogeneous and integrated Euro-

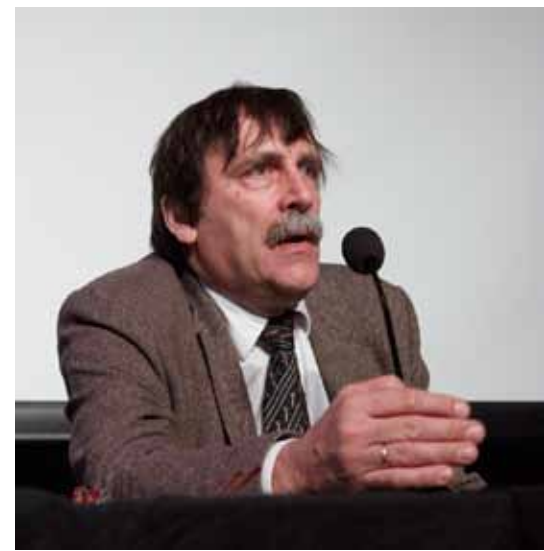
pean public sphere; is a misleading assumption. She asserted that contestations over Europe are troubling and present challenges, but that they also contain ideas and practices that may show the way out of the present paralysis by contributing to developing a new type of European political community. A living democracy with manifold forums where people can debate European issues, where national democracies are closely linked with European-level democracy, and with opportunities for citizens' direct political participation could complement the current modes of representation. The contestations might thus be interpreted as contributing to a revival of the EU rather than to the fall of the euro zone and the delegitimation of European integration, Liebert concluded.

### European or national identity?

**Zdzislaw Mach** (Jagiellonian University) picked up on the 'no demos' thesis and presented research on changing identities in Europe. He started by discussing how to approach the concept of identity, arguing that it should be perceived as a process, not as an essentialistic assumption based in culture and tradition. Identity evolves through dialogue and negotiation. Mach argued that EU enlargement created a new reality in Europe by encouraging mobility and dialogue, which is the essence of a process of identity formation. This has contributed to supplementing and reshaping national identities, in particular among younger generations. Mach, however, also warned about the conservative option which arises when younger generations take advantage of the freedom of expression and choice to construct their identity. Global changes and rapid societal transformations may result in mental and material insecurity, which in turn may lead to the emergence of a traditional, and sometimes even religiously fundamentalist or nationalistic identity.



*Christopher Lord discussed problems of representative democracy in Europe*



*Zdzislaw Mach discussed the transformation of identities in Europe*

Finally, he pointed to research on sexual minorities, which testifies to the fact that also minority groups use the European scene to find security and express their identity. Not only are they able to find possible support in European institutions, they have also found a new platform for promoting their interests, which may not be available at the national level.

### Security – beyond democracy?

**Helene Sjursen** (ARENA) discussed the possible democratic challenges to the EU's foreign, security and defence policy. Sceptics may counter that democracy is of little relevance to this field because it has traditionally been the prerogative of the executive, in line with established practices at the national levels. In Sjursen's view it is, however, difficult to find any principled arguments as to why this policy field should be exempted from democratic control. The main concern of RECON's research has thus been to investigate whether we can still conceive of this policy field as intergovernmental, or whether it has been stretched too far as to become another form of cooperation. If so, what would the democratic implications of this be?

Findings suggest that the ability of member states to control decisions is challenged, and that it is hard to identify who actually decides in this policy field. Key actors are national bureaucrats permanently based in Brussels who make cross-national decisions in a collective manner. Member states are thus not found to bargain on predefined interests. Moreover, although the national veto is still formally in place, researchers observe that member states increasingly refrain from using this right, or they change their position, in order to facilitate a common policy. The reasons and justifications for policies also refer to some idea of European values and interests. According to Sjursen, find-

ings testify to a policy-making process which is something between supranational and intergovernmental. It is a kind of transgovernmental policy area, which it would be difficult to put exclusively in the hands of a federal parliament. Simply strengthening the EP's powers would therefore not be sufficient in order to reconstitute democracy. Above all, there is a need to clarify lines of authority and power.

### Gender democracy?

**Yvonne Galligan** (Queen's University Belfast) asked whether gender democracy in the EU is a dream or reality. In a *gender democracy*, women's perspectives, voices and interests are fully integrated and recognised (*inclusion*), women's spokespersons are held accountable for the positions that they hold (*accountability*), and there is an understanding and respect for the claims to equality expressed by women (*recognition*). Research on the democratic quality of EU decision-making and the transposition of EU directives at the national level shows that there are multiple access points for the *inclusion* of women representatives and the expression of women's views at the European level. At the national level, however, there is an elitism that leads to the inclusion of women as discretionary rather than necessary. As for the *accountability* of women spokespersons at the EU level, reason-giving and justification for positions in the debates are in general highly developed, however, the effect of European norms of gender equality is limited at the national level. Although deliberations in national parliaments were often characterised by a wide range of views on women's social roles, the issue was often framed around national concerns and the equality content was absent. Gender equality is also *recognised*



Yvonne Galligan assessed the status of gender democracy in the EU

as a public good in debates at the EU level, but this common good comes into conflict with sectoral interests, in particular economic imperatives. National deliberations focused only on formal, not substantive, compliance with EU norms.

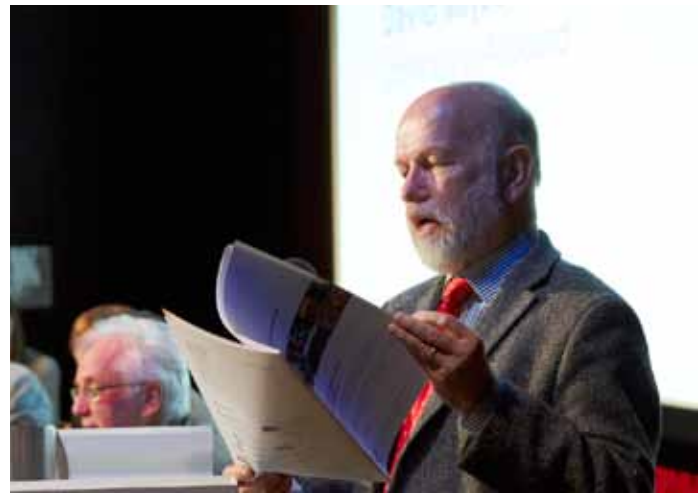
Galligan concluded that the effects of European integration on gender equality are limited by the conflict between member states and the EU level, stemming from different understandings of gender equality. There is an implicit rejection of EU equality norms at the national level. When the transposition of EU directives is substantive, it is because equality is part of the national discourse and the transposition is used as a support to the national legislative efforts.

### Is the monetary union inadequate?

**David Mayes** (University of Auckland) discussed the political economy of the EU, with a particular focus on the monetary union and the current euro crisis. He started by pointing to the reasons why the system has fallen apart. The original idea was a monetary union with considerable economic integration, firm admission hurdles, constraints on imprudent fiscal policy, limited fiscal transfers for the disadvantaged, and encouragement to structural change to ensure flexibility. However, the admission hurdles were not followed, and the constraints on an imprudent fiscal policy were poorly designed and weakly applied. This has led to limited structural change and hence limited flexibility in some countries. He concluded that the model is workable but that the execution has been flawed. Mayes continued to discuss the economic governance measures launched in 2011, underlining that higher growth is essential to debt reduction. To conclude, he argued that fiscal prudence is important, regardless of the regime, and cannot be avoided by an exit from the euro area. On the question if closer integration is needed, Mayes stated that it would only make a difference if the richer nations were prepared to contribute more, which is to be expected in a currency union. But the current process is still very much asymmetric, and most of the burden lies on the countries in difficulties. If this were a balanced process, it would have a better chance of success, he asserted.

### Constitutionalism beyond the state

Finally, **Christian Joerges** (University of Bremen) spoke on constitutionalism beyond the state. He discussed some research find-



David Mayes with RECON's pamphlet with findings

ings regarding comparative constitutionalism and the regulation of the economy within and beyond Europe. The emerging law in this field not only facilitates trade and opens markets, it also regulates the economy, and this needs to be explained. Among the cases studied in depth, Joerges highlighted two studies to illustrate the tension stemming from decisions taken in the economy being of a highly political nature. An analysis of the impact of the opening of markets on the Polish agricultural sector, studying laws on Genetically Modified Organisms, found a tension related to the constitutional structure. Here, the EU imposes laws of equal access to markets without considering the impact on society. A second study contrasts the European and the international level, and the impact of the WTO, asking who in the EU are able to take decisions on highly normative and political issues, and at times also highly ethical issues. Such dilemmas are of constitutional nature because they affect our fundamental values and orientations, as well as important economic and social interests.

### Discussions and media coverage

The independent political analyst **Aslak Bonde** commented on RECON's findings and provided his own take on the current situation, before opening the floor for questions and discussion.

On the conference day Støre was interviewed in the national radio morning news by NRK (Norwegian Broadcasting Corporation), praising the University of Oslo and ARENA for the RECON project. The conference was also attended by Norwegian media, and all the press coverage is available in RECON's Press Room: <http://reconproject.eu/projectweb/portalproject/Media.html>.

Live stream, photo gallery and full report from the event: <http://reconproject.eu/projectweb/portalproject/OutreachOsloNov11.html>



# New book: Rethinking democracy and the European Union

Erik Oddvar Eriksen and John Erik Fossum have edited the book *Rethinking Democracy and the European Union*, which appeared on Routledge in November 2011. The book asks whether EU politics require a new theory of democracy and draws some key conclusions from the RECON project.

While the Lisbon treaty was meant to clarify the European Union's role and political identity, it remains a challenge for politicians and decision-makers to define. This volume looks at both the concept of the EU as a political system, and analyses the meaning and status of democracy in Europe today.

The book draws upon leading scholars and practitioners from the RECON project to frame and analyse a range of institutional realms and policy fields, including constitutionalisation, representative developments, gender politics, civil society and public sphere, identity, and security and globalisation. Drawing together these strands, the book questions whether EU politics require a new theory of democracy. Moreover, it evaluates the relationship between union and state, and the possible future of post-national democracy.

With contributions by Ben Crum, Erik Oddvar Eriksen, John Erik Fossum, Yvonne Galligan, Magdalena Góra, Ulrike Liebert, Christopher Lord, Zdzislaw Mach, Agustín J. Menéndez, Helene Sjørusen, and Hans-Jörg Trenz. The book is part of the *Routledge Series on Democratising Europe*, edited by Eriksen and Fossum.

## Rethinking Democracy and the European Union

Erik Oddvar  
Eriksen and John  
Erik Fossum  
(eds)

Routledge, 2012



# New book: Multilayered representation in the EU

A new volume edited by Tatjana Evas, Ulrike Liebert and Christopher Lord appeared on Nomos in March 2012. The book brings eminent scholars together with RECON researchers from three sub-projects – EU constitutionalism; representation and institutional make-up; and civil society and the public sphere – to jointly discuss the EU's novel configuration of 'compound representation' in light of alternatives to parliamentary representation.

The evolving European Union brings up vital questions about where democracy is heading. This book contributes to this discussion by offering critical appraisals and constructive propositions as regards the novel configuration of 'multilayered representation'. A number of RECON researchers contribute to the book.

## A multilevel parliamentary field

The first section re-assesses the state of representation in the EU with a focus on the issues of political equality and public control in relation to the European and national parliaments. Three chapters in this part rely on research conducted within RECON's WP 3 – *Representation and Institutional Make-up*. **Christopher Lord** and **Johannes Pollak** argue that the German Constitutional Court in its 2009 Ruling on the National Act Approving the Treaty of Lisbon raises important questions about political equality in the apportionment of EP seats. **Sandra Kröger** with **Richard Bellamy** enquires whether domestic representative institutions can and should still provide a forum for either reasonable disagreement or control of power over issues of European governance. **Ben Crum** and **John Erik Fossum** contribute to the research field with the conception of the 'multilevel parliamentary field'. This notion refers to a system of parliamentary democracy beyond the nation state, therefore also offering a framework for better understanding the mechanisms and preconditions for effective democratic control in the EU.

## The role of European jurisprudence

The second section relocates the focus of the debate from the classic parliamentary representative institutions to national and European courts. Speaking to RECON's WP 2 – *The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared*, it asks to what extent these do, should or could play a role in protecting citizens' channels of representation or providing them with new avenues for

## Multilayered Representation in the European Union: Parliaments, Courts and the Public Sphere

Tatjana Evas, Ulrike  
Liebert and Christopher  
Lord (eds)

Nomos, 2012



representing their claims. **Tatjana Evas** and **Ulrike Liebert** compare the role of domestic constitutional courts in the EU system of multilevel judicial governance. **Carlos Closa** and **Pablo José Castillo Ortiz** present comparative data on the engagement of national constitutional courts with European integration through their adjudication on the constitutionality of the European treaties.

## The European public sphere

The third section addresses forms and preconditions for contestatory representation by political parties, civil society and the public sphere in EU politics and policy-making, which has been studied within RECON's WP 5 – *Civil Society and the Public Sphere*. Three chapters discuss the potential and shortcomings of such forms of representation in the EU from different angles. **Aleksandra Maatsch** explores party politics during EU Treaty ratification in the national parliaments of old and new EU member states. **Pieter de Wilde**, **Asimina Michailidou** and **Hans-Jörg Trenz** continue this debate by looking at online news media debates engaging citizens. **Ulrike Liebert** finally re-examines the widespread belief that the EU cannot build a representative democratic constitution as it lacks a necessary requisite: a European demos. She tests the 'no demos thesis' in different fields of discursive representation of the contentious debates about EU constitutional treaty reforms.

The book also contains chapters by Philippe C. Schmitter, Richard Rose, Dagmar Schiek and Harald Koch.

# European constitutional pluralism and the EU Constitution

RECON WP 2 workshop  
Madrid, 10-11 November 2011

The workshop 'European Constitutional Pluralism and the Constitution of the Union' was the concluding workshop of RECON's WP 2 on constitutional politics. The workshop gathered participants from this as well as other work packages, and also some external researchers.

RECON's research in this field has focused on three interconnected research themes: the constitutionalisation of the EU, the Europeanisation of national constitutions, and comparisons of constitutionalism in the EU and in other selected entities. This research endeavour has provided necessary input to the assessment of how constitutional factors increase or decrease the democratic legitimacy of the supranational and national levels in relation to each of the RECON models of democracy. The research has also aimed to identify which RECON model European constitutional practice approximates and how well the processes and the results of European constitutional practice reflect democratic requirements.

The workshop was organised by **Carlos Closa** (Spanish National Research Council, CSIC) and was hosted at the Center for Political and Constitutional Studies in Madrid. The key topic was how Europe understands and manages its underlying constitutional pluralism. The European constitution can be described as a regulatory ideal grounded in a pluralistic set of constitutional norms and in a plurality of institutional structures, without a vertical hierarchisation of them.



Carlos Closa, John Erik Fossum and Saskia Hollander

## Theorising EU constitutionalism

The workshop opened with a co-authored paper by **John Erik Fossum** (ARENA, University of Oslo) and **Agustín José Menéndez** (University of León) on the theory of constitutional synthesis. They argued that it is impossible to understand the EU's constitutional order without taking into account the national constitutional arrangements, which are the pillars of the EU constitutional order. In their opinion the common constitutional norms at the EU level should not be understood as a hegemonic constitutional order but rather as a norm that relies on the constitutional traditions of the member states. They underlined the fact that representative governments are a key factor in understanding the system of *constitutional synthesis*, a system that is based on imbrications and interdependence.

**Rainer Nickel** (Johann Wolfgang Goethe University) raised the question of how the 'conflict of laws' approach can contribute to the legitima-

tion of the EU. Nickel asserted that institutions erected by international treaties often lack democratic legitimacy and accountability. In addition, he noted the role of international tribunals in the constitutionalisation of the international legal order and that the European Convention on Human Rights (ECHR) has become an important element of the European constitutional order. He concluded by arguing for the need of constitutional pluralism in the EU due to the incomplete constitutionalisation in the EU.

According to **Paul Blokker** (University of Trento), who acted as a discussant of the first session, the idea of constitutional synthesis and the idea of conflicts of laws are both, albeit in different ways, looking for some kind of a monistic order. He sustained that the theory of constitutional synthesis is a way of overcoming conflicts and emphasized the need to reflect more over the domestic forms of pluralism and conflicts. **Bruno De Witte** (University of Maastricht) agreed that the EU has become a sophisticated institution with many constitutional features taken from national constitutional traditions. However, he warned that it is also an international organisation and concluded that the legal order of the EU has been built bottom-up and that states continue to be the masters of the treaties.

## EU democracy and the Lisbon Treaty

In the second session, **Christopher Lord** (ARENA) started by welcoming the idea of compound representation at the EU level but argued that this idea does not guarantee in itself a good representation – a form of representation that is



Aleksandra Maatsch, Ben Crum and Christopher Lord

democratic and controlled by citizens. He added that democracy is not distinctively defined by the satisfaction of needs or preferences, but by the citizens' exercise of rights of control.

**Aleksandra Maatsch** (CSIC) argued that citizen-related functions of national parliaments are key to fostering democratic control of EU policies and discussed how national parliaments' functions have been challenged by the integration process and how they have adapted to functioning in a multi-level polity. In her opinion, the new mechanisms introduced by the Treaty of Lisbon create a possibility for national parliaments to strengthen their control of the early stages of policy-making, not only by engaging in debates at the national level, but also within the framework of transnational organisations.

**Bruno de Witte** discussed the challenge for national parliaments to control the decisions taken by their governments in 'grey areas'. In his view, the largest advantage of the EU Council



Madrid. Gran Vía in the foreground © Guzmán Lozano

as compared to other institutions is that the EU Council can be split into groups by some gathering as heads of government to discuss a particular matter instead of as members of the EU Council. The EP does not exercise any control over such configurations, but the national parliaments can control the actions of their own governments in this way.

## Constitutional reform or treaty change?

**Carlos Closa** opened the third session by discussing the rule of unanimity in the ratification of EU treaties. After presenting the origins and evolution of the rule of unanimity in bilateral and multilateral treaties, he introduced four arguments against the rule of unanimity that were related to equality, efficiency, fairness, and the use of consent. The maintenance of the unanimity rule is due to the strict construction of the treaty amendment procedure, he claimed, before drawing three conclusions. First, the rule of unanimity shields national governments from the cost of failure of the treaties they have negotiated; second, it allows for the potential externalisation of courts; and third, it creates a highly specific constitution with a strong conservative bias.

**Saskia Hollander** (Radboud University Nijmegen) presented a co-authored paper with **Ben Crum** (Vrije Universiteit Amsterdam) on the drivers of the use of EU referendums. They exposed two arguments for the use of referendums: a constructivist one, based on the recognition that there are certain issues that go beyond the effective scope of established parliamentary procedures; and a rationalistic one, which affirms that the decision to hold EU referendums is controlled by national political elites to pursue their electoral interests in national politics. Limited evidence was found for a pure constructivist argument, and the evidence for normative arguments were not persuasive either, since



the decisions of holding a referendum result mainly from domestic electoral considerations. In conclusion they affirmed that referendums are a tool that governments may use whenever major EU decisions coincide with electoral challenges.

Discussant **Bruno de Witte** raised the question as to whether a decline in EU referendums provides in itself conclusive evidence for rejecting the constructivist argument. He also wondered whether we will see Euro-related referendums. As for Closa's paper he agreed that the unanimity rule has become increasingly problematic because of the growing number of member states, increasing controversies at the national level, and also due to the augmenting volume of the text and norms of the treaties.

The workshop provided ample room for debate on the question of constitutional pluralism in the EU and the nature of the EU constitutional order. This order needs to be democratic, transparent and subject to public control with a strong participation of national parliaments.

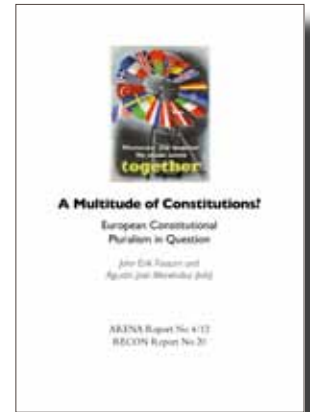
## RECON Report 20

### *A Multitude of Constitutions? European Constitutional Pluralism in Question*

John Erik Fossum and Agustín José Menéndez (eds)

This report discusses the merits of the theory of constitutional synthesis as a constitutional theory for a democratic European Union. The theory has been developed by John Erik Fossum and Agustín José Menéndez in *The Constitution's Gift* (Rowman and Littlefield, 2011).

The key component of the theory is the regulative ideal of a common constitutional law, of a constitution composed of a collection of national constitutions, which makes up the deep constitution of the European Union. Constitutional synthesis is comprised of normative integration and institutional consolidation which together constitute a distinct constitutional dynamic. In this report contributors from political science, sociology, law and history discuss the extent to which they find the theory promising, and the research agenda that the theory of constitutional synthesis has produced.



### New Book:

#### Learning from the EU Constitutional Treaty: Democratic Constitutionalization beyond the Nation-State

Ben Crum

Routledge, 2011



The negative results of the referenda on the EU Constitutional Treaty in France and the Netherlands, and subsequent low-key adoption of the Treaty of Lisbon raise complex questions

about the possible democratisation of international organisations. This book provides a full analysis of the EU Constitutional Treaty process, grounded in broader political theoretical debates about democratic constitutionalisation and globalisation.

As international organisations become permanent systems of governance that directly interfere in individuals' lives, it is not enough to have them legitimated by the consent of governments alone. This book presents an evaluation of the present EU Treaty of Lisbon in comparison with the original EU Constitutional Treaty, and analyses the importance of consent of the people, asking if saving the treaty came at the cost of democracy. Drawing first-hand on the European Convention and the referendum in the Netherlands, Ben Crum outlines an original political theory of democratic constitutionalisation beyond the nation-state, and argues that international organisations can be put on democratic foundations, but only by properly engaging national political structures.

## Website: The Europeanisation of national constitutions

The website on the Europeanisation of national constitutions was launched in October 2007. It has been continuously updated during the lifetime of the project and was completed by the end of 2011. It offers a comprehensive overview of how national constitutions are adapting to the process of European integration.

The website is mastered by the Spanish National Research Council (CSIC) in Madrid and offers detailed information and documentation on the ratification process of EU treaties by each member state, the parliamentary debates surrounding this issue at the national level as well as the judicial treatment that these treaties were given in the member states. Information is provided on all member states, candidate countries and potential candidate countries. For each country, the information is divided in four thematic areas:



**Constitutional provisions:** Information on specific provisions in each Constitution in four areas, concerning the European Union, international treaties, constitutional reforms, and referendums. A total of 380 references. Links to English versions of national constitutions by each member state.

**Parliamentary debates on the ratification of EU treaties:** Information on ratification debates in 25 of 27 national parliaments. A total of 150 debates in national parliaments, reports from Constitutional Committees on the ratification of EU treaties and speeches from the ratification periods of EU treaties.

**Case law related to EU treaties:** Documentation on national judicial decisions on EU treaties and EU legislation. A total of 96 decisions of the different Constitutional Courts, Supreme Courts or the jurisdictional court which has the power to revise the constitutionality of the EU treaties.

**Bibliography:** A comprehensive bibliography with a total of 326 texts for the 34 countries.

The website is an important outcome of WP 2 – *The Constitutionalisation of the EU, the Europeanisation of National Constitutions, and Constitutionalism Compared*. It is a useful tool for researchers, practitioners, policy makers, political actors, interest groups, informed readers, students and others interested in EU constitutionalism.

Website: <http://proyectos.cchs.csic.es/europeconstitution/>

# The conflicts-law approach on trial

Joint RECON/CRC 597 workshop  
Loccum, 17-19 October 2011

The workshop 'The Conflicts-Law Approach on Trial' was hosted at the Evangelische Akademie Loccum within the framework of WP 9 – *Global Transnationalisation and Democratisation Compared*. The event aimed at exploring the potential to evaluate normatively and to conceptualise legally – with the help of the conflicts-law approach to European multi-level system – conflicts generated in what Habermas called the 'postnational constellation'.

The workshop was the last of five joint workshops of RECON and the Collaborative Research Centre 'Transformations of the State' and was organised by Christian Joerges at the Centre for European Law and Politics, University of Bremen. Joerges, inventor of the *conflicts-law approach* and co-leader of WP 9, chaired the first session, which focused on the theoretical and sociological reconstructions of postnational patterns of conflict.

## Postnational conflict patterns

Poul F. Kjaer from the Johann Wolfgang Goethe University (JWGU) stressed the need for descriptive theory to support the normative reasoning by legal scholars. Kjaer presented the beginnings of his own effort at a theory of transnational constitutionalism in the form of three steps: formal organisations (as the true object of constitutions), the relations of these organisations to their social environment, and constitutionalism as the exercise through which the entities stabilise their expectations. Regina Kreide (Justus Liebig University Giessen) was equally critical of elaborating normative attempts to justify justice, and presented an informative overview of current theoretical approaches to transnational political conflicts, culminating in



The Protestant Academy of Loccum in Niedersachsen

a sketch of an approach that she called 'radical democracy'. Continuing on the interdisciplinary approach of conflicts law, Sabine Frerichs (University of Helsinki) gave an economic sociologist's view on the legal dimension of the globalised market society. Her argument matched ideas of conflicts law with those of conflict sociology, notably of the Polanyian kind, and canvassed a conflict between a commodified consumption/production of law (as economic choice) and a de-commodified reconstruction of

normativity (as social obligation). Tommi Ralli (University of Bremen) inquired about the analytical coherence and unity of the multi-dimensional, multi-level conflicts-law approach and its typology of conflicts, suggesting that differences between legal and political responsibility might help to illuminate the core of conflicts law.

## Law of postnational conflict

The second day started with a session on re-conceptualising the law of postnational conflict constellations. In a manifesto on the problems of democratic and social union, Florian Rödl (JWGU) emphasised the democracy-preserving role of a law of conflict of laws. He noted that, in the EU, voting rules balance between democracy and federalism, and this deficiency makes conflicts law the preferred alternative, over a federalism-beyond-the-state approach, for preserving democracy in Europe. Rainer Nickel (JWGU) argued likewise that democratic legitimacy is a justification for European constitutional pluralism. However, he concluded that the conflicts-law approach needs intensely a normative core – a core of constitutional *ius cogens*.

## Global administrative law

In the next session on the legitimacy of global administrative law, Ming-Sung Kuo (University of Warwick) viewed the equal treatment of the regimes involved as the starting point for understanding democracy in conflicts law. Without prejudicing the internally democratic decisions, the approach ascribed democracy to existing regimes and maintained the integrity of each regime. Kuo also drew comparisons with the global administrative law project which could be understood under the 'second dimension' of conflicts law. Karl-Heinz Ladeur (Bremen International Graduate School of Social Sciences) warned, in turn, of a risk of overreach with the conflicts-law approach, when questions of democracy and subsidiarity and the second or third dimensions are addressed, as conflict-of-laws methodology always presupposes that conflicting norms should be on a par with each other. Nevertheless, Ladeur saw that administrative action was an area where the reach of conflicts law could be broadened; namely, to include the organisation of legal procedures for governing the 'pre-decisions' produced in many projects before, or instead of any legally binding decision that could be taken to court.

## Conflict resolution and mediation

Alexia Herwig (University of Antwerp) summarised both analytic and normative dimensions of the conflicts-law approach, and applied the ideas to a situation where openness by the Appellate Body of the World Trade Organisation (WTO) leaves states to come to an agreement. In a discussion on regime collisions in *Tuna-Dolphin III*, Carola Glinski (University of Bremen) considered using general clauses of state law, together with certain principles of conflicts law, as vehicles for selecting what private rules from other levels than the state can be recognised as law. She included among the principles of



Christian Joerges, inventor of the conflicts-law approach  
Photo: Annica Thomsson/UiO

conflicts law such standards as subsidiarity, consensus and public interest, and effectiveness. By contrast, Robert Wai (Osgoode Hall Law School) applauded conflicts law for being an analytical method that does not start from divisions such as 'democratic' or 'undemocratic', but allows a range of matters to be taken in. Wai regarded inter-systemic collisions, including those of state and private ordering, as an area where conflicts law has a lot to contribute.

## Complementary approaches

Joost Pauwelyn (Graduate Institute of International and Development Studies, Geneva) provided a reality check at the international level for the three dimensions of conflicts law: law as a system (that is open to other legal systems), law as regulation (open to non-legal disciplines such as economics and science), and law as governance (open to private actors). Pauwelyn noted that the WTO, for instance, had opened up to other regimes, and that legal questions were being decided with reference to science and economic expertise. He paid special attention to the field of 'informal international law-making' and the accountability questions that come with it, and argued that, where non-law has legal effects, it should be regulated by law. According to Ralf Michaels (Duke University School of Law) there would be no 'conflicts-law approach' without the technique of conflict of laws (private international law). He illustrated this technique using 'characterisation' as an example, which he called a contingent, thus political, move translated into a doctrinal step, but a useful fiction in that it enables lawyers to get a grasp of the issues as if they were private and technical.

## Comitology in conflict resolution

On the third day, Henning Deters (University of Bremen) presented a case study on the abolition of the *Haushaltsglühhbirne incandescent bulbs* in the EU. Deters argued that comitology was in this case used not so much to deliberate, but as a subterfuge to obtain an internal ban as a substitute for a prior anti-dumping measure. Josef Falke and Olga Batura (both University of Bremen) discussed comitology after the Lisbon Treaty and the turn to agencification. They suggested a study of new European agencies for testing the applicability of the conflicts-law approach, and asked whether the agencies were an improvement as compared to comitology.



## GMOs as a regulatory challenge

In a concluding session, **Maria Weimer** (Maastricht University) commented on the lack of normative criteria for a legitimate transnational conflicts-law norm (noted by Nickel and others earlier). Drawing partly on the work of Howse and Nicolaïdis, Weimer enumerated several principles for conflicts law, including external accountability, deference to other legal orders, inclusiveness, review and revision, and contestation, illustrating how these criteria could be applied to the transnational governance of Genetically Modified Organisms (GMOs). Finally, **Karolina Zurek** (Swedish Institute for European Policy Studies, Stockholm) revisited the debate on the European GMO regulation and the emerging conflict between the rule of sound science and trans-scientific socio-economic concerns. Zurek analysed recent developments, in particular the examples of the new internal conflicts with recently acceded states.

## Special Issue: Conflicts Law as Constitutional Form in the Postnational Constellation

**Christian Joerges, Poul F. Kjaer and Tommi Ralli (eds)**

*Transnational Legal Theory*, Vol. 2, No. 2, 2011



This special issue of *Transnational Legal Theory* emerges from a multi-disciplinary exercise combining insights from law, political science and sociology. Common to the contributions is a preoccupation with the role of law in an increasingly globalised world. The guest editors, one jurist, one socio-legal scholar and one legal theorist, all share a deep-felt interest in the effects of globalisation and Europeanisation on legal scholarship and legal practice – and especially on the potential of a ‘conflicts law approach’ as a legal answer to the challenges posed by contemporary developments.

The seven articles in this issue illustrate the problem constellation to which the evolving conflicts-law approach responds and discuss problems with, or limitations of, the approach. Contributors are the editors, RECON scholars Agustín José Menéndez, Florian Rödl and Poul F. Kjaer, as well as Marc Amstutz, Martin Herberg and Michelle Everson. The issue includes a selection of contributions to RECON Report 15, which contains the proceedings of the fourth joint RECON/CRC 597 workshop.

## Changing modes of parliamentary representation

**Joint IPSA/RECON workshop  
Prague, 14-15 October 2011**

The Research Committee on Legislative Specialists of the International Political Science Association (IPSA) and RECON’s WP 3 – *Representation and Institutional Make-up*, organised a joint workshop in Prague. The purpose was to address current issues in parliamentary research and to broaden the research agenda, as well as to discuss final results and theoretical contributions of WP 3.

The workshop was hosted by the Institute of Sociology, Academy of Sciences of the Czech Republic (ASCR) in Prague. **Zdenka Mans-**

The programme was organised around three topics. The patterns in which parliaments function within transnational governance were explored in the first panel, which was chaired by the RCLS co-chair, **Werner Patzelt** (University of Dresden). The workshop continued with panels on the transforming linkages between democratic legitimacy, representation and accountability, with one panel devoted to RECON’s research. The panel ‘RECON – Representation and Institutional Make-up’ was chaired by WP 3 coordinator **Christopher Lord** (ARENA, University of Oslo) and contained three papers by project-affiliated researchers. Lord discussed representative

claims-making in the European Parliament and presented theoretical and methodological reflections applied to European parliamentary debates. **Emmanuel Sigalas** (Vienna Institute for Advanced Studies) presented research on the performance and re-election of Members of the European Parliament. **Petra Guasti** (ASCR) discussed the Europeanisation of parliaments in Central and Eastern Europe. The final panel addressed the interaction between parliaments and organised interest groups, civil society organisations and lobbying groups.

In addition to the academic discussion during the workshop, the workshop provided an opportunity to disseminate the research from RECON to a broader academic audience, students and interested public.

## New Book: The Challenge of Democratic Representation in the EU

**Sandra Kröger and Dawid Friedrich (eds)**

Palgrave Macmillan, 2012



What does political representation in the European Union look like? Which actors claim to act as representatives of which constituency? What role does the EU play in (re)shaping political representation?

This volume addresses these questions, adding to the emerging debate on political representation and democracy in the EU, and includes original conceptual and empirical chapters by emerging and leading scholars in the field. It clarifies the roles of different political actors such as parliaments, civil society organizations and subnational authorities. It explores representative claims made by these actors in different contexts, be it the digital public sphere or parliaments, and elucidates the impact of the EU on the institutions and practices of political representation.

The volume argues that the transformation of representation in the EU is characterized by processes of diversification, albeit with an uncertain ability to re-configure the link between representation and democracy.

Contributions by Asimina Michailidou and Hans-Jörg Trenz, Emmanuel Sigalas and Johannes Pollak, Pieter de Wilde, and editor Sandra Kröger, in addition to Cristina Fasone, Dawid Friedrich, Elena Griglio, Erik Jentges, Håkan Johansson, Simona Piattoni, Heiko Pleines, Tapio Raunio, Meike Rodekamp, and Stijn Smismans.



Prague. The castle overlooking the Vltava river © European Commission

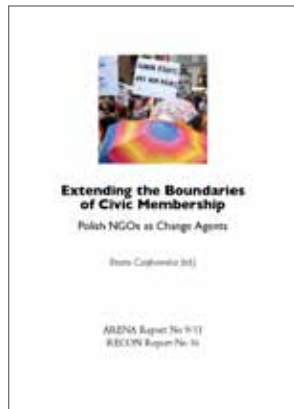
**feldová**, team leader for RECON at the ASCR and RCLS Program Chair, and **Petra Guasti** were the workshop coordinators. The papers presented in the five panels ranged from purely theoretical topics to quantitative papers and included both comparative contributions and case studies.

## RECON Report 16

*Extending the Boundaries of Civic Membership  
Polish NGOs as Change Agents*  
Beata Czajkowska (ed.)

What kind of collective identity or narrative is required for a federal European Union or a post-national polity? Does each *kratos* have a unique *demos*? Or can multiple *demos* or collective identities coexist?

This report investigates empirically the contending narratives of collective identity in contemporary Poland, both a national state and a (relatively) new EU member state. It focuses on non-governmental organizations' (NGOs) role in advancing the rights and civic membership of women and sexual minorities. Employing strategic action field theory, the report finds multiple contending narratives: a waning incumbent exclusive-nationalist conception of Poland; an inclusive-nationalist narrative; and, common among NGO activists, a Kantian rights-based conception of civic membership. Contrary to theories suggesting a static one-to-one mapping between *kratos* and *demos*, the evidence in this report suggests that continuous contestation among identity narratives is more characteristic of living democracies.

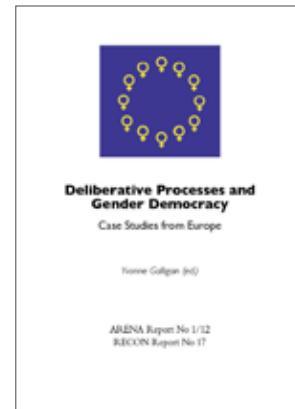


## RECON Report 17

*Deliberative Processes and Gender Democracy  
Case Studies from Europe*  
Yvonne Galligan (ed.)

The gendered nature of democratic decision-making in Europe is the focus of this collection. Using the notion of 'gender democracy', the contributions critically examine the formulation and transposition of gender equality through the Goods and Services Directive. These studies reinforce the importance of including the 'qualified and affected' community in law-making processes: in this case, women.

More generally, the contributions bring to light the inbuilt weaknesses of democratic institutions, practices and processes from the perspective of gender equality. As a gender-focused democratic 'audit', the report offers important insights into what works and what must be changed if European and national democracies are to deliver on gender equality.

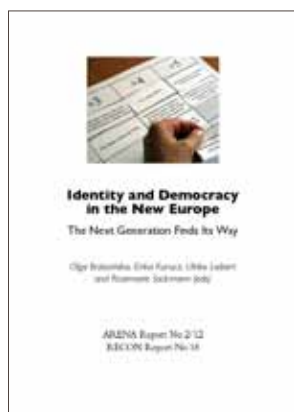


## RECON Report 18

*Identity and Democracy in the New Europe  
The Next Generation Finds Its Way*  
Olga Brzezińska, Erika Kurucz, Ulrike Liebert and Rosemarie Sackmann (eds)

RECON suggests three possible paths of democratic development in the EU: a confederation of nation states; a multi-national federation; and a post-national, cosmopolitan democracy. To a lesser or larger degree they all require a collective identity for the legitimacy of the polity.

This report explores which identity narratives prevail among university students of three member states: Germany, Hungary and Poland. Based on their evaluations of democratic processes and civic membership, Q methodology is used to elicit and construct identity narratives. The report finds considerable resonance with the three RECON democracy narratives, but also some dissonance. Most narratives express both a national and a European identity; the opposition assumed in theory is not found in practice. Some narratives mix elements of the three RECON models in unexpected ways, raising questions about conceptual distinctions. Comparing the three parallel country studies reveals several crossborder commonalities among identity narratives and few differences between so-called 'old' and 'new' member states.



## RECON Report 19

*The European Rescue of the European Union?  
The Existential Crisis of the European Political Project*  
Eduardo Chiti, Agustín José Menéndez and Pedro Gustavo Teixeira (eds)

This report analyses the many dimensions of the existential crisis of the political project of European integration unleashed by the financial crisis of 2007-2008.

The contributions to this volume consider the nature of the European crisis, and in particular, its manifold character – a crisis of the economic model, of the fiscal structure, of the financial sector and finally and foremostly, a deep political crisis. The causal roles played by the twin projects of the single market and of asymmetric monetary integration leading up to the crisis, and the erosion of the tax capacities of European states at the root of the financial troubles of the *Sozial Rechtsstaat* are also dealt with.

The volume moreover contains the reprint of a classical text by Lionel Robbins on the political philosophy of market integration in Europe, which reveals a rather surprising streak in the thought of the LSE professor. It also includes the English translation of the ruling of the German Constitutional Court on the Greek assistance package of September 2011.



Download reports from RECON's website [www.reconproject.eu](http://www.reconproject.eu) or order a paper copy by e-mail to [admin@reconproject.eu](mailto:admin@reconproject.eu)



# EU Democratic Audit website

The European Union Democratic Audit website aims to provoke discussion about indicators and data sources which might be used to assess how democratic the EU is. The website was launched in October 2011 and has been extensively updated after the end of RECON.

A framework for evaluating the democratic qualities of EU institutions through a democratic audit has been developed within WP 3 – *Representation and Institutional Make-up*. Christopher Lord (ARENA) is conducting the EU Democratic Audit based on a set of ten indicators for measuring democracy. The website sets out the democratic indicators and proposes data sources that are helpful to measure these:

- 1. Rights:** How far, how equally and how securely do citizens enjoy rights of free speech, association and assembly?
- 2. Free and fair elections:** How far and how equally can citizens exercise public control through free and fair voting?
- 3. Choice and political competition:** How far are voters offered choices that allow them to exercise public control as equals?
- 4. Electoral participation:** How far and how equally do citizens participate in elections that determine the composition of the legislature and appointments to leading executive offices?
- 5. Representation:** How representative are bodies that legislate or supervise the exercise of executive and administrative power, and how far and how equally can citizens exercise public control through those bodies?
- 6. Civic capabilities:** How plural and how independent is the range of social groups, organised interests and communications media that seeks to influence the polity? How equal is their access to public institutions and how equally accessible are they themselves to individual citizens?
- 7. Civil society:** How far are the decisions of the polity deliberated within a public sphere that allows all points of view to be considered, justified and decided in relation to all others, free of inequalities in power and resources?
- 8. Public sphere:** How far and how equally do citizens enjoy civic capabilities needed for them to exercise public control over the polity?
- 9. Rule of law:** How far does the polity rest on a rule of law that itself encompasses no more and no less than those conditions required for citizens to author their own laws as equals?
- 10. Demos and the polity:** How far is the polity accepted as a unit whose citizens can make decisions that are morally and legally binding on one another? And how far can citizens acting as equals exercise public control over the design of the polity itself?

The website is mastered by ARENA, University of Oslo:  
[www.sv.uio.no/arena/english/people/aca/chrilor/democratic-audit](http://www.sv.uio.no/arena/english/people/aca/chrilor/democratic-audit)

## RECON Online Working Papers

The RECON Online Working Paper Series published pre-print manuscripts on democracy and the democratisation of the political order in Europe. The topics of the series correspond to the research focus of RECON's work packages. The last publications in the series include:

2011/38

*Carlos Closa Montero*  
**Moving Away from Unanimity: Ratification of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union**

2011/37

*Cathleen Kantner*  
**European Identity as Commercium and Communio in Transnational Debates on Wars and Humanitarian Military Interventions**

2011/36

*Sara Clavero, Yvonne Galligan, Cathrine Holst, Róza Vajda and Katarzyna Zielińska*  
**RECON: A Feminist View**

2011/35

*Ben Crum*  
**What Do We Owe the Poles (or the Greeks)? Three Emerging Duties of Transnational Social Justice in the European Union**

2011/34

*Federica Bicchi*  
**The Role of Information and Knowledge in the EU Foreign Policy System? Evidence from Heads of Mission's Reports**

2011/33

*Dariusz Niedzwiedzki*  
**Regional, Ethnic, European? Complex Identity Construction of Silesians in the Context of Cultural Borderland**

2011/32

*Cathrine Holst*  
**Equal Pay and Dilemmas of Justice**

2011/31

*Michelle Everson and Christian Joerges*  
**Reconfiguring the Politics-Law Relationship in the Integration Project through Conflicts-Law Constitutionalism**

2011/30

*Cathleen Kantner*  
**Debating Humanitarian Military Interventions in the European Public Sphere**

2011/29

*Waltraud Schelkle*  
**Choice in European Reforms of Social Policies: The Case of Public Employment Services**

2011/28

*Elisabeth Wisniewski*  
**Coming to Terms with the 'Legitimacy Crisis' of European Foreign Politics: The European Parliament Pushing the Frontiers of Consultation**

2011/27

*Mark Thomson*  
**Democracy, Inclusion and the Governance of Active Social Policies in the EU Recent Lessons from Denmark, the UK and France**

2011/26

*Katherine Lyons and Christine Cheyne*  
**Social Insurance Mechanisms in the European Union**

2011/25

*Mattias Iser*  
**Dimensions of a European Constitutional Patriotism**

Download the papers at:  
[www.reconproject.eu](http://www.reconproject.eu)



## New Book: Collective Identity and Democracy in the Enlarging Europe

Magdalena Góra, Zdzisław Mach and Katarzyna Zielińska (eds)

Peter Lang, 2012



The enlarged and enlarging European Union is a novel political project in motion. The supranational institutions created for six member states over 50 years ago are influencing the everyday lives of more than 500 million European citizens in 27 countries. In addition to being national citizens, such as French, Polish or Hungarian, they are now also Europeans. This generates the following questions. How do ongoing political processes affect who the Europeans are? What is the content of their reconstructed identity? What are the consequences of changes in collective identity formation for political processes in Europe?

This volume is the result of five years of research on the link between democracy and the functioning of the European Union, undertaken as part of the RECON project. It brings together contributions covering recent research dealing with the changing nature of collective identity formation processes in contemporary Europe.

## Forthcoming books from the RECON project

### The Costs of Children Parenting and Democracy in Europe

David Mayes and Mark Thomson (eds)

Edward Elgar, 2012

This book considers the various 'cost' implications of caring for children from a gender perspective. These costs include fewer employment choices, limited childcare options, risks of welfare dependency, difficulties in striking a work-life balance, a gendered division of labour at work and in the home, and lower fertility rates. As these costs are often caused by a lack of real or substantive choices for parents, especially mothers, the volume considers what this means from a democratic point of view and in terms of being a full citizen. (Greater equality in access to employment is fundamental to women's achievement of full social citizenship.) In bringing together several different national perspectives, it addresses Europe-wide concerns with raising female employment levels across Europe as well as providing greater access for working parents to childcare as a way to help them achieve a better work-life balance.

### Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere in Making Europe's Order

Ulrike Liebert, with Tatjana Evas, Alexander Gattig, Petra R. Guasti, Aleksandra Maatsch, Kathrin Packham and Ewelina Riekena

Ashgate Publishers, 2013

The democratic legitimacy of the European Union is neither exclusively a question of supranational institutional design, nor does it primarily derive from the democratic autonomy of the member states but depends on effective vertical and horizontal linkages among the multiple layers constituting the European political community of states and citizens. Bringing together explorations of six different social fields of European citizenship agency involved in European constitutional politics leading from the Laeken Summit to the Lisbon Treaty – from information and opinion shaping to political will formation and decision-making - the present book provides novel and unique contributions to the political and legal sociology of democratizing the EU from below, or the democratic integration of Europe.

## More about RECON

RECON's website [www.reconproject.eu](http://www.reconproject.eu) offers a comprehensive overview of research activities, publications, events and news from the project, including:

- + A searchable **database** with 1,650 publications and presentations by all affiliated researchers
- + 60 **conferences** staged by the project
- + 12 **RECON Newsletters** with updates on research findings and publications and comprehensive conference reports
- + 125 papers issued in the **RECON Online Working Paper Series**
- + 20 **RECON Reports**
- + RECON's **Press Room** with policy memos, leaflets and media coverage



RECON is an Integrated Project supported by the European Commission's Sixth Framework Programme for Research, Priority 7: Citizens and governance in a knowledge-based society.

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## Special Issue: The EU's Common Foreign and Security Policy: The Quest for Democracy

Helene Sjursen (ed.)

Journal of European Public Policy, Vol. 18,  
No. 8, 2011



This special issue critically examines the claim of an emerging democratic deficit in the field of foreign and security policy. In order to do so, it is necessary to have a clearer picture of the

degree and form of integration in this domain. It is only when this is clarified that we can establish what kinds of democratic problems, if any, may have arisen.

The issue points to key questions dealt with in RECON's WP 6, which analyses the EU's foreign and security dimension and includes articles by several RECON-affiliated scholars: Helene Sjursen, Federica Bicchì, Christopher Lord and Erik Oddvar Eriksen.



**Routledge  
Series: Journal  
of European  
Public Policy  
Special Issues  
as Books**

Two special issues of JEPP edited by RECON scholars have been republished with Routledge in 2012:

**Agency Governance in the EU**  
Berthold Rittberger and Arndt Wonka (eds)

**The EU's Common Foreign and Security Policy: The Quest for Democracy**  
Helene Sjursen (ed.)



The pamphlet **Reconstituting Democracy in Europe - Snapshots of Findings** presents RECON's research in brief to a non-academic readership.

To order publications or pamphlets, please send an e-mail to: [admin@reconproject.eu](mailto:admin@reconproject.eu)