Conference ‘Democratic constitutionalism in Europe’
University of Oslo
4-6 November 2014

Organised by ARENA Centre for European Studies, University of Oslo

Background
The bicentennial celebration of the Constitution of Norway in 2014 prompted the Norwegian Parliament to launch a major research program, through the Norwegian Research Council, aimed at investigating the societal, economic and political conditions for the development and flourishing of constitutional democracy.

ARENA has been running one of the projects stemming from that call, under the label The Norwegian Constitution in a Changing European Context (NORCONE). We have considered the nature of democratic constitutionalism in today’s Europe and evaluated how European and global developments shape constitutional democracy in Norway.

The present conference is the major and concluding event of the NORCONE project. By holding it on 4 November 2014, a date which marks the bicentennial of Norway’s accession to Union with Sweden, we want to highlight how important the relationships with the external world are in the shaping of all states, and in particular, Norway, as democratic states.

Key themes
What is the state of democratic constitutionalism in the world, but very particularly, in Europe?

European studies have long been preoccupied with the constitutional credentials of the European Union. Can a polity such as the EU have a constitution? Can the European constitutional settlement, midway between international law and democratic constitutionalism, be overcome, or should it better be preserved as it is? Can integration and democracy be reconciled by other means than the writing of a European constitution that deserves its name?

The multifaceted and profound crisis that has hit Europe since 2007 has led to rapid and deep changes in European constitutional law, both at the supranational and the national level. It has brought forth a deeper existential dimension which brings up the question of the very viability of Europe as a site for sustainable constitutional democracy. As an intrinsic part of that the very viability of European states as social and democratic States of Law (Rechtsstaaten) has come under heavy scrutiny. The crisis has brought into full flourish the question as to whether there is a future for the social and democratic Rechtsstaat in Europe.

Does further integration offer any such assurance? Or have we reached another historical cul de sac in which we have to reconsider the relationship between democracy and integration? What kind of European constitutional law is needed to rescue both the European Union and its Member States from the present predicament? What kind of relationship between the individual and his/her political community, between regions, nations and Europe is to be constituted to ensure
sustainable democracy in Europe? Can democracy flourish if the Union is reduced to a mere facilitator of economic competition? What kinds of duties are required to attach citizens to a Union that is considered viable and legitimate by its respective citizens? Can the three critical components of democracy, integration and monetary union be kept together, or is it impossible under present institutional conditions?

The conference places particular emphasis on combining theoretically informed and empirically grounded assessments of the status of constitutional democracy in Europe, and the implications for Norway. To that end, the conference includes normative debates coupled with empirical investigations of a broad range of institutional spheres and issue-areas.

**Structure**

The **first conference day** is devoted to plenary presentations and panel debates.

**Keynotes: What form of democracy is possible in today’s Europe?**

The first half consists in a number of keynote presentations (and discussants) aimed at providing us with ‘the big picture’ of democratic constitutionalism in Europe now. What is the nature of the European Union in constitutional terms? What is the present status of democracy in Europe? What has the euro-crisis done to constitutional democracy at both the national and the supranational level?

**Panel debate: Is the EU the only game in town?**

The second half of the first day focuses on the EU in relation to its members and associated non-members. It consists in a panel debate that gathers prominent experts on European integration and member and associated non-member states and has the title: is the EU the only game in town? It discusses what options the EU has, what options states in Europe have and the implications of membership and non-membership. This provides a further opportunity to reflect on the implications of the crisis and consider these in light of membership – non-membership status. There will also be specific focus on the situation for Norway, as an associate non-member state. What is the condition for a closely associated non-member such as Norway? Being a rule-taker appears akin to voluntary submission under hegemony. Is that an apt description of Norway (and the other EEA states)? Is that also the case for Switzerland?

**Debate: Nordic constitutional democracy in a Europeanised context**

The conference will also include a late afternoon parliamentary debate on these questions among Scandinavian parliamentarians.

The **second and third days** are devoted to parallel workshops that permit in-depth and more specific investigation of the more substantive and institutional conditions and circumstances of constitutional democracy in the EU and Norway. The key themes of the conference are further scrutinised in four parallel workshops.

The *European Law Journal* will hold the annual meetings of its editorial and advisory boards on the second day of the workshop.
‘Democratic constitutionalism in Europe’

Preliminary programme
Tuesday 4 November 2014

9.00-13.00
What form of democracy is possible in today’s Europe?
What is the nature of the European Union in constitutional terms? What is the present status of democracy in Europe? What has the euro-crisis done to constitutional democracy at both the national and the supranational level?

Venue: Aud 2, Helga Engs hus

09.00 Welcome
Ole Petter Ottersen, rector University of Oslo
Olemic Thommessen, President of the Norwegian Parliament

Introduction
John Erik Fossum, ARENA Centre for European Studies

09.45 Keynote
Reflections on European constitutionalism post-1989
Andrew Arato, The New School for Social Research, New York
Commentator: Wojciech Sadurski, University of Sydney (tbc)

10.30 Keynote
Title tba
Agustín José Menéndez, University of León and ARENA
Commentator: Bruno De Witte, European University Institute

11.15 Coffee

11.30 Keynote
Integration through law, economic constitutionalism and the new modes of economic governance: The OMT controversy in context
Christian Joerges, Hertie School of Governance
Commentator: Inger Johanne Sand, University of Oslo

12.15 Keynote
Title tba
Kalypso Nicolaïdis, University of Oxford
Commentator: Chris Lord, ARENA University of Oslo

13.00-14.00 Lunch
**14.00-16.00**

**Is the EU the only game in town?**

Panel debate

This panel debate discusses what options the EU has, what options states in Europe have and the implications of membership and non-membership. This provides a further opportunity to reflect on the implications of the crisis and consider these in light of membership – non-membership status. There will also be specific focus on the situation for Norway, as an associate non-member state. What is the condition for a closely associated non-member such as Norway? Being a rule-taker appears akin to voluntary submission under hegemony. Is that an apt description of Norway (and the other EEA states)? Is that also the case for Switzerland?

*Venue:* Aud 2, Helga Engs hus

Norway’s EU affiliation: What is the alternative?

**Ingvild Næss Stub**, State Secretary, **Norwegian Ministry of Foreign Affairs** (tbc)

In the panel: **Joachim Blatter**, University of Lucerne  
**Erik O. Eriksen**, ARENA University of Oslo  
**John Erik Fossum**, ARENA University of Oslo  
**Carol Harlow**, London School of Economics and Political Science  
**Imelda Maher**, University College Dublin  
**Johan P. Olsen**, University of Oslo  
**Harm Schepel**, University of Kent  
**Daniel Thym**, University of Konstanz

**18.00-20.00**

**Nordic constitutional democracy in a Europeanised context**

Parliamentary debate

This debate will gather parliamentarians from Norway, Denmark and Sweden to discuss today’s constitutional context and challenges. Do we take the current situation seriously enough?

*Venue:* Wergeland, House of Literature, Oslo

Nordic democracy in an international context  
**Sverker Gustavsson**, Professor, Uppsala University

The implications of European integration  
**Poul Skytte Christoffersen**, former Danish Ambassador to Belgium

In the panel: **Karin Andersen**, Norwegian Storting, Socialist Left Party  
**Nicolai Astrup**, Norwegian Storting, Conservative Party  
**Jette Christensen**, Norwegian Storting, Labour Party  
**Steen Gade**, Danish Folketing Socialist People’s Party  
**Carl B. Hamilton**, Swedish Riksdag, Social Democrat Party (tbc)  
**Sveinung Rotevatn**, Norwegian Storting, Liberal Party  
**Björn von Sydow**, Swedish Riksdag, Social Democrat Party (tbc)

20.30  Conference dinner at Bølgen og Moi, Tjuvholmen
Wednesday 5 November 2014

09.00-11.00   European Law Journal Editorial Board meeting
11.30-12.30   European Law Journal Advisory Board meeting

09.00-17.00   Parallel workshops:
Workshop 1: Law and democracy in Europe
Workshop 2: The European executive order
Workshop 3: Europe’s social substrate
Workshop 4: Constitutionalising European foreign and security policy?

12.30-13.30   Common lunch for all parallel sessions

Thursday 6 November 2014

09.00-12.30   Parallel workshops continued:
Workshop 1: Law and democracy in Europe
Workshop 2: The European executive order
Workshop 3: Europe’s social substrate
Workshop 4: Constitutionalising European foreign and security policy?

12.30-13.30   Lunch and conference conclusion
Workshop 1: Law and democracy in Europe
Conveners: Erik Oddvar Eriksen and John Erik Fossum

This workshop focuses on law and democracy and takes stock of the present status of democratic constitutionalism in an EU that is not only still in the throes of crisis with heightened executive dominance and technocracy but that has also become more differentiated. This parallel session will start by examining the nature of the crisis and the implications it has for the EU as a political-legal system, and for the EU’s relations to its citizens. Particular emphasis will be placed on challenges associated with executive dominance, technocracy and differentiation. With regard to the latter it is useful to examine whether the crisis context is shifting from differentiated integration to differentiation. The latter encompasses differentiated integration but also might include two new differences, namely that some states integrate more closely whilst, at the same time and for connected reasons, others disintegrate from their previous levels of involvement with the Union; and that even notionally full members may come to be regarded as having different membership status. These developments in turn raise interesting questions for closely associated non-members such as Norway. What are the implications of these developments for democratic arrangements? Are there any prospects for representative-democratic institutions to ‘fight back’ and restore/improve democracy? What are the implications of differentiation for the theory and the practice of democracy? The question is whether citizens are capable of governing themselves in a multilevel political entity marked by patterns of authority and/or policy-making that vary in unprecedented ways along territorial and functional lines.

Dinner at Festningen restaurant 19:30

Panel 1: The crisis: implications for law and solidarity
Michelle Everson, Birkbeck, University of London
Erik Oddvar Eriksen, ARENA, University of Oslo
Philipp Schink, Goethe University, Frankfurt

Panel 2: The challenges of technocracy and executive dominance
Cathrine Holst, ARENA, University of Oslo
Sergio Fabbrini, LUISS University, Rome
Ben Crum, VUA, Amsterdam

Panel 3: How to think of representation in an increasingly differentiated Europe?
Chris Lord, ARENA, University of Oslo
Johannes Pollak, HIS, Vienna
John Erik Fossum, ARENA, University of Oslo
Hauke Brunkhorst, University of Flensburg
Daniel Gaus, Goethe University Frankfurt
Workshop 2: The European executive order

Convener: Morten Egeberg and Jarle Trondal

The workshop welcomes papers within three main topics: Centre formation; administrative integration; and co-existing orders.

With regard to centre formation, the aim is to map and explain (1) the establishment and change of EU-level executive bodies (Commission, EEAS, agencies); (2) decision behaviour in EU-level executive bodies (e.g. what is the relative importance of nationality and organizational position? Under what conditions are such bodies able to act relatively independently of national governments?); and (3) to whom (if any) are EU-level executive bodies accountable in practice?

The aim of the second topic of administrative integration is to (1) map and explain behaviour within national agencies (e.g. what is the relative importance of ‘steering signals’ originating from national ministries, EU-level bodies, international organizations and ‘sister agencies’ in other countries?) and the role of transnational regulatory networks in this respect; (2) investigate if more ‘direct’ implementation of EU policies leads to more harmonized practices across Europe; and (3) to what extent and how various implementation structures that span levels of governance become institutionalized practices, and their robustness in times of crisis.

Finally, the workshop aims to map and explain change and effects of co-existing orders, such as bilateral diplomacy, international organizations and EU bodies: under what conditions will a new order layer upon, or replace, existing orders? How do co-existing orders impact on governance (processes) and accountability relationships?

Dinner at Brasserie Hansken 18:00

Koen Verhoest, University of Antwerp
Renaud Dehousse, Science-Po, Paris
Tobias Bach, Hertie School of Governance, Berlin

Hussein Kassim, University of East Anglia, Norwich
Martijn Groenleer, Delft University
Eva Ruffing, University of Hannover

Anchrit Wille, Leiden University
Michael Buess, University of Lucerne
Johan P. Olsen, ARENA, University of Oslo
Åse Gornitzka, University of Oslo

Mathias Johannesseen, University of Oslo
Manuel Szapiro, European Commission
Frode Veggeland, Institute of Health and Society, University of Oslo
Nina M. Vestlund, ARENA, University of Oslo
Workshop 3: Europe’s social substrate

Convener: Hans-Jörg Trenz

Crisis induced social constraints and conflicts test the capacity of the political system (both nation state and EU) to respond to the needs and demands of society. This workshop is concerned with the contestation of legitimacy across societies and political systems. From a comparative and cross-disciplinary perspective we will explore how the ‘European crisis’ has generated deep and ongoing conflicts about European integration within and across national domestic politics, how it has fuelled debate over the authority of the constitutional state and of transnational regimes of governance, how it has pit northern countries against southern ones, citizens against elites and ultimately how it has also fundamentally put into question the efficiency and morality of the European free market and its capacity to guarantee welfare, sustainable growth, and equal distribution of goods and benefits.

The different contributions of the panel will explore these contestations within and across national arenas. They will look into the carriers of these contestations: public intellectuals, political parties and a growing number of protest movements and their various allegiances and frictions. They will further investigate how political conflicts are channelled through different media outlets, amplifying and interconnecting perceptions of interests, identity and solidarity.

The objective is ultimately to delineate the contours of the contested European social space and to discuss the legitimacy impact of contested European politics on the democratic constitutional state and the prospects for the constitutionalisation of the European integration project.

Dinner at Sjømagasinet Tjuvholmen 19:00

Panel 1: Political contestations of capitalism
Paul Blokker, University of Trento
Ulrike Liebert, University of Bremen
Christian Lahusen, University of Siegen

Panel 2: Popular resistances and protest in times of crisis’
Ruby Gropas, EUI
Cristiano Bee, University of Surrey
Aline Sierp, Maastricht University

Panel 3: Euroskepticism in times of crisis
Asimina Michailidou, ARENA, University of Oslo
Hans-Jörg Trenz, ARENA, University of Oslo/University of Copenhagen
Susannah Verney, University of Athens
Simon Usherwood, University of Surrey
Workshop 4: Constitutionalising European foreign and security policy?

Conveners: Helene Sjursen, ARENA and Bruno Oliveira Martins

This workshop brings together legal scholars and political scientists to discuss the constitutional and democratic implications of developments within the domain of foreign and security policy. The main questions to be addressed are: what, if any, is the constitutional identity of the EU in the domain of foreign and security policy? And what are the democratic implications of a putative constitutionalisation of this domain? Contributors will address these questions from a variety of theoretical and normative perspectives and through a focus on different empirical dimensions related to the EU’s global role.

Both procedural and substantive issues are of relevance in order to capture the EU’s constitutional identity and its democratic implications. There may be competing understandings of the EU’s constitutional identity, and the way in which the EU’s global actoriness is understood, defined and interpreted is thus also of relevance. The organisational form of the EU in this domain is contested. A number of scholars suggest that it has moved beyond intergovernmentalism. But its foreign and security policy is still made according to procedures that are different from those of a state. Does it make sense at all then, to use constitutional categories for understanding the foreign and security domain of the EU?

In order to establish this one approach we need to examine the key legal/institutional features of the putative transformation of European foreign and security policy, as well as the practice of policy making. Where does political authority really lie; what kinds of relations are established between the member states of the EU in this domain; which institutions (ought to, and are equipped to) guarantee the respect of key constitutional/democratic principles (member states or the EU institutions)?

But conceptualising ‘the nature of the beast’ may be easier if we know what the EU does and not only how it does so. The question of the EU’s constitutional identity may also be usefully approached by examining substantive issues. The scope of European security policy is constantly expanding. The EU aims to develop a comprehensive approach to security that combines civilian and military aspects. Further, matters of internal and external security are increasingly intertwined. Also with regard to substance, then, the EU defies traditional state-like categories and produces outcomes that may differ in important ways from the policies of states. At the same time, in so far as the EU aspires to the command of its own coercive power, it is particularly worthwhile addressing the question of the legitimacy basis of this actor, and assessing the normative underpinnings of its policies.

Analysis of the substantive dimension of the foreign and security domain entails a focus on how security is practiced. But insights into the EU’s constitutional identity as well as the status of key principles of democratic constitutionalism may also emerge from studying how security is understood and defined in the particular context of the EU.

Ultimately, these analyses of the specific domain of foreign and security policy should contribute to enhance our understanding of EU constitutionalism in general.

Dinner at Restaurant Havsmak 19:30