Constitutional Politics in the European Union: Parliamentarization and the Institutionalization of Human Rights

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(1) Research Question

The proposed project pursues a theoretical and an empirical interest. The theoretical interest is to further develop and test a specific approach to the study of international institutions: strategic action in international community. The empirical interest is to explain the processes and outcomes of constitutional politics in European integration in two areas which have not been systematically studied in a theory-oriented fashion and which constitute a prima facie puzzle for both rationalist and constructivist institutionalism. Both interests are linked: The project starts from the claim that the approach of strategic action in international community is best suited to explain constitutional politics in Europe.

The approach of strategic action in international community is a response to the rationalist-constructivist debate that has shaped the study of international institutions in recent years (see Schimmelfennig 2002; 2003). It combines elements of both social theories into a synthetic approach. On the one hand, and in line with rationalist institutionalism, it starts from the assumption that actors in European integration are strategic actors, that is, they pursue self-defined, individual interests in interdependent decision situations. On the other hand, and in line with constructivist views, it posits that strategic action in Europe is embedded in a tightly knit cultural environment ("community"), which provides specific constraints and opportunities for strategic action. In other words, the approach assumes that the thrust of Europeanization does not consist in the remoulding of identities and interests. Nor is it simply the development of a novel level of decision-making with new formal rules. Rather, it is the emergence of a community environment for political action.

(Pluralistic) international communities are characterized by a common *ethos* (a set of fundamental values and norms that defines it collective identity and distinguishes it from other international communities) and a high *interaction density* (permanent and relevant

contacts and exchanges between its members) but still rely on *decentralized authority* and rule-enforcement. What are the effects of such an international community on strategic action?

(1) The community ethos enables actors, but also forces them, to switch to an "arguing" mode of negotiation and to justify their preferences on the basis of the fundamental community values and norms. In other words, the community environment generates *rhetorical action*, the strategic use of arguments to enhance the legitimacy of one's own claims and to delegitimize those of one's opponents. This community effect strengthens the negotiating power of those actors whose preferences happen to be in line with (albeit not necessarily inspired by) the community ethos.

(2) Rhetorical actors enter into an *information game* (Goffman) in which the actors manipulate the community ethos to their advantage but at the same time check each other's arguments for impartiality and consistency and seek to disclose the manipulations of their opponents. High interaction density increases the symmetry of this information game, that is, it increases the likelihood that opportunistic argumentation is detected.

(3) In international communities, "image" is a vital resource for successful social action. This makes *social influence*, the use of social rewards and punishments, which enhance or tarnish the image of a community actor, an effective instrument of rule-enforcement in the absence of centralized authority and interest-based self-enforcement. For fear of losing "face", the image of a community member in good standing and their argumentative credibility, actors can be shamed into acquiescing to ethos-conforming policies.

I assume that, within a given international community, the strength of these "community effects" depends on several conditions:

    (1) *Constitutiveness*: The more constitutive a policy issue is or the more it involves fundamental questions of community purpose, the easier it is for interested actors to bring in questions of legitimacy and to frame it as an issue of community identity that cannot be left to the interplay of self-interest and bargaining power.

    (2) *Legitimacy*: To the extent that a community rule is determinate, symbolically validated, coherently applied in practice and adheres to a norm hierarchy (Franck 1990), it becomes difficult for the shamed member to rhetorically circumvent its practical implications.

    (3) *Resonance*: The more the rule in question matches domestic beliefs and norms, the more it will resonate when appealed to in a process of argumentation.

(4) *Publicity*: The more public the argumentation process, the stronger the effects of social influence.

It is the purpose of the proposed project to test and further develop this approach in the field of EU constitutional politics. Constitutional politics refers to all politics aimed at changing the membership, the institutional set-up, and the horizontal and vertical distribution of competences in the EU. It is connected to one of the core questions motivating research in Department B of the MZES – the future of democratic governance in Europe. Under the current structure of the MZES research program, it would probably fit best in research area 2 "Governance in Europe".

(2) State of Research

The bulk of the literature on constitutional politics is descriptive, normative and prescriptive. Descriptive work seeks to capture the "essence" or "specificity" of EU constitutionalism. Normative and prescriptive work is predominantly informed by legal scholarship and the political theory of democracy.

The positive, theory-oriented causal and empirical analysis of constitutional negotiations and outcomes has been a stronghold of rationalist intergovernmentalism which regards economic interdependence, commercial interests, bargaining power, and the institutionalization of state commitments to bargaining outcomes as the central factors in the treaty and institutional development of the EU (Moravcsik 1998). However, rationalist studies on the delegation of competences to EU institutions have focused on the Commission (see, e.g., Pollack 2002) or the European Court of Justice (see, e.g., Garrett/Kelemen/Schulz 1998) while neglecting other aspects of constitutional politics – such as parliamentarization and the institutionalization of human rights. Moreover, these processes are difficult to explain on the basis of rationalist intergovernmentalist premises. In a rationalist perspective, the actors in constitutional politics seek to institutionalize competences and rules of decision-making which are most likely to maximize their utilities in future political bargains for which the constellation of actors and preferences is uncertain. If that is the case, it is puzzling why governments should unanimously agree to transfer their collective decision-making power or constrain their autonomy constitutionally, e.g. by strengthening the competences of the European Parliament or institutionalizing human rights at the EU level. Against this background, even rationalist

authors refer to the role of norms, e.g. to explain the delegation of competences to the EP (Bräuninger et al. 2001: 64; Pollack 2002).

However, the constructivist literature on European integration, which takes identity and norms as their central explanatory variables, argues that identities and constitutional ideas not only differ strongly among the EU member countries but also changed little over time (see, e.g., Jachtenfuchs/Diez/Jung 1999; Marcussen et al. 1999; Wagner 1999). Yet, if ideational convergence or international socialization has not taken place, it is still puzzling why the EU should have undergone progressive democratic constitutionalization. It is even more puzzling that this democratic constitutionalization has taken place and accelerated as the membership and its constitutional ideas have become more heterogeneous and less federalist as a result of enlargement.

(3) Work of Applicant

In a previous project on the enlargement of the EU and other international organizations and on the international socialization of non-member states to the Western community and its organizations, I have developed and used the approach of strategic action in international community in another field of constitutional politics ("membership") in European integration (see Schimmelfennig 2001; 2002; 2003; forthcoming). Indeed, the main idea behind this project proposal was to test and apply an approach developed for the "widening" of the community in the area of "deepening". In an earlier paper, I mapped the academic debate about legitimate rule in the EU (Schimmelfennig 1996).

(4) Research Strategy

The project will deal with two central processes of democratic constitutionalization, which constitute puzzles for both rationalist and constructivist institutionalism: parliamentarization and the institutionalization of human rights at the EU level. The main research question is: How and under what conditions does the constitutionalization of the EU advance in these two fields? The hypotheses to be tested are derived from the approach of strategic action in international community: The processes of parliamentarization and the institutionalization of human rights in the EU are characterized by rhetorical action and social influence; their outcome depends on the legitimacy of the norms in question, their resonance with the actors, the publicity of the process, and the argumentative credibility of the actors. The units of observation are formal constitutional changes in the EU. For each change, we observe

whether and to what extent it is accompanied by parliamentarization and/or institutionalization of human rights codification. These are the dependent variables, which are categorized with regard to degree: no, declaratory, informal, and formal parliamentarization and human rights institutionalization.

The project combines conditional and process-tracing analysis to increase analytical leverage. The conditional analysis follows Ragin's Qualitative Comparative Analysis (Ragin 1997) and seeks to establish (configurations of) conditions under which parliamentarization and institutionalization of human rights occur (to different degrees). It includes the conditions postulated by the approach of strategic action in international community; but other (inductively plausible) conditions will be added and tested as well. For this analysis, the project aims at analyzing the entire universe of cases (formal constitutional changes). It is expected that there is sufficient "across-case" variation between the parliamentarization and human rights cases as well as "within-case" variation between constitutional changes at different points in time to arrive at meaningful analytical results. However, the analysis has to be sensitive to the problem that constitutionalization in the EU is likely to be a path-dependent process.

In a second step, the project moves on to process-tracing (George/Bennett 1998) or analytic narratives (Bates et al. 1998). For the process-tracing analysis, cases will be selected, which are representative for different conditional configurations, in order to analyze the causal mechanisms of constitutionalization. Process-tracing consists in investigating in detail how the established conditions and path-dependencies play out in the EU decision-making processes and whether these processes conform to the hypothetical expectations of rhetorical action and social influence effects. Depending on the sources available for the cases to be selected, process-tracing will be based on archival documents, interviews, and secondary sources such as press reports to establish the preferences, information, and strategies of the actors.

(5) Time and Funding
I apply for DFG funding for two years beginning in the spring or summer of 2003. The requested funding includes two full-time positions (one each for the analysis of parliamentarization and the institutionalization of human rights) as well as funding for research and conference travel.

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