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Political Science Series

The Constitutionalization of the European Union

Explaining the Parliamentarization and Institutionalization of Human Rights

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share "work in progress" before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschafts-wissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

Parliamentarization and the institutionalization of human rights are two processes of constitutionalization in the EU that constitute a puzzle for explanations inspired by both rationalist and constructivist institutionalism. We propose to analyze these processes as strategic action in a community environment: Community actors use the liberal democratic identity, values and norms that constitute the EU's ethos strategically to put social and moral pressure on those community members that oppose the constitutionalization of the EU. Theoretically, this process will be most effective under conditions of high salience, legitimacy, publicity and resonance. In a Qualitative Comparative Analysis (QCA) of the EU's constitutional decisions from 1951 to 2004, we show salience to be the by far most relevant condition of constitutionalization in the EU.

Zusammenfassung

Parlamentarisierung sowie Institutionalisierung von Menschenrechten sind zwei Konstitutionalisierungsprozesse in der EU, welche nicht durch rationalen und konstruktivistischen Institutionalismus erklärt werden können. Wir schlagen vor diese Prozesse als eine strategische Aktion in einem Gemeinschaftsumfeld zu analysieren: Gemeinschaftsakteure verwenden strategisch eine liberaldemokratische Identität sowie Werte und Normen, welche das Ethos der EU begründen, um sozialen und moralischen Druck auf jene Gemeinschaftsmitglieder auszuüben, die sich der Konstitutionalisierung der EU entgegensetzen. Aus einer theoretischen Perspektive heraus wird dieser Prozess am effektivsten sein, falls die Bedingungen von hoher Salienz, Legitimität, Öffentlichkeit und Resonanz erfüllt sind. Anhand der konstitutionellen EU-Entscheidungen von 1951 bis 2004 zeigen wir mittels Qualitative Comparative Analysis (QCA) auf, dass Salienz bei weitem die wichtigste Bedingung für die Konstitutionalisierung der EU darstellt.

Keywords

Constitutionalization, European Union, Institutionalism, Strategic Action, QCA

Schlagwörter

Konstitutionalisierung, Europäische Union, Institutionalismus, Strategische Aktion, QCA

General note on content

The opinions expressed in this paper are those of the author and not necessarily those of the IHS Department of Political Science

Contents

Introduction

The development of representative parliamentary institutions and the codification of fundamental rights constitute processes which are foundational for liberal democratic polities. In this paper, we argue that these developments are, however, not solely restricted to the domain of the nation-state. In the European Union (EU), over the past half century, the European Parliament has undergone a remarkable transformation from an assembly endowed with supervisory powers to a directly-elected legislator, co-deciding most secondary legislation on equal footing with the Council of Ministers. While human rights were not institutionalized in the founding Treaties of the European Communities, the European Court of Justice (ECJ) began to make references to fundamental rights in its jurisprudence since the late sixties (Stone Sweet 2000). The recent past has seen the codification of fundamental rights in the Charter of Fundamental Rights and, most recently, in the Treaty establishing a Constitution for Europe. Yet, the processes which underlie these two developments are fundamentally different to the 'parliamentarization' and institutionalization of human rights in nation-states. In the EU, these processes have not been triggered 'from below' by civic protest or even revolutionary movements, or as a result of the intervention of foreign powers.

The phenomenon we refer to as 'constitutionalization' is the process whereby the EU's institutional architecture and legal order increasingly come to reflect the fundamental norms and principles of liberal democracies. The central focus of this paper is thus to identify the dynamics and mechanisms that brought and continue to bring about parliamentarization and institutionalization of human rights: Why and under what conditions have human rights become increasingly enshrined in the EU's legal architecture? Why has the European Parliament (EP) come to acquire powers over time that resemble those of national parliaments more than those of any parliamentary assembly of an international organization (Malamud and de Sousa 2004; Rittberger 2005: 2-3)?

We will argue that for explanations inspired by both rationalist and constructivist institutionalism these two phenomena constitute a puzzle which has not yet been resolved. To counter this state of affairs, we propose to analyze the constitutionalization of the EU as 'strategic action in a community environment' (Schimmelfennig 2003). According to this approach, community actors can use the liberal democratic identity, values and norms that constitute the EU's ethos strategically to put social and moral pressure on those community members that oppose the constitutionalization of the EU. Theoretically, strategic action will be most effective in a community environment if constitutional issues are highly salient, constitutional norms possess high international legitimacy and resonate well with domestic norms, and if constitutional negotiations are public. In a first attempt to test our argument empirically, we conduct a Qualitative Comparative Analysis (QCA) of the EU's constitutional

decisions from 1951 to 2004. While the results generally confirm the hypothesized conditions, they reveal salience to be the by far most relevant condition of constitutionalization in the EU.

To develop our argument, we will proceed as follows. In the ensuing section, we will discuss the integration theoretic literature and illuminate why the state of the literature is unsatisfactory with regard to the explanations and cues offered to shed light on the parliamentarization and the institutionalization of human rights. We then introduce strategic action in a community environment as an alternative theoretical perspective. Section 4 describes our research design, the cases and the data, and section 5 presents our preliminary QCA findings. Section 6 concludes.[1]

1 The research for the paper has been funded since 2004 by the Thyssen Foundation and the Mannheim Center for European Social Research. Our collaborators in this project, Alexander Bürgin and Guido Schwellnus, have contributed case study data to this paper.

1. The constitutionalization of the EU: A theoretical puzzle

Integration theorists have for long debated the causes of transfers of sovereignty from the domestic to the supranational level. The theory-oriented causal and empirical analysis of 'constitutional' negotiations and outcomes has been a stronghold of rationalist liberal intergovernmentalism which regards economic interdependence, commercial interests, bargaining power, and the institutionalization of state commitments to bargaining outcomes as the central factors in the institutional development of the EU (Moravcsik 1998).[2] Other rationalist studies on the delegation of competences to EU institutions – inspired by principal-agent theory – have focused on the Commission or the ECJ (Pollack 1997; 2003) while neglecting other aspects of constitutional politics – such as parliamentarization and the institutionalization of human rights. It has been demonstrated that these processes are difficult to explain on the basis of both rationalist intergovernmentalist as well as constructivist premises (Rittberger 2005).

1.1. Rationalism and constitutionalization

From a rationalist perspective, 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, however, the constellation of actors and preferences is uncertain. In order to determine what kind of rules maximize an actor's utility, rationalists make auxiliary assumptions regarding those interests and preferences integral to their utility function. Rationalist explanations for institutional choices in the EU stress a number of functions exercised by institutions which induce political actors to delegate sovereignty. First, institutional choices can reduce the transaction costs associated with decision-making and thus carry efficiency-enhancing effects. For instance, slimming a legislative procedure by reducing the number of readings or, more drastically, reducing the number of veto players involved in decision-making may speed up decision-making or reduce the potential for stalemate or non-decision and hence reduce the costs of decision-making. However, especially with regard to the latter example, attempts to improve the efficiency of institutional arrangements may carry significant distributional implications. Actors may challenge existing institutions not merely to improve the efficiency of decision-making but also to improve their capacity to affect policy decisions (Tsebelis 1990; Knight 1992). The second strand of

2 The two constitutionalization phenomena have been well-described in the literature. For parliamentarization, see Corbett (1998), Maurer (2003), Westlake (1994); for the institutionalization of human rights, see Alston (1999), McCrudden (2001), Quinn (2001). Yet, as far as human rights are concerned, there is no theoretically-driven literature *explaining* institutionalization.

literature thus looks at actors as policy-seekers, who prefer those institutions which best help them to 'lock in' their preferred 'policy-streams'.

In the EU literature, Hix (2002) has advanced a rationalist argument as to why the EU member states decided to reform the co-decision procedure at Amsterdam by scrapping the third reading, thereby improving its overall efficiency. Yet, at the same time, by scrapping the third reading, the member states formally improved the position of the EP in the legislative game, thereby redistributing decision-making power from the member states to the EP. Hix thus asks why the EP 'won at Amsterdam' and stipulates that an exclusive focus on the Amsterdam Treaty negotiations obscures that the reform of the co-decision procedure was first and foremost the achievement of 'rule interpretation' by Members of the EP (MEPs) of the Maastricht provisions of the co-decision procedure (see also Rasmussen 2000; Farrell and Héritier 2003). At Amsterdam, the member states merely institutionalized formally or *de jure* what was already common practice, i.e. the *de facto* operation of the Maastricht version of co-decision. Hix argues that even though the "governments do not expect these new rules to redistribute power to the EP, as the governments MEPs seek for a favorable interpretation of the new rules and threaten to jeopardize the legislative process if the Council is not willing to accept the EP's interpretation. Since there is at least one member state government which is indifferent between the *de facto* operation and the *de jure* rules, the initial status quo cannot be enforced and hence, once the next constitutional reform-phase comes about, the EP will propose to the member states to formalize the *de facto* operation of the legislative rules. Hix, however, qualifies the scope of the applicability of this 'automatism' by introducing two conditions which have to be met if the *de facto* operation of constitutional rules is to be formalized into *de jure* rules: firstly, there must be zero redistribution of powers between the *de facto* operation of the old and the *de jure* operation of the proposed new rules; secondly, there have to be collective efficiency gains of the new procedure such as greater transparency or greater simplicity in the actual operation of the procedure (see Hix 2002: 272). If these conditions are met, even the most recalcitrant government is unlikely to veto a proposal which entails efficiency and transparency gains. Hix's argument constitutes a systematic attempt to explicate conditions under which the EP is able to successfully challenge the *de jure* Treaty rules. Yet, the two aforementioned conditions, which are crucial for parliamentarization to succeed, are too restrictive to provide a comprehensive account of the EP's empowerment. First, we need empirical evidence to know whether member states acquiesced to co-decision reform due to the expected efficiency-enhancing effects or whether other considerations played a role. Hix's argument about the efficiency-enhancing effects of the 'interpreted' co-decision procedure is not backed up by empirical evidence: Making a functional argument about the expected efficiency-enhancing effects of co-decision reform is not the same as providing an argument that looks at actors' actual motivations. Secondly, in contrast to the expectations derived from Hix's efficiency-based explanation, reforms of legislative decision-making rules in the EU only rarely result in Pareto-improving bargains. As a result of subsequent Treaty reforms, decision-making efficiency has been substantially hampered by the reform of legislative rules. Schulz and König (2000) show that

legislative reform in the EU reduces decision-making efficiency since "giving the Parliament a formal role in the legislative process significantly increases the duration of the decision-making process" (Schulz and König 2000: 664; see also Rittberger 2005).

Efficiency-based arguments thus offer a poor fit for explaining the increasing role the EP is playing in legislative decision-making, let alone for the parliamentarization phenomenon as a whole. Opting for a policy-seeking argument as point of departure, Bräuninger et al. (2001) argue that political actors will attempt to create and to sustain those rules from which they expect the generation of 'policy streams' which maximize their policy preferences under given constraints (such as the unanimity rules at IGCs). Bräuninger et al. (2001) develop and test a set of hypotheses which reflect this underlying assumption about member states as 'policy-seekers' and institutions as instruments for member states to reap the 'policy streams' they expect institutions to help generate (see also Steunenberg and Dimitrova 1999). First, the authors propose that changes in the voting rules in the Council and EP participation in the legislative process can only come about when all member states expect to be better off under the proposed institutional changes. They find that member states' net expected utilities (i.e. the gains expected from institutional reform resulting from the Amsterdam Treaty), even though they vary substantially across member states, are all greater than zero when compared with the status quo. Second, the authors propose and find confirmation for the proposition that member states advocate institutional changes along *issue specific lines* if they expect to be better off as a result (i.e. if the calculate the net gain from institutional choices in each individual policy area). In their discussion of the results, the authors state that their models fare well in accounting for the move to qualified majority voting or the retention of unanimity in various policy areas in the Amsterdam Treaty, yet their findings are unsatisfactory as far as the EP's participation in the legislative process is concerned: whereas member states "take into account their individual expected gains from future policy-making when deciding in the Council's voting quota for future decision-making", the same does not hold for the EP. Bräuninger et al. thus conclude that "the results on the EP's participation indicate different reasons for its choice. Commitments of a certain number member states do not sufficiently explain the participation of the EP. We suspect that policy-seeking delegations may be guided by different 'central ideas' when deciding on both voting rules" (2001: 64).

A further attempt to explain the extension of the EP's (legislative) powers grounded in a policy-seeking approach has been advanced by Moravcsik and Nicolaïdis (1999). Explaining member state governments' decision to empower the EP by reforming the co-decision procedure at Amsterdam, they offer the following logic: Social democratic parties and governments in the Council supported an increase in the EP's legislative powers given that – at the time of the Treaty negotiations – there existed a left-wing majority of MEPs in the EP. This left-wing majority in the EP, so the argument, rendered the decision to increase the legislative powers of the EP 'easy' for the mainly social democratic chiefs of government during the Amsterdam negotiations. This claim, however, is not supported by any data. More

fundamentally, however, if the decision of the predominantly left-wing chiefs of government was based on the instrumental calculation that a left-wing majority in the EP would (help) produce legislation closer to the respective governments' ideal points than a right-wing dominated EP, Moravcsik and Nicolaïdis assume that governments are extremely short-sighted and demonstrate little understanding of the logic of EP elections as 'second order national contests' which tend to provide electoral benefits to those parties in opposition domestically. Hix argues "by strengthening the EP's power, the centre-left governments increased the likelihood of centre-right policies at the European level. Hence, Moravcsik and Nicolaïdis's explanation only holds if it includes the assumption that the governments negotiating the Treaty of Amsterdam made a major miscalculation about the future political make-up of the EP" (2002: 269).

Pollack (1997; 2003) has analyzed the delegation of powers from member states to EU organs – the Commission, ECJ and EP – from the perspective of principal-agent (P-A) theory. P-A theory stipulates that principals may delegate four functions powers to their agents: monitoring the compliance with agreements among principals; filling in 'incomplete contracts'; providing credible expert information; agenda-setting to avoid endless 'cycling' of proposals (see Pollack 2003: 21). This 'functional logic of delegation' fares well in accounting for the pattern of delegation to the Commission and the ECJ, yet Pollack admits that it offers a poor fit for explaining the powers of the EP. He echoes Bräuninger et al.'s results when he argues that the willingness of the member states to support or oppose EP legislative participation in specific policy areas has varied considerably as a result of cross-national variation in substantive policy preferences and the expected consequences of parliamentary involvement in specific policy areas. He stresses that throughout past Treaty revisions, the member state governments adopted a case-by-case approach to the extension of the respective legislative procedures whereby they took account of the anticipated consequences of EP participation in each individual issue area and the particular 'sensitivities' of each member government.[3] While this evidence supports the claim that member states follow a rationalist 'logic of consequentialism' when they bargain over the participation of the EP in individual policy areas, the question of why the EP was given a legislative role in the first place remains unanswered (Pollack 2003: 257-258). Neither the efficiency- nor the policy-seeking arguments enable us to capture the general decision to improve parliamentary participation in the EU's legislative process, let alone the decision endow the EP with budgetary powers or the rationale behind its creation. Against this background, even rationalist authors refer to the role of norms and the perceived necessity

3 Pollack (2003) refers to Joseph Jupille work to back up his arguments (see Jupille 2004). See also Steunenberg and Dimitrova (1999: 21). They quote Moravcsik's (1993; 1998) argument that 'when the consequences of institutional decisions are politically risky, calculable and concrete, national positions will be "instrumental" reflecting the expected influence of institutional reforms on the realization of substantive interests'.

by political actors to inject the EU with a dose of parliamentary democracy to explain the delegation of competences to the EP.

In contrast to the case of parliamentarization, to our knowledge, rationalist analyses of the institutionalization of human rights at the EU level are absent. One might reason by analogy, however, that political efficiency gains of binding EU decisions to human rights norms are hard to imagine. Rather, it introduces a constraint on intergovernmental policy-making autonomy and potentially strengthens independent, judicial review of EU legislation. Even if one dismisses the formal institutionalization of human rights in the EU as a mainly or even purely symbolic act with negligible cost implications for member state governments, it remains to be explained why governments would engage in this process in the first place.

The rationalist literature on general international human rights does not help either. First, the establishment of international human rights institutions constitutes a puzzle for neoliberal institutionalism (Donnelly 1986; Moravcsik 2000; Schmitz and Sikkink 2002), since classical human rights issues concern a purely domestic relationship between a state and its citizens and do not require international cooperation to overcome externalities and inefficiencies created by international interdependence. In contrast, Moravcsik proposes – in his analysis of the establishment of the Council of Europe-based European human rights regime – that the international institutionalization of human rights is in the self-interest of newly established democratic government in order "to 'lock in' and consolidate domestic institutions, thereby enhancing their credibility and stability vis-à-vis nondemocratic political threats" (2000: 220). This explanation does not entirely fit the institutionalization of human rights in the EU, however. It could account for human rights rules binding candidate and member states (such as the Copenhagen political conditions for membership or Art. 7 TEU, which empowers EU institutions to suspend the rights of a member state in case of a serious and persistent breach of the core community norms) as an instrument of reducing political uncertainty. It is less clear, however, why member government should have a self-interest in binding the EU to human rights rules, thus reducing the very political autonomy that they sought to increase by making policy at the EU level (Moravcsik 1994; Wolf 1999).

1.2. Constructivism and constitutionalization

While rational studies thus struggle to explain parliamentarization and institutionalization of human rights, the constructivist literature has alluded to the role of identities and norms, for instance in explaining the decisions of member state governments to empower the EP. Yet it suffers from a double puzzle.

On the one hand, all EU member states share the basic liberal constitutional norms that governments and their actions be constrained by respect for human rights and approved directly or indirectly by elected, representative assemblies of the people: parliaments. These

norms are not only common to the member states but also form a central part of their identity as liberal-democratic states. In light of these common norms and identities, it is puzzling why member state preferences on the application of these norms to the EU have regularly diverged and led to controversy – and why it took such a long time for these norms to become institutionalized at the Union level (Bojkov 2004: 333-34).

In response to this apparent puzzle, the constructivist literature argues that, whereas ideas on human rights and parliamentary power are widely shared among EU member states and societies, it is their EU-related identities and constitutional ideas that not only differ strongly but also changed little over time (see Jachtenfuchs et al. 1998; Jachtenfuchs 2002; 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.

Most accounts in this tradition stress the distinctiveness of domestically held 'polity ideas' or legitimating beliefs' which inform political actors' institutional choices. Wagner, for instance, argues that political elites in the member states employ notions of "appropriate parliamentary legitimation" (1999: 427) which states derive from domestic political culture when contemplating over the role and powers to be exercised by the EP. 'Political culture' is operationalized by identifying "those worldviews and principled beliefs – values and norms – that are stable over long periods of time and are taken for granted by the vast majority of the population" (Risse-Kappen quoted in Wagner 1999: 427). Wagner thus employs domestic constitutional arrangements as a proxy for its political culture: member states will hence "respond to the question of supranational democracy in the same way they have addressed the question of *sub-national* democracy" (Wagner 2002: 29; emphasis in the original). More concretely, Wagner argues that we should expect "support for direct parliamentary legitimation by those countries whose policy at the regional level has been legitimized by directly elected regional parliaments, i.e. by federal states. […] [C]ountries whose regional-level policy has been legitimized indirectly by the national parliaments, i.e. unitary states […] are expected to prefer indirect parliamentary legitimation for the EU" (2002: 29). Hence, federally-organized member states such as Germany and Belgium in which regional policy is directly legitimized through the involvement of regional parliaments are expected to be in favor of a strengthening of the EP's powers while unitary states, such as France, are less inclined to support an empowerment of the EP. Although Wagner's theoretically derived expectations are largely corroborated in his work, his approach suffers two deficiencies. First, it is causally incomplete as it offers no answer to the question of how we move from 'political culture' to preferences and on to outcomes. In particular, why have governments coming from diverse political cultures repeatedly agreed to strengthen the powers of the EP? Secondly, Wagner's approach is mute on the issue of when and under what conditions the

question of EP empowerment becomes salient and induces political elites to contemplate on its empowerment.

In several contributions to the subject, Jachtenfuchs (1999; 2002) and his collaborators (Jachtenfuchs et al. 1998) have specified the content of shared beliefs about a 'legitimate political order' ('polity ideas') which are attributed a prominent role in the constitutional development of polities (see Jachtenfuchs et al. 1998: 410). They show that variation in polity ideas helps to explain why different EU member states, but also different political parties *within* a member state hold different preferences for the 'appropriate' scope of policy integration and form and powers of EU institutions. According to Jachtenfuchs et al. (1998), political parties are the major 'carriers' of polity ideas: they are articulated in national party manifestos and records of parliamentary debates during which governments have to justify their foreign policy behavior before their domestic audience. Four analytically distinct polity ideas are identified – *Intergovernmental Cooperation* ("Staatenbund"), *Federal State* ("Bundesstaat"), *Economic Community* ("Wirtschaftsgemeinschaft") and *Network* ("Netzwerk") – which offer alternative prescriptions for action. Depending on which polity idea an actor adheres to, the answers she will give to questions such as the sources of legitimate governance, the desirability and possibility of democracy at the supranational level, supranational citizenship, etc. will vary substantially. This argument also applies to the phenomena of parliamentarization and the institutionalization of human rights: elite support depends on the polity idea which respective political elites hold. Contrary to Wagner, Jachtenfuchs and collaborators offer a more nuanced analysis of those normative beliefs which define what actors consider 'appropriate' governance structures, pointing at the observation that political culture is not interpreted uniformly within each member state. Even though Jachtenfuchs's account is more precise in specifying the content of alternative polity ideas and their behavioral prescriptions, explanations inspired by constructivism do not offer a satisfactory explanation for the processes of parliamentarization and the institutionalization of human rights at the EU level. First, neither Wagner nor Jachtenfuchs can account for the conditions under which these issues becomes salient: the *timing* of constitutional reform decisions remains unaccounted for. Second, while Jachtenfuchs is focusing on the formation and content of actors' preferences, nothing is said about the process whereby preferences are translated into outcomes, that is: concrete institutional choices.

The review of the existing work on the subject demonstrates that both rationalist and constructivist approaches appear ill suited to explain the constitutionalization phenomena under consideration. From the rationalist perspective, neither an efficiency- nor a policy-seeking logic helps us to account for the progressive empowerment of the EP. Approaches informed by constructivism ascribe an important role to polity ideas in shaping actors' preferences and guiding action. While these accounts improve our understanding about the source and content of political elites' preferences as to what role the EP should play in the EU polity, these accounts fall short of offering a causally complete explanation of

constitutionalization processes. In the ensuing section, we present a theoretical approach, which aims at overcoming these shortcomings.

2. Solving the puzzle: Strategic action in a community environment

Any theoretical solution to the puzzle of EU constitutionalization needs to explain why and how the EU has made progress toward parliamentarization and the institutionalization of human rights in spite of stable adverse or divergent member state preferences and in the absence of bargaining power or learning and socialization effects conducive to constitutionalization. The solution we propose here is "strategic action in a community environment" (Schimmelfennig 2003: 159-163).

On the one hand, and in line with rationalist institutionalism, the approach assumes that actors involved in EU integration and policy-making have stable interest-based or idea-based preferences and act strategically to achieve an outcome that maximizes their utility. In contrast to constructivist or sociological institutionalist propositions, this means, first, that the policy preferences of the actors are not derived from collective identities, values, and norms constructed and institutionalized at the EU level. Rather, they reflect actor-specific interests or ideas. Second, the actors follow a logic of consequentiality, not appropriateness (March and Olsen 1989) or truth seeking (Risse 2000) in their actions and interactions, and third, they will not change their identities and norms or learn and internalize new, 'appropriate' preferences as result of their interaction in the EU context.

On the other hand, we assume that the EU constitutes a community environment for its members. This assumption goes beyond the regime rules stressed by rationalist institutionalism but agrees with the constructivist emphasis on informal, cultural values and norms. An international community is defined by three core characteristics: its ethos, its high interaction density, and its decentralization.[4] The ethos refers to the constitutive values and norms that define the collective identity of the community – who 'we' are, what we stand for, and how we differ from other communities. A high interaction density is indicated by frequent and relevant interactions in a multitude of policy areas and at various political levels. Moreover, membership in communities is permanent for all practical purposes. Finally, international, pluralistic communities lack a centralized rule making and rule enforcement authority.

These conditions apply in the EU. First, it has a European and liberal identity that is most explicitly stated in Article 6 of the Treaty on European Union (TEU): "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law". Second, it probably has the highest interaction density of all

4 See the concept of "pluralistic security community" developed by Deutsch et al. (1957).

international organizations. At the same time, the EU still relies predominantly on voluntary rule compliance and national rule implementation. Primary political socialization still takes place in a national rather than European context.

For strategic actors, acting in a community environment means that the effective pursuit of political goals is not only dependent on the constellation of actor preferences, their relative bargaining power and formal decision-making rules. The community ethos defines a standard of legitimacy that community members have to take into account to be successful. In addition, the high interaction density provides for soft, informal mechanisms of rule enforcement.[5] In particular, a community environment affects interaction and collective outcomes in the following ways:

1. It triggers arguments about the legitimacy of preferences and policies. Actors are able – and forced – to justify their preferences on the basis of the community ethos. They engage in 'rhetorical action', the strategic use of the community ethos. They choose ethos-based arguments to strengthen the legitimacy of their own goals against the claims and arguments of their opponents.

2. The community ethos is both a resource of support and a constraint that imposes costs on illegitimate actions. It adds legitimacy to and thus strengthens the bargaining power of those actors that pursue preferences in line with, although not necessarily inspired by the community ethos.

3. The permanence of the community forces actors to be concerned about their image. This image does not only depend on how they are perceived to conform to the community ethos but also on whether they are perceived to argue credibly. Credibility is the single most important resource in arguing and depends on both impartiality and consistency (Elster 1992: 18-19). If inconsistency and partiality are publicly exposed and actors are caught using the ethos opportunistically, their credibility suffers. As a result, their future ability to successfully manipulate the standard of legitimacy will be reduced. Thus, community members whose preferences and actions violate the community ethos can be shamed and shunned into conformity with the community ethos and their argumentative commitments – even if these contradict their current policy preferences.

In sum, a community environment has the potential to modify the collective outcome that would have resulted from the constellation of preferences and power and the formal decision-making rules alone. It facilitates individual compliance and the reproduction of a normative order in the absence of an interest-based equilibrium or centralized enforcement.

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5 On social influence, see Johnston (2001).

On the other hand, it does not necessarily require the internalized following of community norms or a true consensus. This theoretical approach with its postulated causal mechanisms of rhetorical action and social influence should be particularly suitable to analyzing institutions that, on the one hand, have the core characteristics of community (ethos and high density) but cannot count on centralized rule enforcement or strong political socialization, on the other – such as the EU.

What do these theoretical ideas imply for the study of liberal-democratic constitutionalization in the EU? They generate the expectation that, even though parliamentarization and institutionalization of human rights at the EU level do not reflect the collective institutional interest or the normative consensus of member state governments, their collective identity as democratic states and governments and as members of a liberal international community obliges them in principle to conform to basic norms of liberal democracy. Community actors that are interested in expanding the powers of the EP and the role of human rights in the EU for self-interested or principled reasons are therefore able to exert effective social influence by using norm-based frames and arguments in constitutional negotiations and to persuade reticent community actors to make constitutional concessions.

We expect, however, that the strength of community effects on strategic action in international communities will vary according to several context conditions.

1. *Constitutive rules.* Obviously, the more constitutive or constitutional 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. Since both human rights and parliamentary competencies are such constitutive rules and are directly linked to fundamental political norms of a liberal community, we expect this condition to be constantly present.

2. *Salience.* Within the domain of constitutive politics, we expect community effects to increase with the salience of the constitutional problem. We define salience as the perceived discrepancy between 'ought' and 'is'.[6] The more a proposed or implemented step of EU integration is perceived to curb the competencies of national parliaments and to undermine national or other international human rights provisions, the more salient the "democratic deficit" of European integration becomes and the stronger is the normative pressure on EU actors to redress the situation through strengthening constitutional rights at the EU level (cf. Rittberger 2003; 2005).

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6 Note that other authors define and use 'salience' interchangeably with 'resonance' (see below). See e.g. Cortell and Davis (2000).

3. *Legitimacy.* Even among issues that are constitutive and highly salient, community effects may vary according to the norms in question. According to Franck, the degree to which an international rule "will exert a strong pull on states to comply" depends on four properties, which account for its legitimacy: determinacy, symbolic validation, coherence in practice, and adherence to a norm hierarchy (1990: 49). To the extent that the relevant community norm possesses these qualities, it becomes difficult for the shamed community members to neglect or rhetorically circumvent its practical implications (cf. Shannon 2000: 294). We focus specifically on two dimensions of legitimacy.

    a. *Coherence* refers to established norms and practice. Community effects in constitutional negotiations will be strongest if demands are based on precedent, that is, for instance, earlier treaty provisions, common member state declarations, or informal practices.

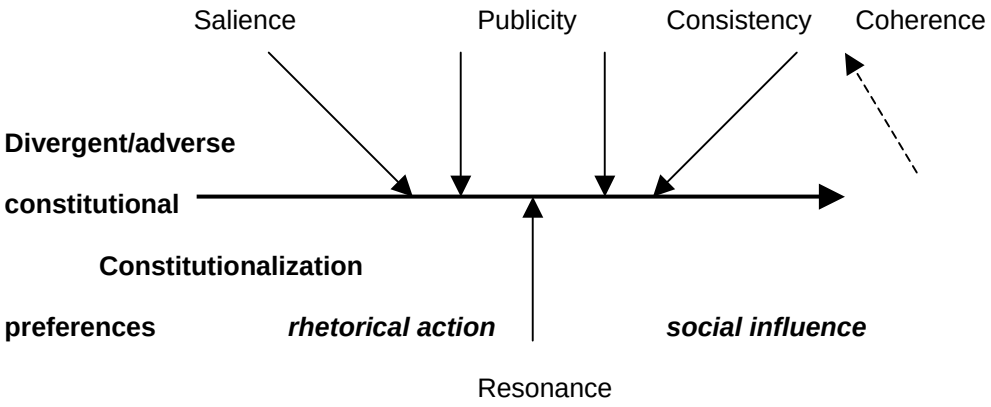
    b. *Consistency* refers to international norms and practices outside the EU. Again, we assume that the legitimacy pull of constitutional norms will be stronger if their proponents can refer to the norms and practices of other international organizations of the same community. Such an extra-institutional precedent is most obvious for the case of human rights, which are already strongly institutionalized in the Council of Europe system of human rights protection. In contrast, the competencies of parliamentary assemblies in other Western international organizations such as NATO or the Council of Europe are so minor that they cannot be expected to strengthen the legitimacy of demands for more EP competencies.

4. *Resonance.* Resonance is a major explanatory factor in studies of the domestic impact of international norms (see e.g., Checkel 1997; 1999; Cortell and Davis 2000). Here, we suggest that those constitutional demands that resonate most strongly with domestically held and institutionalized norms will create the strongest sense of obligation at the EU level when appealed to in the shaming process.

5. *Publicity.* Shaming and shunning work better in public than behind close doors. In a public setting, strategic actors feel more compelled to use impartial and consistent norm-conforming language and to behave accordingly. We therefore assume that the community ethos will have a stronger impact on constitutional negotiations and outcomes if they are public than in the usual format of IGCs.

Illustration 1 summarizes the assumed mechanism and conditions of strategic constitutional negotiations in a community environment.

Illustration 1: Conditions and Mechanisms of Rhetorical Action in EU Constitutional Negotiations



Briefly summarized, the model postulates that, on the basis of divergent or adverse constitutional member state preferences, progress in constitutionalization results from a process of rhetorical action and social influence and depending on the presence and strength of salience, publicity, resonance, consistency, and coherence. Moreover, the model contains a potential dynamic effect, since constitutionalization at one point in time will increase the legitimacy pull of coherence in future constitutional negotiations.

Theoretically, this model is able to fix the explanatory deficiencies of extant rationalist and constructivist analyses of constitutionalization. It provides a causal mechanism and conditions under which, in the absence of efficiency, common interests, and a constitutional consensus among EU member states, parliamentarization and the institutionalization of human rights progress in the EU.

The preceding discussion is summarized in the 'constitutionalization hypothesis'.

Constitutionalization Hypothesis

Decisions to empower the EP and to institutionalize human rights in the EU are likely to occur

- the more a proposed step of EU integration is perceived to undermine the powers of national parliaments or human rights provisions thereby producing a 'democratic deficit' exercising normative pressure on EU actors to redress the situation through strengthening constitutional rights at the EU (salience);
- the more legitimate a particular norm is (coherence and consistency);
- the more strongly a constitutional decision resonates with domestically held and institutionalized norms about human rights and the role of parliaments (resonance);
- the more public the setting for constitutional decision-making is (publicity).

3. Data, cases, methods

To test our central hypothesis, we take recourse to the method of Qualitative Comparative Analysis (QCA) advanced by Charles Ragin (1987; 2000). In the following section, we briefly outline the underlying assumptions and goals of QCA. In the ensuing sections, we will introduce the selection of units of analysis, our dependent and independent variables, the cases and the respective values of our variables.

3.1. Method: QCA

In essence, Qualitative Comparative Analysis is an extension of classical comparative analysis or the 'congruence method'. It is specifically designed to handle a large number of cases rigorously without applying statistical, regression-based techniques.

Charles Ragin defines the essence of qualitative research by its case-orientation. Qualitative analysis distinguishes itself from quantitative research not just – or not so much – by the (limited) number of cases or the (qualitative) kind of data and measurements but by its 'holistic character'. Qualitative social researchers look at and compare 'cases as wholes': "cases are viewed as configurations – as combinations of characteristics" (Ragin 1987: 3). Qualitative research then seeks "to determine the different combinations of conditions associated with specific outcomes or processes" (Ragin 1987: 14). As a consequence, qualitative research is less concerned with the number of cases than with the variety of conditional configurations. It does not work with sampling, frequencies, and probabilities; its methods are logical rather than statistical. It is not interested in the general significance and explanatory power of individual variables but in their embeddedness in causal fields as either individually or jointly necessary and/or sufficient conditions (Ragin 1987: 15-16). This corresponds to the interest of this paper in discovering the configurations of conditions of constitutionalization in the EU.[7]

However, qualitative analyses often become more difficult to conduct and interpret as the number of cases and variables increases. Commonalities become rare and difficult to identify, the number of possible comparisons increases geometrically, and the number of logically possible combinations of causal conditions increases exponentially (Ragin 1987: 49-50). Using Boolean algebra, QCA offers a tool to handle more than the handful of cases and causal configurations typically analyzed in qualitative research without, at the same time, requiring the large n of statistical analyses. It is capable of examining complex patterns of interactions between variables and contains procedures to minimize these patterns in

7 For another application of QCA to the analysis of European integration, see Koenig-Archibugi (2004).

order to achieve parsimony (Ragin 1987: 121-123). Thus, QCA helps to improve qualitative research without having to compromise on its basic features. In contrast to regression-based techniques, it allows researchers to study necessity and sufficiency and makes it easier to study interactions between explanatory variables.

Basic QCA requires the researcher to conceptualize variables dichotomously and use binary data (0/1). 'Fuzzy-set' QCA (Ragin 2000) also works with values between 0 and 1 and thus allows for a more fine-grained and information-rich analysis. However, fuzzy-set QCA still requires the researcher to define a theoretically meaningful qualitative 'breakpoint' and to interpret the intermediate values as degrees of membership in the 0 or 1 class of cases. For reasons of simplicity and clarity of interpretation, we therefore decided to eliminate theoretically less relevant information and to use a binary coding.

The data is arranged as a 'truth table'. That is, each conditional configuration (combination of values of the independent variables) present in the data set is represented as one row together with the associated ('truth') value of the dependent variable. Finally, the truth table is analyzed with procedures of combinatorial logic to arrive at a solution specifying a parsimonious combination of necessary and sufficient causes (Ragin 1987: 86-99).

3.2. Units of analysis

Our units of analysis are *formal constitutional decisions* of the EU which are taken during IGCs. This implies that we do not analyze constitutional *proposals*, nor constitutional *preferences* at this stage. We have identified nine IGCs resulting in new treaties or treaty revisions: ECSC 1951, Rome 1957, Luxembourg 1970, Brussels 1975, SEA 1986, Maastricht 1992, Amsterdam 1997, Nice 2000, Constitutional Treaty 2004. With exception of budgetary powers, we exclude the 1970 and 1975 IGCs because they were specifically planned to amend the competencies of the EP in this sphere. Constitutional changes in the other areas of parliamentary competencies as well as in the area of human rights could not have been introduced at these IGCs given their exclusive focus on budgetary competencies.

This conceptualization of the unit of analysis entails a principled openness toward the outcome of our dependent variable 'constitutionalization'. Constitutional decisions of the EU may be accompanied by parliamentarization or institutionalization of human rights or they may not. Whereas many studies of European integration look at instances of constitutional change only, thus privileging the 'positives' and neglecting the 'negatives', our data set includes almost as many negative (27) as positive cases (31) of constitutionalization.

3.3. Variables and operationalization

Our dependent variable is *constitutional change*. If constitutional decisions on the distribution of competencies and transfers of sovereignty are accompanied by a positive change in favor of parliamentarization and institutionalization of human rights, we code the outcome as '1'. 'Positive change' can mean two things:

1 a move from a lower to a higher level of constitutionalization:

   a. from 'no constitutionalization' to at least 'declaratory constitutionalization' (official references to parliamentarization and human rights, recommendations to strengthen competencies);

   b. from 'declaratory constitutionalization' to at least 'weak constitutionalization' (non-binding rights and competencies);

   c. and from 'weak' to 'strong constitutionalization' (binding rights and competencies)

2 an significant extension of rights and competencies within each level of constitutionalization:

   a. at the levels of 'declaratory' and 'weak' constitutionalization: horizontal extension to new issues (additional human rights or additional parliamentary competencies);

   b. at the level of 'strong constitutionalization': horizontal extension to further issues and/or strengthening of obligation and delegation resulting in stronger EU parliamentary and human rights competencies.

In our analysis, we include five independent variables theoretically identified as potentially relevant by the approach of strategic action in a community environment: salience, resonance, coherence, consistency and publicity.

Salience

Constitutionalization becomes *salient* when a (planned) constitutional decision, which changes the distribution of competencies within the European multi-level system results (would result) in a reduction of previous (national or international) parliamentary competencies or human rights protection. For constitutionalization to be coded salient (1), such a reduction must also be perceived to be problematic by EU actors (see Rittberger 2005). We thus code salience as present if at least one EU actor brings up the problem and demands constitutional change. Salience disappears (0) after the institutionalization of

parliamentary competencies and human rights at the EU level, provided that previous levels of parliamentary competencies and human rights protection are re-established.

Coherence

We code constitutional decisions as *coherent* if there exists a formal or informal institutional precedent within the EU (1) and incoherent if such a precedent is absent (0). Formal precedence is always present if there has been constitutional change at a previous IGC. Technically speaking, a value of 1 for constitutional change sets coherence to 1 for all subsequent constitutional decisions. In addition, informal precedence is established by codification between IGCs, e.g., through interinstitutional agreements that enhance the powers of the parliament or by ECJ rulings that establish the legal validity of human rights at the EU level. Theoretically, coherence adds normative power to attempts at constitutionalization and creates path-dependency. It can be used by rhetorical actors to support their claims for change in a pre-established direction.

Consistency

In contrast with coherence, *consistency* refers to the international institutionalization of the norms in question outside the EU (1). It is absent if there are no such international norms for a proposed or required constitutional change (0). The causal effect is assumed to be the same as for coherence but presumably weaker. Generally, codification is absent in the area of parliamentarization because there is no internationally codified norm requiring parliamentary competencies beyond consultation to be granted to international assemblies outside the EU. In contrast, it is mostly present for human rights. In this area, we interpret international codification narrowly and code it as ‘1’ if a particular class of human rights has been codified by the Council of Europe in form of a binding convention, namely the ECHR of 1950 (political rights and non-discrimination), the European Social Charter of 1961 (social rights) and the Framework Convention on National Minorities of 1995 (minority rights).

Resonance

Constitutionalization is *resonant* if it is compatible with national constitutional cultures (1). Conversely, resonance is low (0) if the constitutional change required to counter the democratic deficit contradicts national constitutional traditions and provisions. Theoretically, resonance is assumed to condition the acceptability of constitutional changes at the EU level. Constitutional changes that resonate with national constitutional cultures will receive a boost, whereas those that do not will be blocked.

In contrast to salience and publicity (see below), resonance is a sub-systemic variable. In order to explain systemic change, it has to be transformed to a systemic-level variable. Given that constitutional changes require consensus among the member states, and that consensus is hard to build against any large member states, we postulate that the absence

of resonance for a single large member state (France, Germany, Italy, Spain, UK) will set systemic resonance to zero, while it is coded as '1' as soon as all major actors show at least neutral resonance, i.e. when domestic institutions or traditions are permissive for the constitutional change in question.

Publicity

At the structural level, publicity is a feature of the negotiating forum for constitutional decisions. In the EU, formal constitutional decisions are made in IGCs behind close doors, that is, they are generally characterized by low publicity. The only distinction we can make at the structural level is that between *regular IGCs* (0) and *IGCs that are preceded by convention-type preparatory conferences* (1). The latter are conceived to involve a higher degree of publicity because conventions include other actors besides the representatives of member-state governments and public proceedings. IGCs following conventions are assumed theoretically to increase the pressure on actors to use and respond consistently to norm-based arguments, because actors making their arguments in a public setting are more likely to be rhetorically entrapped by the norm-based arguments and conclusions of the conventions. In the parliamentarization case, the only IGC preceded by a convention was the 2003-2004 IGC on the constitutional treaty; for human rights, the Nice IGC of 2000 is an additional instance (preceded by the Convention, which drew up the Charter of Fundamental Rights).

Cases

Explanatory factors vary with specific issues of constitutionalization. For this reason, we subdivide constitutionalization not only into the two processes of parliamentarization and institutionalization of human rights but further differentiate both processes according to four specific competencies and rights for each. For parliamentarization, we distinguish four fields of competences: legislative competencies, budgetary competencies, control of the Commission, and appointment of the Commission. With regard to the institutionalization of human rights, we equally distinguish between four areas: civil rights and liberties, non-discrimination, social rights, and minority rights. The issue-specific coding has the welcome side-effect of increasing our number of cases. Given the qualifications about the 1970 and 1975 IGCs, which focused exclusively on budgetary competencies, we arrive at 58 cases.[8]

For reasons of space, we are not able to provide data and detailed evidence for our assessment of the values of the different variables.[9] Table 1 offers an overview of the cases and the data indicating the respective values of the dependent and independent variables.

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8 For the parliamentarization process the count is 30 (3x7 + 1x9) and for institutionalization of human rights the count is 28 (4x7).

9 The dossier in which we present data and evidence for coding our cases about parliamentarization and institutionalization of human rights can be obtained from the authors upon demand.

Table 1: Cases and data

Human Rights Cases

case	salience	resonance	coherence	consistency	publicity	constitutional change
CPR51	0	0	0	1	0	**0**
CPR57	0	0	0	1	0	**0**
CPR86	1	0	1	1	0	**1**
CPR92	1	0	1	1	0	**1**
CPR97	1	1	1	1	1	**1**
CPR00	1	1	1	1	1	**1**
CPR04	1	1	1	1	1	**1**
ND51	1	0	0	1	0	**1**
ND57	1	0	1	1	0	**1**
ND86	0	0	1	1	0	**0**
ND92	0	0	1	1	0	**0**
ND97	1	1	1	1	1	**1**
ND00	0	1	1	1	1	**1**
ND04	0	1	1	1	1	**1**
MR51	0	0	0	0	0	**0**
MR57	0	0	0	0	0	**0**
MR86	0	0	0	0	0	**0**
MR92	0	0	0	0	0	**0**
MR97	0	0	0	1	1	**0**
MR00	0	0	0	1	1	**0**
MR04	0	0	0	1	1	**0**
SR51	0	0	0	0	0	**0**
SR57	0	0	0	0	0	**0**
SR86	1	0	0	1	0	**1**
SR92	1	0	1	1	0	**1**
SR97	1	0	1	1	1	**1**
SR00	1	0	1	1	1	**1**
SR04	1	0	1	1	1	**1**

CPR: civil and political rights; ND: nondiscrimination; MR: minority rights; SR: social rights;

Parliamentarization Cases

case	salience	resonance	coherence	consistency	publicity	constitutional change
CC51	1	0	0	0	0	**1**
CC57	1	0	1	0	0	**1**
CC86	0	0	1	0	0	**0**
CC92	0	0	1	0	0	**0**
CC97	0	1	1	0	0	**0**
CC00	0	1	1	0	0	**0**
CC04	0	1	1	0	1	**0**
CA51	0	0	0	0	0	**0**
CA57	0	0	0	0	0	**0**
CA86	1	0	1	0	0	**0**
CA92	1	0	1	0	0	**1**
CA97	0	1	1	0	0	**1**
CA00	0	1	1	0	0	**0**
CA04	1	1	1	0	1	**1**
BP51	1	0	0	0	0	**1**
BP57	1	0	1	0	0	**1**
BP70	1	0	1	0	0	**1**
BP75	1	0	1	0	0	**1**
BP86	0	0	1	0	0	**0**
BP92	0	0	1	0	0	**0**
BP97	0	1	1	0	0	**0**
BP00	0	1	1	0	0	**0**
BP04	1	1	1	0	1	**1**
LP51	0	0	0	0	0	**0**
LP57	1	0	0	0	0	**1**
LP86	1	0	1	0	0	**1**
LP92	1	0	1	0	0	**1**
LP97	1	1	1	0	0	**1**
LP00	1	1	1	0	0	**1**
LP04	1	1	1	0	1	**1**

CC: Commission control; CA: Commission appointment; BP: budgetary powers; LP: legislative powers

4. Analysis

The 'truth table' displayed as Table 2 summarizes and lists the conditional configurations present in the data. '1' indicates the presence of the particular condition hypothesized to cause constitutional change; '0' indicates the absence of such a condition.[10]

Before presenting the results of the QCA analysis, we would like to point out two observations. First, the truth table represents 16 of the 32 (= 2^5) possible configurations. For the other half of the logically possible configurations, we do not have empirical outcome observations. Fortunately, however, only one pair of conditions is completely absent from the truth table: the presence of resonance in the absence of coherence.

Table 2: Truth Table

row	salience	resonance	coherence	consistency	publi-city	constitutio-nal change	N	Cases
1	1	1	1	1	1	**1**	4	CPR97-04, ND97
2	1	1	1	0	1	**1**	3	CA04, BP04, LP04
3	1	1	1	0	0	**1**	2	LP97/00
4	1	0	1	1	1	**1**	3	SR97-04
5	1	0	1	1	0	**1**	4	CPR86/92, ND57, SR92
6	1	0	1	0	0	**1/0**	7/1	CC57, CA92, BP57-75, LP86/92, ***CA86***
7	1	0	0	1	0	**1**	2	ND51, SR86
8	1	0	0	0	0	**1**	3	CC51, BP51, LP57
9	0	1	1	1	1	**1**	2	***ND00/04***
10	0	1	1	0	1	**0**	1	CC04
11	0	1	1	0	0	**0/1**	5/1	CC97/00, CA00, BP97/00, ***CA97***
12	0	0	1	1	0	**0**	2	ND86/92
13	0	0	1	0	0	**0**	4	CC86/92, BP86/92
14	0	0	0	1	1	**0**	3	MR97-04
15	0	0	0	1	0	**0**	2	CPR51/57
16	0	0	0	0	0	**0**	9	MR51-92, SR51/57, CA51/57, LP51

10 To analyze the data we used fs/QCA 1.1 software (Ragin et al. 2003) which can be downloaded at www.fsqca.com.

The absent configurations are called 'remainders'. QCA can deal in different ways with these remainders depending on the goal of the analysis. In order to maximize parsimony, remainders can be used as potential simplifying assumptions in the logical minimization of conditions. By contrast, "the most conservative strategy is to treat them as instances of the absence of the outcome when assessing the conditions for the presence of the outcome" and vice versa (Rihoux and Ragin 2004: 12). In our analysis, we used both techniques to see what difference they make for the results.

Second, two configurations are contradictory, that is, the same configuration of to constitutional change in some cases and no change in others (see rows in Table 2 with '1/0' or '0/1' outcomes. In contrast to a probabilistic statistical analysis, a deterministic logical analysis cannot incorporate such contradictory results. However, the contradiction can be reduced to two specific cases of Commission appointment (CA86 and CA97). These cases will require careful analysis later; for the moment, we exclude them from the analysis to obtain a general picture.

With this *caveat*, the parsimonious solution produced by QCA for the presence of constitutionalization is *'SALIENCE or (RESONANCE and COHERENCE and CONSISTENCY and PUBLICITY)'*.[11] That is, constitutional change has occurred either when the issue was salient (there was a perceived legitimacy deficit) or, in the absence of salience, when all other conditions were jointly present.

This solution offers general support for the constitutionalization hypothesis. All of the variables which we expected to be causally related with constitutional change appear to be relevant explanatory variables and all show into the expected direction: the presence of the conditions is associated with the presence of constitutional change. However, one condition clearly stands out: salience. In 54 out of 58 cases, salience is a both necessary and sufficient condition for bringing about constitutional change. In these 54 cases, constitutional change occurred whenever salience was present – even if all other theoretically postulated conditions were absent (see Row 8 in Table 2). Conversely, whenever salience was absent, no (further) parliamentarization or institutionalization of human rights occurred. In the two cases in which change was present in the absence of salience, all other factors had to be jointly present to produce a positive outcome (see Row 9 in Table 2).

What about the four 'outliers' where the presence (absence) of salience does not (does) produce constitutional change? In the two non-discrimination cases (ND00 and ND04) we observe constitutional change despite the absence of salience. The same holds for the case of Commission appointment powers for the EP in 1997 (CA97). In-depth case study research

11 In QCA notation, upper-case letters indicate the presence of a condition, whereas lower-case letters indicate the absence of a condition.

is needed to trace how, in the absence of salience, the combinations of the other conditions generates sufficient normative pressure to trigger constitutional change. Similarly, we can identify one single case where the presence of salience is not associated with constitutional change: the case of Commission appointment in 1986 (CA86) where the EP was being refused a Treaty-based role in the Commission appointment process despite the salience of the issue. This finding does not contradict our theoretical expectations, yet it forces us to investigate more closely how an instance of high salience does, seemingly, not generate sufficient normative pressure to trigger constitutionalization.

To learn more about the robustness of this parsimonious solution for positive outcome, let us first cross-check it for the negative outcome, the absence of constitutional change. Here the parsimonious solution is *'salience and consistency or salience and resonance'.* That is, constitutional change will not occur if either salience and consistency are jointly absent or salience and resonance are jointly absent. This solution generally confirms the results of the analysis for positive outcomes. The absence of constitutionalization is associated with the absence of three conditions identified by our model and salience stands out as the most relevant condition again. The absence of salience is a necessary condition for the absence of constitutional change. However, in contrast to the positive analysis, it is not a sufficient condition.

As a second check of robustness, we ran a conservative analysis uniformly treating the 16 absent conditional configurations ('remainders') as counterfactuals. That is, we assumed that all of them would not produce positive constitutional change. This analysis results in a much less parsimonious solution:

> 'SALIENCE and resonance and publicity or
> SALIENCE and RESONANCE and COHERENCE and consistency or
> RESONANCE and COHERENCE and CONSISTENCY and PUBLICITY or
> (SALIENCE and resonance and COHERENCE and CONSISTENCY
> or SALIENCE and COHERENCE and CONSISTENCY and PUBLICITY)'.

This solution is much harder to interpret than the parsimonious solution but it confirms the relevance of salience for constitutional change: it figures as a positive and necessary condition in four out of five configurations and never as a negative condition. In addition, this analysis reveals coherence to be equally relevant. Just as salience, it is a positive and necessary condition in four out of five sufficient configurations and it is never a negative condition. All other conditions (resonance, codification and publicity) appear less often and are sometimes positive and sometimes negative, that is, they are not systematically associated with constitutional change. In sum, this solution shows that coherence, the presence of institutional precedent in the EU, appears to be an important condition of constitutionalization, which might have been eliminated prematurely in the more parsimonious analyses.

If coherence is a relevant condition of constitutionalization, it is plausible to assume that it will be more relevant in the later stages of European integration after institutional precedent has been established. We therefore subdivided our cases into two groups, one covering all early constitutional decisions before 1986, the other comprising the more recent decisions starting with the 1986 Single European Act. The results confirm our assumption. Sticking with the conservative analysis of remainders, we find that, in the early cases, only salience is a necessary and positive condition in all sufficient configurations, whereas in the more recent cases, both salience and coherence are necessary and positive conditions in all sufficient configurations.

Finally, we checked our findings for issue-specificity. Do parliamentarization and institutionalization of human rights follow a common logic or does constitutionalization in these two issue-areas depend on different (sets of) conditions? We find that issue-specificity is low. In the conservative analysis, salience and coherence are equally positive and necessary conditions in both issue-areas. In the parsimonious analysis, the solution for parliamentarization is *'SALIENCE'*, that is, the perceived legitimacy deficit is a both necessary and sufficient condition for parliamentarization. The solution for the human rights issues is *'SALIENCE or (RESONANCE or COHERENCE and PUBLICITY)'*, indicating that, while salience can be a necessary and sufficient condition for the institutionalization of human rights, there are other causal paths as well.

In sum, salience and coherence appear to be robust conditions of constitutionalization in European integration. As expected, coherence gains in importance as constitutionalization progresses. To what extent the elimination of coherence in the parsimonious QCA solution is justified or simply an artefact of the method, needs to be assessed more thoroughly in the detailed analysis of the cases.

Conclusion

In this paper, we analyzed the deficiencies of extant rationalist and constructivist analyses of EU parliamentarization and institutionalization of human rights. As an alternative, we proposed to analyze these two processes of constitutionalization as strategic action in a community environment. Theoretically, this approach provides a causal mechanism and conditions under which, in the absence of efficiency, common interests, and a constitutional consensus among EU member states, parliamentarization and the institutionalization of human rights will progress in the EU.

In a QCA of 58 constitutional decisions of the EU from 1951 to 2004, we tested five theoretically plausible conditions of effective strategic action in a community environment. The preliminary results strongly suggest that the key factors in generating normative pressure, which trigger constitutional change in turn, are salience and coherence. How can we interpret these findings?

First, it seems that the more a proposed or implemented decision by the member states to pool or delegate sovereignty is perceived to curb the competencies of national parliaments and to undermine national or other international human rights provisions, the more salient the ‘democratic deficit’ of European integration becomes. This state of affairs then generates normative pressure on EU actors to redress the situation through strengthening the powers of the EP and human rights provisions at the EU level. With regard to parliamentarization, these findings are in line with the results of a set of in-depth case studies on this issue (cf. Rittberger 2003; 2005). Second, we suggest that the existence of institutional precedent in the EU is a second source of pressure on the EU actors to further constitutionalize the EU along an established pathway. In contrast, there does not seem to exist any systematic congruence between consistency, publicity, and resonance, on the one hand, and constitutional change in the EU, on the other.

The QCA has allowed to analyze the conditions and conditional configurations of constitutionalization in the EU for a large number of cases covering the entire history of European integration and to select the most promising candidates for explaining this process from a set of theoretically plausible causal conditions. QCA, however, follows the congruence method of comparative analysis and does not give us direct insight into the political process of constitutionalization. To further substantiate the results, we will therefore conduct process-tracing analyses in order to determine, *whether* there really was a clear causal process linking salience, coherence and constitutional change and, if so, *how* salience and coherence produced the progressive constitutionalization of the EU.

In a broader theoretical perspective, our preliminary analysis appears to corroborate the "supranationalist" theory of European integration. Our findings suggest that integration which is reflected in member states' decisions to pool and delegate sovereignty triggers a *normative spillover* process. Once integration looms, normative pressure is generated to counter the threat which community actors in the EU associate with integration, namely that further integration undermines the competencies of national parliaments and human rights provisions. In addition, supranationalist theory emphasizes *institutional path-dependencies* (see e.g. Pierson 1998; Stone Sweet and Sandholtz 1997) and *argumentative self-entrapment* (Schimmelfennig 2001) in European integration. The relevance of coherence as a condition of constitutionalization seems to corroborate these mechanisms.

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