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Abstract

This paper applies a normative democratic perspective on European constitutional politics to the analysis of discursive practices related to the crisis of the 'Treaty establishing a Constitution for Europe' (TCE), in the aftermath of the failed referenda. Starting from three distinct logics of constitutionalisation, we ask whether and in which ways EU constitutional politics has interacted with the general public sphere. In terms of constitution politics, did the national mass media basically ignore the European dimension, and fail to take the debate beyond the national state? Or did they closely represent deliberations that went on during the 'reflection period,' and present the various reasons for and against this joint agreement designed to get the EU out of its impasse? And, moreover, did they represent social contentions and enhance the diversity of interests and identities involved in the constitutional crisis debates in the run up to the Lisbon Reform Treaty? To answer these questions, we will use the methodology of comparative discourse analysis and a data set covering constitutional media debates from May 2005 – June 2007 in 14 EU member and candidate countries.

Keywords

I. Introduction[*]

The rejection of the Treaty establishing a Constitution for Europe by referenda in two founding EU member states has brought to light a deep gulf between supporters and opponents of democratic approaches to the institutional reform crisis of the European Union. For proponents of radical democratisation, the popular rejection of the Constitutional Treaty does not invalidate the constitutional project as such but rather reconfirms the urgency of democratic settlement. According to this perspective, the way out of the crisis is not less but more democracy (Brunkhorst 2008; Habermas 2008; Fossum 2008). This is in keeping with a consequential-expansive logic of EU-constitution-making according to which, the deepening of integration has always been seen as necessary for enhancing functional problem solving in an enlarged Union as well as democratic legitimacy. Inclusive public debates are therefore needed to ensure that basic agreement among EU-constitution-makers extends to the general public. Political conflict is not altogether excluded, but accommodated by the very normative order it seeks to establish. This expansive approach to democratic settlement has been criticized by scholars as well as political leaders who, in the aftermath of the ratification failures in France and the Netherlands, embarked on correcting such 'misleading ideas'. The new agenda propagated was to abandon the 'high politics' of Constitution-making and return to a minimalist 'low politics' of treaty that entailed lowering public attention and expectations (Moravscik 2006).

Can there be a third approach that spells out the dynamics of EU-constitutionalisation beyond the normativity of Constitutional high politics and the pragmatism of minimalist treaty reform? In this paper we propose such a third approach, which we call logics of contentious transnational constitution-making. The intention here is to shed light on the contentious politics of democratic constitutionalism. European integration is then not simply seen as achieved by instrumental action and reasoning within formal organisations and institutions, but is the product of intermediating processes of public debate and resonance. The emergence of this 'postfunctionalist' and contentious logic (Hooghe und Marks 2008) allows researchers with to enage in deeper explorations of the contested nature of European integration.

In this paper, we seek to map with the help of mass mediated political discourse analysis the – quality, be it high, low or contested, of democratic constitutional politics beyond the nation state in the context of the institutional re-ordering of Europe. By bringing in a public sphere perspective, the research focus shifts here to how competing logics of constitutional politics are translated into different sets of discursive practices:

- The logic of quasi-constitutional arrangements whereby successive treaty revisions occur by a process of intergovernmental bargaining (public avoidance strategy);
- The logic of Constitution-making by agreement among the representatives of the governed about a universal position for accommodating diversity, hence keeping conflict between different constituents' wishes and ways of life at bay (public consensus strategy);
- The multivariable logic of 'dialogical contestation', based on maintaining and encouraging diversity in domestic as well as trans-/cross-national interaction (public contestation strategy.

So far, analyses of deliberative democratization and constitutionalisation have focused primarily on the EU level and its 'main drivers, arenas and procedural arrangements that contributed to justificatory

processes in forging agreements on and arrangements for democracy' (Eriksen/Fossum 2008). By putting national public spheres centre state, this analysis pursues a complementary avenue with the aim of reflecting the EU's democratic constitutional experiment.

If we take the national mass media system as representative of the national public sphere as a whole, we would find scant grounds on which to praise in their capacity as drivers of and arenas forging democratization or even deliberation in the EU. Normative expectations about the media's role in mediating collective decisions along with the information needed to make them to the public are frequently frustrated, with tabloid press and private TV channels in particular standing accused of personalization, political bias and lack of independence and pluralism.[1] So, in fact, by either simply ignoring or even by actively biasing people against the European dimension of politics, the mass media may, in fact, cognitively constrain the emergence of a European democratic order. Nevertheless, we must assume that the discourses of the mass media are necessary mechanisms for translating European democratic norms and principles into mass public practices. The mass media are in a unique position to enhance people's cognitive awareness of European political processes, and, inasmuch as they function both at a mass level and within and across EU member states, they are indispensable for instilling democratic practices into public life within the emerging European political order.

So let us turn our attention to the intermediary processes of constitutional communication and how they *resonate* within diverse national publics. Constitution-making, contested democratic constitutionalisation and constitutionalisation through treaty reform are conceived as three competing modes by which the legitimacy of the European normative order is mediated. Scrutinizing constitutional debates in public arenas will allow us to assess whether the preferences of political elites and those of citizens match up. Opening this black box of communicative intermediation, we shift our research focus from formal norms and restricted political bargaining to those arenas where mass public deliberation unfolds, politicisation and contention may erupt, or public reaction to the stance of political leaders is played out. In this context we can build on existing *European public sphere* research. Our paper sets out to reconstruct mass media debates on EU-constitutional politics, seen here as large scale experiments in European public sphere building. This includes overarching general publics, strong, institutionally restricted publics and also segmented publics competing for polity solutions (Eriksen 2005). The logics of public sphere building thus reflect, resonate with and, arguably, conflict with the competing logics of constitutional politics.

For this purpose, our analysis is structured in three parts: We start by delineating three different modes of public involvement in the EU-constitutional process (1). Subsequently, we 'operationalise' these three logics for the purposes of media discourse analysis (2). In the empirical part (3), we provide systematic empirical evidence and use our findings to judge the democratic quality of media debates and what they reveal on the mode of constitutional politics that is in play. We conclude by answering three questions about the scope of the European public sphere: First, to what extent did the print media's treatment of the constitutional ratification crisis indicate public interest in the EU's constitutional process? Second, did the mass media primarily represent the views of their national political class or did they include voices from non-national actors and non-elite groups? And, finally, did the contentious issues tackled by the mass media relate primarily to EU policies and institutions, or did they rather take issue with the EU's democratic practices, norms and procedures?

II. Three Logics of Constitutional Politics in Europe

For the purpose of this paper, we turn from EU polity models to the logics underlying constitutional politics and the dimension of mass media communication. The three procedural logics distinguished here have a lot in common with but are by no means identical to the three 'RECON models' of

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1 See for instance (Norris 2000), (Meyer 2001), and, for an overview and discussion (Liebert 2007b, Trenz 2008).

democracy in Europe. Following Castiglione and Schönlau (2006), there are two broad narratives of constitutional politics in EU scholarship: the 'constitutionalisation narrative' based on incremental Treaty reform through Intergovernmental Conferences and low politics and the 'supranational constitution narrative' based on the high politics of explicit constitutional drafting. However, a third narrative can be distinguished too. Importing James Tully's concept from the Canadian context into the EU, Jo Shaw has introduced the notion of 'postnational constitutionalism in the European Union' (1999; 2000, 2003). Tully defines postnational constitutionalism as an intercultural dialogue in which the culturally diverse sovereign citizens of contemporary societies negotiate agreements on their forms of association over time in accordance with three conventions of mutual recognition, consent and cultural continuity (Tully 1995, 30).

1. The consensual-restrictive logic of 'quasi-constitutional arrangements' through treaty reform

In debating the future of European integration and possible paths towards democratic legitimacy, EU constitutionalisation has mainly followed the logic of integration through law (Mancini 2000). The idea that the EU institutional order can be rationally designed and calculated is expressed in the bargaining approach to European integration that claims to bring about the most substantive and stable solutions (Tsebelis 2008). In order to maintain the integrative dynamic, openness and participation must be restricted. The basic consensus about a European constitutional order or the fragile interest equilibrium must be protected at all costs from possible outside interferences. Democratic procedures are thus not essential to the basic legitimacy of the EU (Majone 2005, 1998; Moravcsik 2006) but, to the contrary, are often seen as counterproductive.

For Moravcsik (2006) political contestation is not a symptom but rather the cause of loss of faith in the legitimacy of the EU. According to him, the project to legitimate the EU by encouraging more popular participation and debate was doomed to failure from the outset because it was 'inconsistent with basic empirical social science about how advanced democracies work' (ibid.: 219). In particular, the constitutional strategy of achieving European integration through democratic legitimacy had not taken into account the dysfunctional and counterproductive effects of politicisation, which instead of providing more long term popular support and trust in the European project, tended to undermine the EU's stability and success in incremental problem-solving. The lesson to be learned, pragmatically and normatively, would be then to de-politicize the EU and to return to the traditional, tried and tested strategy of incremental, piecemeal reform (ibid.: 237)

Following this line of argumentation, the basic constitutional consensus is achieved by intergovernmental cooperation and elite consensus about how to settle interest conflicts internally. A written constitution that enshrined the participatory rights of European citizens would only damage the functional requirements of expert governance. This explains the focus on efficient rather than on participatory governance. In terms of polity design, the consensual-restrictive logic pleads for the maintenance of the nation-state order, claiming that this is strengthened by coordinated problem solving through functional bodies. In some cases, this might even necessitate restricting integration and the excessive competences of supranational bodies.

2. The consensual-expansive logic of supranational constitutional settlement

Identified by Wiener and Schmalz-Bruns (2008) and conceptualized as a 'Kantian reconstitution of democracy in Europe', this logic entails a 'reasoned view of norms': While meanings with reference to specific norms will vary across contexts, and differences are to be expected when the boundaries of interactive contexts are transgressed, this logic rests on keeping diversity at bay. According to this logic, the development of a universal position based on a shared set of cultural and social conditions is used to avoid or bypass conflict. Within different contexts, representatives of the governed within a community make sure that the governors proceed according to the wishes of the former.

The Laeken process starting in 2001 offered opportunities for intellectuals, political entrepreneurs and institutional architects to suggest ideas for reform. Their efforts were informed by belief in a rational constitutional design and deliberative procedures for constitution-making. Especially in the process of drafting the Constitutional Treaty, the political and the normative discourses on European integration were mutually reinforcing. From both sides, European integration was conceived as a project for the future of Europe that should lead to deeper and wider integration and ultimately to democracy. The question to be addressed was how this *finalité* could be achieved and how possible obstacles on this way could be overcome.

Following this paradigm, the draft Constitutional Treaty can be seen as a logical step forward from strategic bargaining and functional problem-solving towards democratic legitimacy. Path dependencies and institutional learning were central in arguing for the necessity of a European Constitution. Constitution-making could thus be perceived as the legitimate output of legal reasoning and deliberation within strong publics with a constitutional mandate to agree upon the normative substance of the emerging institutional order.

This logic is based on a progressive notion of EU-constitution-making as a catalyst for the building of an EU polity and a corresponding EU-social constituency. In this case, the legitimacy of the EU essentially relys on the implementation of democratic procedures through constitutional design. There would be no need for a pre-established collective identity as citizens could, in the long run, be expected to support and identify with the new democratic procedures and institutions and to recognize its surplus in terms of legitimacy in comparison to the traditional model of national democracy. The launching of a constitutional project could thus be used to expand basic consensus with regard to supranational integration and to build trust and solidarity among the citizens of Europe. Following this model, democratic legitimacy is based on intermediation from strong deliberative publics to general mass publics and a channelling and filtering of voice through participatory and inclusive arenas. In terms of polity design, the consensual logic envisages the possibility of European statehood in terms of a federation (federal Europe) or alternatively promotes the allocation of authority to multiple sub- or supranational bodies coordinated by international law (cosmopolitan Europe).

3. The politics of contentious constitutionalism

Compared to the 'quasi-constitutionalisation narrative' which is based on the idea of intergovernmental treaty reform, the 'contentious constitutionalism' paradigm problematises the hierarchical and legalistic logic implicit in the 'hidden process' of the former, driven as it is by intergovernmental negotiations and the judiciary (Liebert, Falke, und Maurer 2006: 13ff). But 'contentious constitutionalism beyond the nation state' equally goes against the 'big bang' approach to European constitution-making espoused by the 'supranational Constitution-making narrative'. The logic of critical and reflexive democratic constitutional politics (Tully 1995, 2007; Shaw 2000, 2003; Wiener 2003; Wiener und Della Sala 1997) is premised, rather, on reinforcing transnational interactions, on non-teleological processes and procedures that are open to contestation and deployed as inclusive and responsive dialogues aimed at accommodating diversity of views, interests, identities. And while the supranational Constitution-making narrative is premised on the assumption of clear-cut patterns of political conflict that can be accommodated by supranational institutions and procedures, this third postnational view expects the normative order of the European Union to emerge as an 'essentially contested project' (Bańkowski and Christodoulidis, 1998).

In a similar vein, Liesbet Hooghe and Gary Marks (2007) have called for theoretical soul searching, appealing to EU researchers to pay attention to the contested nature of European integration. According to these authors, mainstream integration theory - in its functional as well as in its intergovernmental variety - applies an elite perspective to European integration that rests on three empirically false premises:

First, that the public's attitudes towards European integration are superficial, and therefore incapable of providing a stable structure of electoral incentives for party positioning. Second, that European integration has low salience for the general public (…). And third, that the issues raised by European integration are *sui generis*, and therefore unrelated to the basic conflicts that structure political competition in western democracies (Hooghe/Marks 2008: 3).

The contentious mode of constitutional politics is based on an open ended notion of EU-constitutional settlement, which does not necessarily end up in the body of a written constitution but rather proceeds through flexible arrangements. Different from the previous logic it abandons all belief in rational design and calculation. From this perspective, democratic constitutionalism makes a significant leap forward from strategic bargaining and functional problem-solving towards democratic legitimacy, even if this may come at the price of ratification failures. Popular responses may bring to light possible gulfs between the elites and the European citizens (Commission 2006). In this sense, the ratification crisis of June 2005 was certainly not the first time that the EU was confronted by its deficit of public support. Yet, it was a rather unique instance of contentious constitutionalism at work, demonstrating that the articulation of public voice *can* actually make a difference.

III. Reconstructing Constitutional Politics: Media Discourse Analysis

Against the normative background of the three logics of democratic constitutionalism we will examine whether and in what ways mass media debates interact with EU constitutional politics. The question is whether and how the mass media have engaged with the democratic dimensions of the TCE supporting either the path of constitutional low politics, justifying the high politics of supranational constitution-making, or enhancing a contentious approach to European integration with its concomitant ambivalent repercussions for the constitutional endeavour. More specifically, we will measure the scope and performance of constitutional media debates, see here as an indicator of the democratic quality of the process. Translated into empirical indicators, the democratic quality of media debates on the EU-constitutional project is measured in terms of visibility (coverage intensity), language (different framings of same topics), substance (argumentative strategies deployed and the extent of deliberation, and hence of reason giving) and pluralism (inclusion of diversity of voices).

1. Empirical questions

The three process logics of democratic constitutional politics in the EU can be applied to a normative assessment of the performance of national newspapers in representing and elaborating constitutional debates on the EU. Assessing media coverage of the constitutional crisis and 'reflection period' post-ratification failure, our aim is to explore the following set of questions pertaining to the democratic quality of the EU constitutional experience as relayed by the media – each of which opens a research dimension of central relevance for understanding present dynamics and future options for integration:

1) What are the patterns, resources and dynamics of mass media communication in relation to the EU-constitutionalisation process? How do constitutional debates unfold in the mass media, what kind of issues and particular concerns are raised, involving what kind of actors are involved and what kind of publics are addressed?

2) What is the degree of Europeanisation in public and media debates on EU-constitution-making? Does political contestation in the different national media spheres follow similar conflict lines? How do speakers and addressees from different national backgrounds relate to each other discursively?

3) Through what kind of meaning structures and justificatory logics do constitutional debates unfold? Can attitudes expressed towards European integration be grouped along a similar cleavage line to that existing between opponents and proponents of the Constitutional Treaty?

In addition, a categorisation of typical justifications used to defend particular visions of the EU as a legitimate order is proposed.

To answer these questions, the methodology of comparative discourse analysis and a data set covering constitutional media debates from May 2005 – June 2007 in 14 EU member and candidate countries will be used. We will reconstruct discursive - cognitive and normative - references in mass-mediated public discourses within the normative framework of our three 'logics of constitutional politics'.

2. Operationalisation of the three constitutional logics

Our analysis is premised on a 'reconstructive interpretation' of the meanings and relative salience of the various components of the three logics – or modes - of European constitution-making in media discourse. Here, we aim at not superimposing or projecting any of these logics into the media debates. Neither we are interested in the question which of the three logics is given preference in media discourse. Rather we want to assess how the latent structure of media discourse corresponds or relates to the scope conditions set by the three logics and how their corresponding languages have entered mass mediated everyday life language or have been translated for mass publics into a more familiar idiom.

   a) *The exclusive-bargaining logic of treaty reform:* Five indicators establish whether this logic is reflected in constitutional media debates: preferences would be negotiated in rather closed arenas without major need for media attention. The expression and mobilization of public concerns outside these arenas would not be necessary. Communicative inputs would be provided mainly by national governments qua legitimate representatives of national interests, or by experts. EU institutions would play a minor technical role as there would be no need for the generation of legitimacy beyond the representative procedures of national democracy. Justificatory discourse would mainly emphasis national interests, efficiency and functional problem solving.

   b) *The inclusive-consensual logics of democratic Constitution-making:* In order to fulfil the criteria required by the logic of limiting diversity as a means of accommodating conflict in EU-constitution-making, mass media communication would have to limit growing popular contention and partisan conflict about European integration, giving voice primarily to representatives of the governed. In other words, mobilisation by affected groups and civil society would not become visible in the media. The contested meaning of the EU would be displayed in stable cleavage structures across national arenas. Politicisation would decrease over time and the issue cycles in the media would indicate recurrent debates about the EU that are stimulated by supranational actions and events. Justificatory discourse would highlight the European collective good, and promote rights and collective identities.

   c) *The contentious logics of constitutionalisation:* According to the logic of inclusive, transnational, open-ended procedures of constitutionalisation, overlapping public spheres of mass media communication must exist, structured by expanding public debates amplified through mainstream mass media. We expect these overlapping media debates to respond to a growing demand for information about the EU constitutional project within national publics. This facilitates cross-border interactions and communicative exchanges involving a wide range of actors, the participation of both state and civil society actors at different levels of governance, and growing understanding among citizens, manifested in general support for the goals of European integration and the contents of constitution-making. Constitutional referenda would be not simply a one-off opportunity for popular mobilisation but the starting point of a new contentiousness that would unfold further in the reflection period. Justificatory discourse would focus on contested sectoral and territorial interests and identities.

The following table gives an overview of the three logics of constitutional politics, along five different dimensions, each with a set of corresponding 'code families' that will subsequently be applied to structure our qualitative-quantitative media discourse analysis.

Table 1: Three Logics of Constitutional Politics in the Public Sphere

	Small 'c' - quasi-constitutionalism through treaty reform	Capital 'C' representative Constitution-making	Contentious constitutionalisation
1. Visibility (coverage cycle)	- hidden process - limited, nationally segmented strong, sectoral, and general publics *coverage cycle of EU low, with peaks for national EU politics*	- Strong publics (EP), translating into general public spheres (mass media) *coverage cycle of EU high with peaks for EU topics/events*	- Transnational public spheres *coverage cycle of EU variable, with peaks for non-national EU-politics*
2. Actor type and origin	National exclusivity: Judiciary (ECJ, national courts) and IGC, Council *dominance of national origin and national state/government/court elites*	Multilevel inclusiveness: EU actors European parties, European civil society *similar share of EU elites vis-à-vis national actors*	Social inclusiveness: Culturally diverse groups, sovereign citizens *similar share of national and non-national actors, including elites and civil society*
3. Logic of interaction	Logic of intergovernmental bargaining & compromise, structured by integration through law *depoliticised national relations and discursive interactions centred on national representatives, experts, courts*	Logic of political polarisation, structured by political cleavages and majority-opposition dynamics (majority rule + alternance in power) *polarised relations and discursive interactions encompassing EU and national elites*	Logic of contention, contingent on issues and contexts, structured by deliberation, negotiation and aimed at consent *contentious and deliberative transnational relations and discursive interactions encompassing social and political actors*
4. Salient topics/issues of constitutional politics **- policies** **- institutions** **- processes**	- 'Treaty Reform', national sovereignty, - 'Union of democratic states' - national ratification referenda - national elections - Economic costs and benefits of EU enlargement *low salience and low politicisation*	- 'Treaty establishing a Constitution for Europe' 'Federal Republic of Europe' - Pan-European treaty reform referendum - European elections - EU absorption capacity vis-à-vis further enlargement (Turkey…) *high salience linked to consensus orientation,(or structured articulation and accommodation of conflict),*	- Ongoing EU constitutional reform process - Deliberative Convention - Citizens' legislative initiative - International human rights and democratic practices in candidate countries *high salience, with strong polarisation (or contentiousness)*
5. Argumentative strategies and justifications	Efficiency, functionality, national interests, national identities *justification codes*	Collective European interests, values, history, future *justification codes*	contested interests, values and norms *justification codes*

3. Method of qualitative-quantitative discourse analysis

To examine to what extent each of these competing logics of EU constitutional politics resonates with the public sphere, this paper draws on an unique data set: A large and encompassing print media data set on constitutional ratification and reflection debates (2005-7) including fourteen old and new Member States (Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Netherlands,

Poland, Spain, Sweden, United Kingdom) and a candidate country (Turkey). These data were collected as part of the RECON project '*Reconstituting Democracy in Europe*'. The particular strength of this data set relating to mass media debates is that it enables us to reconstruct the logics of bargaining, deliberative consensus-building and contention involved in EU-constitutional politics during the period May 2005 – June 2007 through a cross-national comparative analysis. In addition, at a later stage it will be possible to compare these patterns to findings from two related research projects: ConstEPS project '*Constituting the European Public Sphere'* (University of Bremen)[2] and by the ESF project '*Building the EU social constituency* (University of Oslo and Humboldt University Berlin)[3].

Thus, we will not only be able to describe the salience of public debates; the types of agency, and the intensity of normative conflict at particular moments in this period of over two years, but also to explore lines of conflict and possible accommodations. With regard to explaining the failure of the EU-Constitutional Treaty, we expect not only to establish descriptively the kind of narrative that prevailed in the public spheres but also to assess normatively the success of the communication strategy promoted by European leaders in the aftermath of the negative votes in France and in the Netherlands with the aim of closing the gap between the EU and its citizens (Plan D and the subsequent White Paper on European Communication issued by the Commission in February 2006).

A three-step discourse analytical approach has been chosen:[4]

a) Sampling of 40 print media articles per country and qualitative coding by country specialists following a shared coding scheme; drafting qualitative country report;

b) Output of cross-national tables for descriptive comparative analysis of distribution of frequencies of actors, topics, justifications, interactions, context issues etc.

c) Based on theoretical supercodes that are linked to models/logics, Excel-based output of comparative tables providing quantitative data on resonance of models.

IV. Empirical findings, interpretations and discussion

Summarising the results of our interpretative reconstruction of mass media discourse on EU-constitution-making, we find a major discrepancy between how constitutional politics is represented, and how the EU constitutional project is portrayed. In the representation of constitutional politics, the media largely follow routine paths of news-reporting within the nation state, giving prominence to national agency and viewing the EU primarily as an intergovernmental setting. In their portrayal of the constitutional project, however, newspapers apply a new justificatory practice, in which the EU is cast as a supranational unit which unfolds through new contentious processes of negotiating the European order. The representation of the constitutional process in the media is thus characterized by a discrepancy at the level of actors, the substance of the debate and the justificatory logics. Although the logic of intergovernmental treaty reform largely prevails as regards the dominant agency – in other words, national political elites -, dominant justifications speak to the supranational representative frame, while institutional and procedural issues at stake in the contested constitutional debates of the referenda and reflection period are frequently linked to contentious transnational politics.

In the following we present our findings with regard to the four central indicators that were developed for operationalising the three logics of EU constitutional politics (see table 1):

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2 For publications of initial results from the ConstEPS project, see 'Europe in contention: debating the constitutional treaty', ed. U. Liebert, with contributions by P. Rakusanova (Czech Republic), Tatjana Evas (Estonia, Latvia); Sönke Maatsch (France), Aleksandra Wyrozumska (Poland) and Kathrin Packham (UK) http://www.informaworld.com/smpp/title~content=g780767412~db=all (Liebert 2007).

3 For publications of the findings from the ESF project, see Fossum/Trenz 2006, Jentges, Trenz, Vetters 2007, Vetters, Jentges, Trenz 2008, Trenz, Conrad, Rosén 2007, 2008, Trenz/Losada/Menéndez 2008; Statham/Firmstone 2007.

4 For details, see the Liebert/Trenz 2008.

(1) Transparency and the amount of information made available in the national public sphere measured through issue salience and issue cycles.

(2) Participatory structure of the debate, interdiscursivity, degree of transnationalisation measured through (a) type of agency, (b) origin of agency, (c) modes of interaction.

(3) The substantive character of the constitutional debates measured through the distinction of different sets of (a) policy issues, (b) institutional issues, and (c) procedural issues.

(4) The justificatory modes of constitutional politics measured through (a) argumentative strategies, and (b) patterns of justifications.

1. Visibility of EU constitutional politics in the mass media

Newspaper coverage is a reliable indicator for measuring the salience of EU-constitution-making to the national audience. The absolute amount of information that journalists make available can be taken as a measure of the knowledge that becomes accessible to citizens. The low politics logics of intergovernmental bargaining would correspond to a low salience of constitutional debates in the media. This is incompatible, first, with European leaders' aim to broaden public debates and improve citizens' understanding of the process (the expansive-consensual logics), and second, with opposition and resistance mobilised from the outside (the contentious logics). According to these second and third logics, media salience should be high and sufficient information should be made available to either convey the basic consensus that has been generated within strong publics to the general public or to enhance broader debates and to sharpen social cleavage lines and conflicts.

The optimistic assumption that strong publics would generate mass communication through the national media has only partially translated into reality. As figure 1 shows, the EU constitutional project only went through a short period of politicisation, in which media debates were synchronized. Normative debates about the constitutional design of the EU were still mainly restricted to expert publics and parliamentary arenas. By distinguishing different phases of democratic constitution-making (Fossum/Menendez 2006), the restrictive rules that apply to communication within strong public can be defended on condition that results are subsequently communicated and amplified to the broader public. Electorates must be able to ground their consent or rejection on informed and substantive debates. This condition was only partially fulfilled: countries without referenda did not generate sufficient information and contested debates about the contents and goals of the Constitutional Treaty. Countries with referenda went through rather short periods of politicisation, which focused mainly on strategic communication and the staging of a power play between domestic actors. Last but not least, constitutional contention came to an abrupt halt after the popular vote, and the reflection period was not used as an opportunity for further mobilisation on the issue. The low salience of the issue over the whole period thus clearly facilitated the return to a 'constitutional low politics'.

Figure 1: Combined Coverage Cycle of the Constitutional Debate 2004-2007
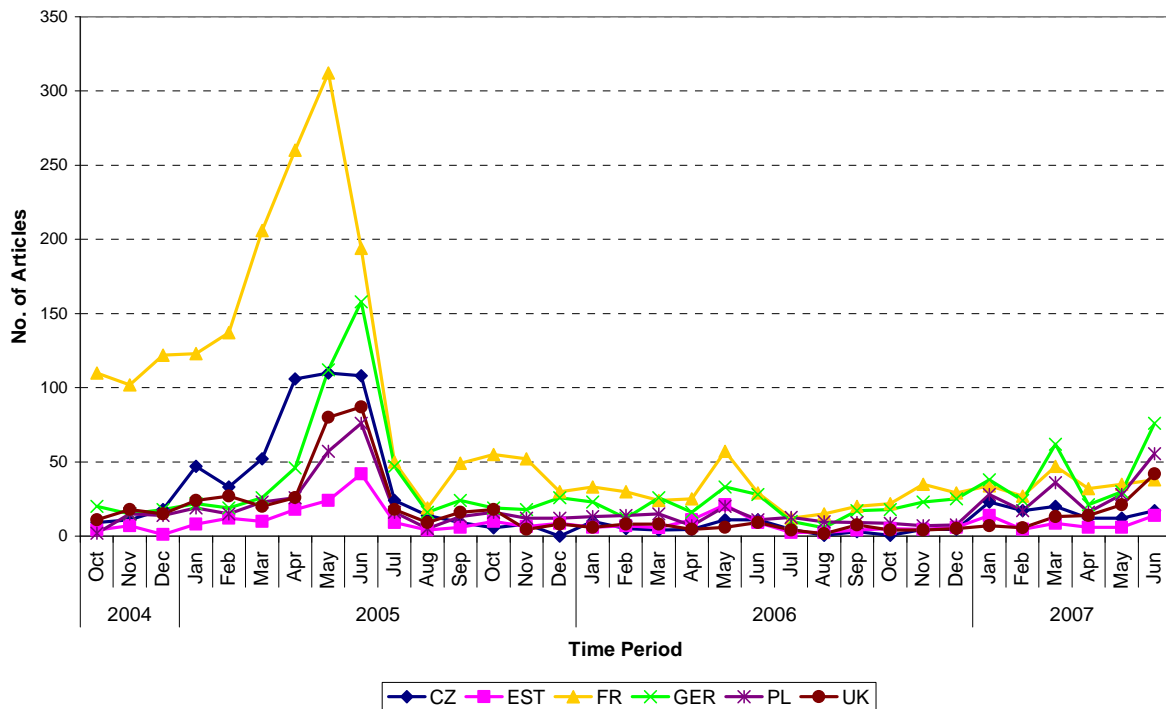
2. Origins and types of agency

One of the principal aims of the reflection period was to become engaged in a dialogue with the people of Europe and to close the gap between the EU and its citizens. As an indicator of the degree of openness and diversity of the debate, we compare the share of state and non-state actors that were involved and active in the reflection period. Generally speaking, reflection on the constitutional choices for Europe was predominantly driven by state actors. In comparison to previous rounds of constitutional debates in the member states, reflection did not only mean a general restriction of publicity but also a considerable reduction in the plurality of participation. The invitation by the governments and by the Commission in summer 2005 to broad and plural debate in the member states and beyond clearly did not resonate with the media and society. Rather, the reflection period reproduced traditional patterns of intergovernmental negotiations with a preference for low public involvement in EU-constitutional politics.

Table 2 provides more detailed information on the participatory structure of media debates in the reflection period. Only in very few countries such as Bulgaria, Estonia, France, Italy, and the Netherlands, did the public or voters emerge as active participants in the debate with shares of more then 10%. Civil society organisations on the other hand were largely absent from the discussion – with the highest involvement level (4%) occurring in Denmark.

Table 2: Types of Agency

	BUL	CZ	DK	ESP	EST	FR	GER	HU	IT	NL	PL	SWE	TR	UK	Average
European actors	17%	8%	19%	36%	17%	18%	26%	36%	15%	15%	43%	37%	21%	22 %	24 %
Member state actors (national/sub-national)	52%	78%	59%	47%	57%	56%	59%	50%	64%	61%	20%	55%	40%	66 %	55 %
IO and non-EU states	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	0 %	0 %
Economic organisations	0%	2%	1%	2%	0%	2%	1%	0%	0%	1%	0%	1%	2%	0 %	1 %
Civil society organisations	2%	0%	4%	2%	1%	1%	1%	2%	3%	1%	0%	0%	2%	0 %	1 %
Mass media/external journalists	11%	0%	1%	0%	6%	1%	1%	4%	1%	2%	1%	0%	10%	0 %	3 %
Personalities, experts, think tanks	3%	3%	11%	6%	9%	11%	6%	3%	4%	9%	29%	3%	8%	6 %	8 %
Public/voters/people/citizens	14%	7%	5%	6%	10%	11%	6%	6%	13%	11%	6%	4%	17%	6%	9%
No. of quotations	245	245	520	444	455	500	465	376	278	532	409	189	374	403	402

How can we explain the elite dominance in constitutional debates in the media? Shifting media attention cycles are partly related to the indifference of the general public and the low level of political contestation in most member states. The fact that, among the non-state actors, only scientific experts and think tanks achieved some visibility in the media with an average share of 8%, further underlines the technocratic character of the debate in the reflection period, which tended to focus on the viability of legal choices.[5] If non-state actors (at the domestic or transnational level) do not mobilise, it is either because they lack specific concerns and opportunities, or because they trust in the particular representative structure in place. We assume that both explanations apply here: The reflection period did not provide opportunities for mobilisation from below. At the same time, non-state actors were involved in corporatist partnership designs with the EU and considered lobbying strategies as more successful than public mobilisation through the media.

Table 2 further indicates that the particular representative structure in place is unquestioned, and governments are seen as the legitimate voice of the member states in defending EU-constitutional issues. The particular type of representative voice in the reflection period thus supports the hypothesis that there is a return to intergovernmentalism in EU-Treaty reform. Intergovernmental theorists would be right to predict that national governments are successfully monopolizing domestic debates on the EU and excluding oppositional voices.

3. Patterns of interaction

In order to measure interdiscursivity and actors' relationships across countries and levels of political authority, the analysis of the post-ratification period looked at the particular ways in which actors' positions and statements were interlinked in unfolding media discourse. Interactions and interrelations were coded in all statements in which either a person was directly addressed or someone spoke about someone else. Combining these findings with an evaluation of actors' origin and level of action, our data measures the degree of transnationalism in the unfolding debate. It becomes possible to determine to what extend the debate was mainly restricted to the nation states or reached beyond national boundaries. This results in a matrix that distinguishes nine types of actor relationship (table 3):

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5 Note that the high share of 29% in the Polish case is due to the number of interviews and guest commentaries chosen for the analysis.

Table 3: Actor Relations

	Own national addressees	Foreign national addressees	EU addressees	All addressees
Own national actor	23 %	26 %	15 %	64 %
Foreign national actor	2 %	10 %	5 %	17 %
EU Actors	3 %	7 %	9 %	19 %
All Relations (%)	28 %	44 %	28 %	100 %
All relations (N)	371	581	378	1330

The aggregated figures show that two types of actor interactions shaped the debate: discussions within the nation states (23%) and forms of horizontal Europeanization (26%) in which actors from different EU-member states interacted with each other or more specifically, in which national actors addressed (with praise or criticism) actors from other member states. By comparison, vertical Europeanization, measured in terms of statements and opinions expressed by EU-actors in interaction with national actors (or vice versa) were less important (15%). Finally, contention in the EU arena, measured in terms of exclusive interactions between EU actors (e.g. EU-Parliamentarians addressing the Commission), was only marginally represented in the media (9%).

Again, these patterns of interaction portray the EU mainly as a Union of nation states, which are either closed in domestic debates or interact with each bi- or multilaterally. In turn, media discourse overlooks the multi-level character of the EU and the allocation of political authority at the supranational level: while domestic actors (mainly national governments) are taken into consideration as active players in EU debate, there are only few instances of direct intervention of EU actors in the domestic realm. In contrast to earlier phases of the constitutional debate, the importance of horizontal Europeanisation, measured in terms of passive observation of debates in other EU-member states, also diminished over the course of the reflection period (only 10%).[6] Our findings thus seem to deflate expectations of a progressive Europeanisation of the public sphere. Despite the fact that the EU hoped to launch a period of reflection and dialogue among Europeans, there is a considerable degree of re-nationalisation to be observed in media discourse of the EU.

4. Contentious issues

The range of issues raised by the statements made in media discourses indicates that during the reflection period a range of particular concerns has been expressed in relation to European integration in each of the single member states. A fundamental requirement for European political will formation is that public debates focus on the same topics of relevance (Eder/Kantner 2000). For the 2005-2007 reflection period the expectation would be that member state debates should primarily focus on the institutional and constitutional design of the European Union. The people of Europe were asked to deliberate about the scope and the limits of European integration, the possibilities for democratic control and the principal rules of decision-making. In order to compare the thematic character of European debates in the Member States, we have categorized the broad range of European issues into three categories

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6 Comparative findings for France, Germany, the UK and Spain for the referendum period, in which horizontal Europeanisation was considerably higher, are reported in Vetters et al. 2008 for France and Germany and Trenz et al. (2008).

a) Policy issues: In relation to which EU public policies is the constitutional treaty mentioned? Which types of EU policy-fields are considered most relevant in the constitutional debate (output legitimacy)?

b) Polity issues: How are the objectives of the European Union debated? How is membership perceived? How should democratic participation and control mechanisms be allocated (input legitimacy)? And how are the 'polity model' and principles for which the EU stands discursively represented?

c) Procedural issues: How is the process of constitutional negotiation, ratification, crisis, reflection and relaunch perceived? How are actors' positions and strategies in the process represented?

In order to increase the relevance of the sample, our country experts were advised to give preference to those kinds of articles in which strong opinions and preferences on the EU institutional and constitutional set-up and desired reforms were expressed. We expected that this particular sampling bias should increase the salience of polity issues over policy and procedural issues. This expectation was partly fulfilled in the sense that EU-policies were indeed discussed rather broadly and only mentioned on average in about 13% of all statements. Against our expectations however, polity issues did not figure most prominently in the newspapers either. The EU polity was a topic in 28% of all quotes, with a relatively wide range across countries, going from only 21% in Denmark to 45% in Turkey. Instead of dealing primarily with the substantive issues involved in the making of the EU polity, mass public debates in the reflection period tended to focus rather on strategic choices and the tactics of the main actors involved. The topics that were most hotly debated during the post-ratification debate were thus less concerned with the institutional and constitutional setup of the EU or the particular policy issues involved, dealing mainly with the process itself, reflecting on the referenda, the present impasse and possible ways out of the crisis. Overall, this emphasis on procedural issues (70% on average) reflects the dominance of strategic news framing and contentious issues. This can be correlated to the actor variable to reveal which national government leaders were the main promoters of European debates. Our analysis demonstrates that the activity of national governments is characterized in the media as: promoting national or shared European interests, searching for coalitions and possible compromises in conjunction with European partners, and devising strategies to rescue the treaty reform process. Given this focus on strategic-procedural issues, media debates largely reflected the agenda of intergovernmental negotiations (logic one) that was dominant over the period with the aim of arriving at a compromise of minimal Treaty reform beyond constitutional high politics.

5. *Justifications*

The justifications used by actors to explain or to give reason for their views or proposals were analyzed along three broad categories connected to interests, values and rights. Each of these categories included a range of sub-codes in order to establish to which level or group (e.g. regional, member states, European, sectoral, gender based) the justifications referred to. The three justificatory logics (interest, values and rights) were operationalised in terms of:

- whether a constitutional choice/strategy/policy for the EU is efficient/inefficient or beneficial/unbeneficial (problem-solving/interest-based justification),

- whether a constitutional choice/strategy/policy is considered relevant for a particular entity/collective (contextualized value based justification)

- whether a constitutional choice/strategy/policy is considered generally valid and impartial and defended on the basis of universal principles (rights-based justification

Furthermore, it was specified that only those justifications that were directly related to an issue of EU policy, the EU polity or the EU constitutional process or project should be coded. This condition was met in only 22% of all statements.

In all countries, the dominant pattern of justifying the constitutional project was interest-based. This points, once again, to a perception of the European Union as an entity that aims primarily at problem solving through compromises between the interests of different member states. Interest-based justifications were clearly dominant in the new Member States, especially Bulgaria (76%) and Estonia (74%), but were also in evidence in the applicant country Turkey and in some of the old Member States, especially in Britain (66%) and Italy (65%). Questions of collective identity and belonging were mainly debated in Turkey as well as in France and in Germany, and in all three countries were closely related to the question of Turkish membership. Justifications referring to rights and democracy became more prominent than interest-based justifications only in three countries: Sweden (57%), Denmark (36%) and the Netherlands (30%).

The reflection period is thus marked by diverging practices across the Member States with regard to justifying European integration. This contradicts in particular the second logic of European constitution-making, which relies on a convergence of interpretative patterns and unification of the debate through shared criteria of relevance. Diverging justifying practices rather point to the existence of latent cleavage structures and the existence of incommunicabilities between nationally diverse discourses. An example are concerns with the defence of rights and democracy, which were mainly articulated in well-established Northern European democracies (Sweden, Denmark, the Netherlands, and also Germany to a degree), whereas the New Member States, the UK and the Southern Member States tended to cast the EU routinely in terms of power and interests, albeit not national but predominantly joint European interests.

Looking at the degree to which different justifications were referred to, common European interests and values were dominant, followed by national or member-state-based arguments. The EU is thus primarily constructed as a double faced – in some cases even bi-polar - entity. The multi-level and poly-sectoral character of the EU-polity does not feature prominently in the discourses of the media. This also hampers the unfolding of a contentious logic of EU-constitution-making beyond the classic forms of bi-lateral cross-national or EU-member states conflicts. However, throughout the reflection period, such conflicts rarely become manifest. The diverging practices of justifying European integration rather point to latent cleavages which do not turn into contentious politics.

V. Conclusion: Lessons for Democratic Constitutionalism

Does media communication restrict the scope of democratic legitimacy in EU constitutional politics? According to the representative democratic logic of EU-constitution-making, ratification failure is basically a failure of public communication. However, as Fossum (2008) and Fossum and Menendez (2006) have argued, the institutional conditions for this failure can be found in the Laeken process itself which only insufficiently fulfilled the requirement of deliberative constitution-making. This accounts for why, in discursive practices the media could neither reach nor convince the relevant publics. In light of these shortcomings, the rather divergent media discourses do not come as a surprise. They cannot be seen to undermine the validity of the normative claims of deliberative constitution-making, as long as the necessary procedures have not been put properly into practice at the level of political process.[7]

From the intergovernmental perspective of 'quasi-constitutionalisation', the constitutional treaty ratification has been viewed as a procedural defeat but a substantive victory (Tsebelis 2008). Normative shortcomings do not matter as long as the process is functionally viable. As long as better alternatives to the Laeken outcome are not available, the failure of ratification does not matter. The task is therefore to protect the fragile compromises and to rescue the substance of the Constitutional Treaty. This can be done strategically by reducing public attention, e.g. by getting rid of the symbols

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7   In retrospect, contingencies can of course always be identified as wrong calculations.

and unnecessary corollaries of the Treaty. The road to Lisbon proves indeed that the restrictive logics of EU-constitutional settlement can still be applied successfully without European heads of states needing to worry about media interference or the mobilisation of significant popular resistance. Through these lenses, the EU is apparently not 'ripe for politicisation', as some commentators have suggested in the aftermath of the referenda (Mair 2007). It therefore appears to be premature to postulate a new logic of European integration by democratization that would be structured by stable cleavage structures to accommodate conflict within and across the member states.

Our data shed doubt on the claim that ratification failure is simply to be regarded as a communications failure that could be 'managed' by applying the right communicative procedures and norms. The EU is not simply unwilling to provide the right information to the citizens or generally incapable of talking to the public directly, but it encounters systematic constraints: on the one hand the institutional preconditions for constitutional politics, namely Council Presidency consultations behind closed doors; and, on the other hand, nationally fragmented public spheres.

Yet, the failure of communicating the European message in the ratification stage does not imply that mass media communication of EU-politics to the public leads to the wholesale re-nationalising of EU constitutional politics. Though some re-nationalising dynamics could be verified by our data (especially with regard to the dominance of national actors and interactions), the reflection period held some quite unexpected surprises: Although the media undoubtedly give prominent voice to national governments, they do not necessarily reframe the agenda of European integration and democratization in the terms of national interests or identities. To the contrary, the comparative assessment of the democratic quality of the constitutional debate in the mass media has revealed that a substantial degree of attention was paid to supranational policy issues as well as to European interests and identity. Furthermore, we claim that across extended pockets of the emerging European public sphere, institutional and procedural issues linked to a contentious, transnational democratic politics of constitutionalism can be seen to trump national institutional or supranational issues. Finally and importantly from the perspective of democratic constitutional politics by deliberation, the same mass media discourses that largely privilege the voices of national elites do not necessarily do so to the detriment of reason giving. In this regard, our most surprising finding consists in patterns of justification where appeals to European interests, values and identities have played the most prominent role. Arguably a reflection, if not on the democratic quality, then on the reflexive capacity of the European political class to learn from past failures and successfully stage the Berlin Declaration on occasion of the 50th anniversary of the EU.

In light of these non-linear trends in cross-national and transnational media communication on the construction of a European political order, we cannot but conclude that these neither support the thesis that the media is a mechanism for forging permissive social consensus, nor does it promote normative contentions about European integration. They do articulate normative debates about the constitutional design of the EU, but neither build societal consensus nor reflect (as yet) stable patterns of societal contention. Generally, media attention to EU constitutional politics is low, except for short periods around specific events like national referenda, and especially crises. Nevertheless, during the reflection period the media have demonstrated an unusual readiness to cover transnational normative and political debates. EU-democracy is not an explicitly prominent topic within the national media, but neither do they exclusively or predominantly focus on the defence of national positions and interests when dealing with EU topics of general relevance.

Last but not least, our analysis also proves the intergovernmental logic of quasi-constitutionalisation wrong, with our findings contradicting its core claim that the necessary institutional settlement of the EU has already been achieved by restricting the instrumental scope and the normativity of the project. It needs to be recognised that the EU's visibility in public discourses all over Europe has become a fundamental condition for debating and negotiating its legitimacy. The question of the democratic legitimacy of the European political order can therefore not be detached from normative debates that effectively engage broader publics.

The role of publicity as a constraint on and precondition for democratic legitimacy has not yet been fully grasped. Arguably, a theory of constitutionalism beyond the state would have to put discursive intermediation centre stage, paying attention to the contingencies deriving from competing constitutional games. Their articulation is risky but unavoidable, with no guarantee of public loyalty.

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