



# ***Building Europe's Constitution. The parliamentarization and institutionalization of human rights***

*Berthold Rittberger & Frank Schimmelfennig*

*Working Paper*

*No. 07, March 2006*

*Working Papers can be downloaded from the ARENA homepage:*

<http://www.arena.uio.no>

## Abstract

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. Furthermore, while human rights were not institutionalized in the founding Treaties, the European Court of Justice began to make references to fundamental rights in its jurisprudence since the late sixties, and the recent past has seen the codification of fundamental rights in the Charter of Fundamental Rights. Under what conditions have the parliamentarization and the institutionalization of human rights at the EU level progressed? We explain the constitutionalization of the EU – parliamentarization and the institutionalization of human rights – as strategic action in a community environment. According to this approach, 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. We find that salience has been the most relevant condition for triggering incremental constitutionalization: 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 “legitimacy deficit” of European integration becomes. This state of affairs, in turn, 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.

Prof. Berthold Rittberger  
Kaiserslautern University of Technology  
Department of Social Sciences  
67663 Kaiserslautern, Germany  
++49-631-205-2013  
rittberg@rhrk.uni-kl.de

Prof. Frank Schimmelfennig  
Swiss Federal Institute of Technology (ETH)  
Center for Comparative and International Studies  
ETH Zentrum SEI International Studies  
++41-44-632 80 62  
frank.schimmelfennig@ep.gess.ethz.ch

*Reproduction of this text is subject to permission by the authors.*

© Arena 2005

# 1. Introduction: The Constitutionalization of the EU<sup>1</sup>

Constitutionalization has become a buzz-word in the study of the European Union (EU). Past years have seen a constant increase of references to constitutionalization in the academic literature and in political commentary. Constitutionalization has traditionally been employed to denote the process of European legal integration which has led to a remarkable transformation of the EU replacing the traditional notion of a state-centered international organization with “a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within the sphere of application of EC law.” (Halter 2002: 2)<sup>2</sup> The establishment of the doctrines of supremacy and direct effect coupled with the system of judicial review have “to a large extent *nationalized* Community obligations and introduced on the Community level the habit of obedience and the respect for the rule of law which is traditionally less associated with international obligations than with national ones.” (Weiler 1999: 28) Hitherto, the political science and legal literatures have dedicated volumes to the question of constitutionalization *qua* legal integration by taking recourse to and refining theories of European integration, most notably intergovernmentalism and supranationalism /neofunctionalism.<sup>3</sup>

---

<sup>1</sup> This paper presents arguments and preliminary findings from a research project based at the Mannheim Centre for European Social research (MZES) funded by the Thyssen Foundation. We wish to thank our collaborators Alexander Bürgin and Guido Schweltnus for their invaluable input to this work.

<sup>2</sup> See, for example, the pioneering works by Stein (1981) and Weiler (1981).

<sup>3</sup> The battle between intergovernmentalists (see Moravcsik 1991, 1993, 1998; Garrett 1995, Garrett et al. 1998) who argue that legal integration broadly reflects the interests of the (large) member states and supranationalists/neofunctionalists (Burely and Mattli 1993, Alter 1998, Stone Sweet 2000, 2003) who argue that legal integration has progressed ‘behind the back’ of and even against the interests of the member states is still waging. Empirical evidence suggests however that the ‘winning formula’ is to be found with the supranationalists/neofunctionalists (see Stone Sweet and Brunell 1998, Stone Sweet 2000, 2003).

More recently, the scope of empirical phenomena and processes which are studied by making reference to the concept of constitutionalization has broadened. Constitutionalization is considered to refer to all those “processes which ... tend to confer a constitutional status on the basic legal framework of the European Union.” (Snyder 2003: 62-63) According to Snyder, constitutionalization thus encompasses processes which relate to “deepening and delimitation” (Snyder 2003: 63) including democratization, the creation of solidarity as well as the establishment and maintenance of boundaries. This definition of constitutionalization is derived from a broad normative consensus which holds that constitutions should encompass a set of core principles: rights, the separation of powers and representative democracy (see, for example, Wiener 2005). From this perspective, a more inclusive definition of constitutionalization – which includes but goes beyond European legal integration – relates to all those processes through which the above mentioned core principles are becoming embedded in the EU’s legal order. In this vein, constitutionalization, *inter alia*, refers to the inclusion of fundamental rights in the EU Constitution (Sadurski 2003) or to the infusion of representative democratic principles in the EU’s constitutional order: “By ‘constitutionalization’ we mean the embedding of principles related to representative party-based democracy into the treaties” (Day and Shaw 2003: 150). This paper echoes this development as it takes issue with precisely these two constitutionalization processes: the development of representative parliamentary institutions and the codification of fundamental rights at the EU level.

In the early decades of the European integration project, these two constitutionalization processes have hardly attracted the attention of European integration scholars, early neofunctionalist scholarship being a lonely exception. Neofunctionalists, most notably Ernst Haas, famously pointed at the potential held by political elites in the new supranational institutions, such as the Commission’s forerunner – the High Authority – or the Common Assembly to promote the European integration project by triggering’ political spillover processes. Haas

argued that the new supranational political elites possessed the ability to persuade national political elites “to shift their loyalties, expectations and political activities” (Haas 1958: 16) towards the new central institutions: “If permitted to operate for any length of time, the national groups now compelled to funnel their aspirations through federal institutions may also be constrained to work within the ideological framework of those organs.” (Haas 1958: 19). As we know today, these expectations did not match with the realities of the integration process for decades to come. With regard to the role of societal actors and supranational institutions in promoting European integration, most notably the Commission and the Court, central tenets of neofunctionalism have been re-discovered and applied successfully (see, for example, Sandholtz and Stone Sweet 1998; Stone Sweet, Sandholtz and Fligstein, 2002). More recently, Haas’ neofunctionalism has also inspired scholars studying the impact of the European Parliament on processes of vertical integration (‘deepening’) from a ‘supranationalist’ perspective (e.g., Hix 2001, Farrell and Héritier 2005).

By-and-large, however, the academic literature has eclipsed the processes of parliamentarization and institutionalization of human rights. 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. Furthermore, while human rights were not institutionalized in the founding Treaties of the European Communities, the European Court of Justice 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. But we still lack systematic, theoretically sophisticated, longitudinal analyses about these two processes. This paper attempts to close this gap.

Under which conditions have the parliamentarization and the institutionalization of human rights at the EU level progressed? We start from the

double puzzle that EU constitutionalization constitutes for both rationalist and constructivist integration theories.<sup>4</sup> On the one hand, the EU has taken incremental steps towards increasing the competencies of the European Parliament and the institutionalization of human rights in spite of adverse or divergent member state preferences and in the absence of a favorable bargaining power structure. Rationalist analyses of European integration find it hard to explain these processes as an outcome of preference and power constellations. On the other hand, the constitutionalization of the EU cannot be attributed to learning and socialization effects. Rather, constructivist analyses show that divergent national constitutional attitudes and norms display remarkable stability in the course of European integration and that their heterogeneity have increased rather than decreased as a result of successive enlargement rounds. Nevertheless, constitutionalization has progressed despite the stability and increasing heterogeneity of national constitutional attitudes.

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, we expect strategic action to be most effective in a community environment if constitutional issues are highly salient, constitutional norms are possess high international legitimacy, and if constitutional negotiations are public. To develop our argument, we will proceed as follows. In the ensuing sections, we introduce our theoretical perspective – strategic action in a community environment – as well as the causal mechanisms that underlie our causal conditions to explain the processes of parliamentarization and the institutionalization of human rights. We then present our empirical analysis and results in a two-stage process. We offer a general test of our theory by testing for

---

<sup>4</sup> See Rittberger (2005: chapter 2) and Rittberger and Schimmelfennig (2006) for a detailed argument.

the necessity and sufficiency of our different theoretical conditions employing qualitative comparative analysis (QCA) developed by Charles Ragin. We have collected a data set of all constitutional decisions in the domains of parliamentarization and institutionalization of human rights between 1950 and 2004. Furthermore, we present case studies of individual constitutional decisions to offer evidence for the operation of different causal mechanisms which underlie our theoretical conditions. In the final section we discuss implications of our analysis for theories of European integration.

## 2. The Theoretical Argument: Strategic Action in a Community Environment

We claim that 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. 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.<sup>5</sup> 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

---

<sup>5</sup> See the concept of “pluralistic security community” developed by Deutsch et al. (1957).

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 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.<sup>6</sup> In particular, a community environment affects interaction and collective outcomes in the following ways:

---

<sup>6</sup> On social influence, see Johnston (2001).

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. On the other hand, it does not necessarily require the internalized following of community norms or a true

consensus. This theoretical approach 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 stipulations 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.

*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.

*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”. 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 perceived “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.

The mechanism that helps us to understand why actors feel compelled to close the perceived gap between “is” and “ought” is *cognitive dissonance*. Dissonance is a mental state which “is stipulated to arise when a person holds two or more “cognitions” that are *inconsistent* with one another.” (Elster 1998: 52, emphasis added) Cognitions comprise factual beliefs, consciously held values as well as mental representations of the different choices or behaviors of a particular social actor (see Elster 1998: 52). The potential for inconsistency between different cognitions is founded on the expectation of actors about “what goes with what” (Festinger and Bramel 1962: 255). These expectations are “built up on the basis of past experience, including notions of logical relations, cultural mores, and learned empirical correlations among events” (Festinger and Bramel 1962: 255). Cognitive dissonance is associated with emotional discomfort and mental tensions which actors seek to resolve. The more pronounced the inconsistency-gap between different beliefs or between a particular behavior and associated belief, the higher the level of dissonance that actors experience and the more will actors feel compelled to reduce the experienced inconsistency. Leon Festinger (1957) distinguishes different avenues that actors may pursue to bring their dissonant beliefs and/or actions into harmony: actors can change their beliefs, change their perception of their actions, or change the actions themselves.

The basic liberal-democratic constitutional norms which are at stake in the present context can be considered so fundamental that ‘belief change’ is an unlikely option to resolve the mental tension between “what is” – i.e. the looming threat that further integration undermines human rights standards and curbs domestic parliamentary powers – and “what out to be” – i.e. the

maintenance of those basic liberal-democratic constitutional standards at the domestic level. Consequently, to reduce the dissonance between “ought” and “is”, we expect political actors to alter their behavior so as to ensure that basic standards are upheld; alternatively, actors may change their perception of their actions by ‘rationalizing’ their actions. When people engage in ‘rationalizing’, they engage in redefining the requirements of a specific task in order to stay committed to their beliefs and values. In the context at hand, this means that EU actors will not dispute the general validity of liberal-democratic constitutional norms and standards, they may argue, however, that these standards are not threatened in a particular context: “further integration does not undermine domestic parliamentary powers after all” or “‘de-parliamentarization’ happens in all domestic polities, so why should *we* bother too much”. The likelihood that rationalization is successful, however, crucially depends on other EU actors’ response to this problem of cognitive dissonance. If other actors do not respond similarly to their own cognitive dissonance, the likely success of attempts to re-define a particular task is limited (see Kuran 1998: 160).

*Legitimacy.* Even among issues that are constitutive and highly salient, community effects may vary according to the norms in question. According to Thomas 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 (Franck 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, inter-institutional agreements, 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.

The mechanisms through which institutional precedent comes to exercise force on the behavior of political actors are *analogical* and *abstract reasoning*. Analogical reasoning refers to a cognitive process whereby actors “reason and learn about a new situation (the *target* analog) by relating it to a more familiar situation (the *source* analog) that can be viewed as structurally parallel.” (Holyoak and Thagard 1997: 35) Research on analogical reasoning in cognitive psychology has informed several areas of political science, most notably the literatures on decision-making in foreign policy (see, for instance, Khong 1992, Houghton 1996) as well works on judicial integration (Sandholtz and Stone Sweet 2004). Political actors employ analogies for coping with two types of problems: They either employ analogies “for the focused purpose of understanding a particular situation or for the broader purpose of comprehending a whole new issue-area or type of problem.” (Peterson 1997: 248) Analogical reasoning proceeds in the following way (see, for instance, Breuning 2003: 231–232 and Peterson 1997: 248). First, actors construct a *representation* of the problem confronting them; this involves identifying the structural features of the problem. Second, actors use this representation to *retrieve* useful, structurally similar problems (analogies) from memory. Third, actors *map* information from the analogy (the ‘source’ analog) to the current problem (the

'target' analog) "by matching observed features that correspond and [by] transferring inferences about the existence of other features or relations among features from the source to the target domain" (Peterson 1997: 248). In the fourth step, *adaptation*, actors modify the model drawn from the analogy to offer a better fit to the target domain. However, actors may equally seek to generalize from the particular situation to comprehend "a whole new issue area or type of problem" (Peterson 1997: 248). Developing such a generalization "implies the emergence of a more abstract form of reasoning which can be applied to future problem-solving attempts. ... Rather than comparing two or more cases, the problem solver examines the problem to determine whether it has certain structural properties and, hence, belongs to a certain class of problems." (Breuning 2003: 232) This form of reasoning is less 'analogical' or case-based and more abstract and deductive in nature.

We expect that initial steps of transferring sovereignty through pooling and delegation catapult member states into situations in which they face novel challenges: How do states cope with the challenges supranational integration poses to domestic standards for human rights and domestic parliamentary participation? As pooling and delegation progress through recurrent Treaty revisions, we would expect that – over time – political actors develop more abstract schemes for analyzing and coping with the ongoing challenges of integration to uphold liberal-democratic constitutional standards at the domestic level. Once an analogy is adopted, it becomes institutionalized either as a formal institutional rule – e.g. a Treaty clause – or as an informal institutional rule – e.g. a non-binding inter-institutional agreement. These rules systematically structure institutional reforms in future Treaty revisions: Once an institutional rule has been established and institutionalized, it is susceptible to positive feedback effects. Political actors interested in promoting constitutionalization will employ these institutional rules – like judges invoke precedents – in future Treaty revisions to connect present and future 'cases' of integration with past 'cases'. Like judges, we expect political actors to link 'like instances to like' whereby these actors underpin the self-

referential and path-dependent nature of precedent based decision-making (see Stone Sweet and McCown 2001). Furthermore, as rules are applied, interpreted, and evoked in recurrent Treaty reforms, they are likely to become more determinate and thus also more legitimate, which makes them even more difficult to reverse. According to Thomas Franck, “rules which are perceived to have high degree of determinacy – that is, readily ascertainable normative content – would seem to have a better chance of actually regulating conduct in the real world than those which are less determinate.” (Franck 1990: 52) A rule is characterized by a high degree of determinacy if it offers clear behavioral prescriptions (the ‘Do’s’) or prohibitions (the ‘Don’ts’) (see Franck 1990: 64). Analogical and abstract reasoning do thus display “path dependent cognitive effects” (Pierson 2004: 40, fn. 20) which historical institutionalism and supranationalist integration theory have theorized and applied empirically (see Pierson 1998, 2004; Shapiro and Stone Sweet 2002: 113–135).

*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. The mechanism at work here is – what Elster has famously coined – the *civilizing force of hypocrisy*. Elster argues that “[t]he presence of a public makes it especially hard to appear motivated merely by self-interest. Even if one’s fellow assembly members would not be shocked, the audience would be. In general, this civilizing force of hypocrisy is a desirable effect of publicity.” (Elster 1998: 111) 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 Intergovernmental Conferences.

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

<Insert Figure 1 about here>

Briefly summarized, the model postulates that, on the basis of divergent or adverse constitutional member state preferences, progress in constitutionalization depends on the presence and strength of salience, publicity, consistency, and coherence. As argued above, the model contains a potential positive feedback 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 public the setting for constitutional decision-making is (publicity).

### 3. Analysis

In the ensuing paragraphs, we offer a two-staged analysis to test the constitutionalization hypothesis employing different data sources and methods.

#### *3.1. Necessary and sufficient conditions for constitutionalization: 1950-2004*

In this section, we take recourse to the method of Qualitative Comparative Analysis (QCA) advanced by Charles Ragin (1987; 2000). We briefly outline the underlying assumptions and goals of QCA before we move on to introduce the selection of units of analysis, our dependent and independent variables, the cases and the respective values of our variables.

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).

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 order to achieve parsimony (Ragin 1987: 121–123). Thus, QCA helps to improve qualitative research without having to compromise on its basic features.

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).

### *Units of analysis*

Our units of analysis are *formal constitutional decisions* of the EU which are taken during Intergovernmental Conferences (IGC). This implies that we do not analyze constitutional *proposals*, nor constitutional *preferences* at this stage. We have identified ten IGCs resulting in new treaties or treaty revisions: ECSC 1951, EDC/EPC 1953, 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 European Parliament

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 as positive cases of constitutionalization.

### *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:

- A move from a lower to a higher level of constitutionalization:
  - from “no constitutionalization” to at least “declaratory constitutionalization” (official references to parliamentarization and human rights, recommendations to strengthen competencies);
  - from “declaratory constitutionalization” to at least “weak constitutionalization” (non-binding rights and competencies);
  - and from “weak” to “strong constitutionalization” (binding rights and competencies)
- A significant extension of rights and competencies within each level of constitutionalization:
  - At the levels of “declaratory” and “weak” constitutionalization: horizontal extension to new issues (additional human rights or additional parliamentary competencies);
  - 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 four independent variables: salience, 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).

*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. The IGCs preceded by a convention were the 1953–54 IGC on the EPC and 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*

In order to increase the number of cases, coding is *issue-specific* for all variables. This means that 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. Given the qualifications about the 1970 and 1975 IGCs, which focused exclusively on budgetary competencies, we arrive at a total of 66 cases.

### *Analysis*

The ‘truth table’ displayed as Table 1 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.<sup>7</sup> Before presenting the results of the QCA analysis, we would like to point two observations. First, the truth table represents 15 of the 16 ( $= 2^4$ ) possible configurations. For only one logically possible configuration, we do not have empirical outcome observations. This configuration is called a “remainder”. In the following preliminary analysis, we will use this ‘remainder’ as potential simplifying assumptions in order to maximize parsimony (see Rihoux and Ragin 2004: 12). Second, three configurations are contradictory, that is, the same configuration of conditions leads to constitutional change in some cases and no change in others (see rows in Table 1 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) and one case of civil and political rights (CPR53). These cases will require careful analysis at a later stage; for the moment, we exclude them from the analysis to obtain a general picture.

*<Insert Table 1 about here>*

With this *caveat*, the parsimonious solution produced by QCA for the presence of constitutionalization is “SALIENCE or (COHERENCE and CONSISTENCY and PUBLICITY).”<sup>8</sup> That is, constitutional change has occurred either whenever 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 61 out of 66 cases, salience is a both necessary and sufficient condition for bringing about constitutional change. In these 61 cases, constitutional change occurred whenever salience was present – even if all other theoretically postulated conditions were absent (see row 8). Conversely, whenever salience was absent, usually 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).

To learn more about the robustness of this parsimonious solution for the positive outcome, we first ran a conservative analysis uniformly treating the absent conditional configuration (“remainder”) as a counterfactual. That is, we assumed that it would not produce positive constitutional change. This analysis results in a similar but slightly less parsimonious solution: “(SALIENCE and publicity) or (SALIENCE and consistency) or (COHERENCE and CONSISTENCY and PUBLICITY).” The main difference of the more conservative and cautious solution is that the presence of salience loses its status as a sufficient condition. It must either be joined by the absence of publicity or consistency to produce

---

<sup>7</sup> To analyze the data we used fs/QCA 1.1 software (Ragin et al. 2003) which can be downloaded at <[www.fsqca.com](http://www.fsqca.com)>.

<sup>8</sup> In QCA notation, upper-case letters indicate the presence of a condition, whereas lower-case letters indicate the absence of a condition.

positive constitutional change. Furthermore, the analysis shows that publicity and consistency are not systematically related to constitutional change: both its absence and presence are part of alternative pathways to constitutionalization. By contrast, this analysis reveals that coherence, i.e. 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 analysis.

If – in addition to salience – 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 (SEA), the other comprising the more recent decisions starting with the SEA. The results confirm our expectation. The time-dependent analysis separates the two main solutions we arrived at for the time-independent analysis. Whereas the solution for the early cases is “SALIENCE”, (“SALIENCE” or “COHERENCE and CONSISTENCY and PUBLICITY”) appear for the time period between 1986 and 2004. In the more conservative solution, the presence of coherence and consistency – conditions which we expect to be conducive to positive feedback effects – are necessary for producing constitutionalization in two out of three solutions. Table 2 summarizes the different QCA solutions, including time-dependent effects.

*<Insert Table 2 about here>*

The QCA has allowed us 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 need to find evidence for the relevant mechanisms which we postulated to be at work 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.

### *3.2. A mechanism-based explanation of constitutionalization processes*

In this section, we present a model which specifies the individual causal mechanisms which are work to explain constitutionalization. We take recourse to James Coleman's (1986) famous 'bath tub'-model to analyze the interplay between micro-level mechanisms and macro-level outcomes. Coleman's model stipulates that "proper explanations of change and variation in the macro level entails showing how macro states at one point in time influence the behavior of individual actors, and how these actions generate new macro states at a later time." (Hedström and Swedberg 1998: 21) First, such a model has to specify how macro-level events affect individual political actors at the micro level (*situational mechanism*). Second, the model has to specify an *action-formation mechanism* which explains how individuals assimilate the impact of macro-level events. Finally, the model has to define a *transformational mechanism* which sheds light on how political actors generate outcomes at the macro-level through action and interaction (see Hedström and Swedberg 198: 21-22). Figure 2 offers a brief overview of the argument which we flesh out in the ensuing paragraphs.

<Insert Figure 2 about here>

#### *From macro to micro: cognitive dissonance*

We have argued that cognitive dissonance is the mechanism which underpins the salience-variable, capturing the perceived discrepancy between "ought" and "is": When integration looms, political actors experience a mental tension that is triggered by the perceived consequences of deepening integration on domestic

standards for parliamentarization and/or human rights. What are the observable implications of the proposition that political actors ‘suffer’ from such a mental tension whenever ‘deepening’ looms? We expect that political actors publicly and privately express concerns about and make reference to the discrepancy between liberal-democratic constitutional standards (“ought”) and the challenges the deepening of integration is expected to pose with regard to upholding these standards (“is”).

To illustrate the plausibility of the salience-proposition and the underlying mechanism of cognitive dissonance, we present a stylized case study from the early years of the European integration project, the creation of the ECSC (see Rittberger, 2003, 2005). The major ‘invention’ of the Schuman Plan in May 1950 was the proposal to institutionalize the idea of supranationality in a Treaty between France and Germany which – once the ECSC was adopted and ratified by the six founding member states of the ECSC – was embodied by the High Authority (the forerunner of the Commission). The *sine qua non* of the Schuman Plan was that the prospective ECSC member states renounced their right to issue unilateral vetoes by accepting the idea of transferring sovereignty in the respective policy sectors to the supranational High Authority which had the power to make decisions binding on the member states. As soon as the member state representatives congregated to negotiate the terms of the ECSC, the question of the democratic accountability of the new supranational organ was raised. During a debate in the French National Assembly, Robert Schuman emphasized time and again that the delegation of sovereignty to the new supranational High Authority required democratic flanking mechanisms to prevent potential abuse of power. Schuman argued that a new parliamentary assembly should be created, comprised of national parliamentarians who should commonly exercise the portion of sovereignty which it was about to delegate by accepting the creation of a supranational High Authority.<sup>9</sup>

---

<sup>9</sup> Robert Schuman stated: ‘Auf diese Weise würde zum ersten Mal eine Versammlung, die aus den Vertretern verschiedener Länder zusammengesetzt ist, mit entscheidenden Rechten begleitet

For the French delegation to the Schuman Plan negotiations, the inclusion of a parliamentary assembly solved the tension between “is” (the existence of a supranational quasi-executive) and the “ought”-postulate (‘executive bodies must be democratically controlled’) that had emerged over the question of democratic control of the High Authority: “For the first time, an international assembly will become more than a purely consultative body; the [national] parliaments which will give up a fraction of their sovereignty will ... exercise this sovereignty jointly.”<sup>10</sup> By creating a parliamentary assembly, Jean Monnet has offered an apt proposal to solve this cognitive tension arguing that “in a world in which government authority is derived from representative parliamentary assemblies, Europe cannot be built without such an assembly.”<sup>11</sup> This argument was enthusiastically taken up by the German and Italian delegations and also found acceptance, albeit initial skepticism, from the Benelux representatives.

*From micro to micro: analogical and abstract reasoning*

We have argued that the deepening of integration by transferring sovereignty to the supranational level does not only generate cognitive dissonance; integration also triggers a second micro-level process: analogical and abstract reasoning. In this paragraph we offer an example of the second mechanism which links a situational mechanism (cognitive dissonance) with an action-formation mechanism (analogical and abstract reasoning). Once political actors have commenced to resolve the cognitive tension by making sense of the particular situation they are in, we need to look at how they translate their understanding of the situation into concrete cues for action. How do these cues affect and structure future

---

werden, und die einzelnen Parlamente, welche Vertreter in diese Versammlung entsandt haben, würden dort gemeinsam den Teil der Souveränität ausüben, den sie abgetreten haben.’ (HAEC, AA/PA.SFSP – 53: Auszüge aus der Debatte über den Schuman-Plan in der Nationalversammlung [deutsche Übersetzung], 25-26/06/1950).

<sup>10</sup> HAEC, AA/PA.SFSP – 53: Résumé du document de travail présenté par les experts français, 27/06/1950.

<sup>11</sup> This statement was attributed to Jean Monnet in meeting between the heads of delegation debating the Schuman Plan (HAEC, AA/PA.SFSP – 62, 11 July 1950, authors’ translation).

constitutionalization decisions? In order to explore the second mechanism, we present an example that spans two decades of integration. We argue that the (re-)introduction of qualified majority voting (QMV) which the member states agreed to in the Single European Act (SEA) – and the concomitant renouncing of the ‘Luxembourg Compromise’ – confronted the member states with a new challenge which not only triggered cognitive dissonance (‘does the application of QMV undermine national parliamentary prerogatives?’) but also activated a search for concepts and behavioral prescriptions for coping with this situation. Following the SEA, further rounds of integration produced extensions of the application of QMV to new policy areas. We argue that the recurrent appearance of the issue of QMV-extension enabled political actors to develop more abstract schemes for analyzing and proposing solutions to the challenge QMV posed for domestic parliamentary competences. How did analogical and abstract reasoning work in the case of the introduction of QMV and the question about EP participation?

First, we have to ask what *representation* of the problem (the introduction/extension of QMV) political actors evoked. Similar to ECSC case, in the run up to the SEA, member state governments responded to the introduction of QMV by voicing concerns about the increasing marginalization of national parliaments in their capacity to exercise control and influence over EU decision-making (cognitive dissonance). With the introduction of QMV, so the problem-definition which was shared by domestic MPs and member state representatives alike, ever more policy-decisions would be taken at the EU level by-passing national parliaments.

Secondly, once the problem was depicted in this particular way, did political actors *retrieve* any useful examples from memory to offer cues for coping with this problem? In Germany, for instance, the leader of the Social-democrats Hans-Jochen Vogel warned that sovereignty transferred to the European level must not be steered into “a parliament-free space ... Europe cannot live with a Parliament whose competencies are less than those of nineteenth-century

representative institutions.”<sup>12</sup> Renate Hellwig of the governing Christian-democrats and chairwoman of the Bundestag’s EC Committee compared the looming threat of an executive-dominated Community to “cabinet-politics” (‘Kabinettspolitik’) in absolutist regimes, asking rhetorically whether “we want a Europe of the type of eighteenth- and nineteenth-century cabinet-politics? A Europe resembling the Congress of Vienna where the heads of government and crowned leaders took ‘European’ decisions ... [and] with the peoples having no input and being the victims of these decisions? Has the Congress of Vienna been resurrected disguised in form of the summit meetings in Brussels, Athens and Milan? ... We ... welcome that Chancellor Kohl has set himself the core task to convince the other heads of government in Milan that the European Parliament has to become involved in the legislative process.”<sup>13</sup>

Thirdly, the solution that representatives from a majority of member states *mapped* onto the problem posed by the introduction of QMV was as follows: The bypassing of national parliaments in Community affairs, so the argument, could be counter-acted and compensated for first and foremost by providing the EP with legislative decision-making authority. The French Socialist MP Charles Josselin stipulated that “[a]gainst the background of the weakening of national parliaments’ powers, the European Parliament ... has, for long, embodied an opportunity, and maybe still does: to control the proliferation of Community legislation. ... All in all, we national parliamentarians will have to seek consolation for our decline in the thought that a substitute [for our loss in competencies] lies in Strasbourg, by reminding us of what John the Baptist had to say: “Il faut qu’il croisse et que je diminue”.<sup>14</sup> Finally, the solution which was *adopted* and found acceptance by the majority of member states<sup>15</sup> found expression

---

<sup>12</sup> Bundestag debate of 27 June 1985: 11089 (authors’ translation).

<sup>13</sup> Bundestag debate of 27 June 1985: 11111 (authors’ translation).

<sup>14</sup> Journal Officiel, Assemblée Nationale, debate of 11 June 1985: 1600 (author’s translation).

<sup>15</sup> At the time the SEA was negotiated, the governments and Denmark did not share this formula, opposing increased legislative involvement of the European Parliament. However, what they *did* accept was the definition of the problem that QMV was undermining the competences of

in the simple formula: ‘Wherever QMV applies, the EP should be involved in legislative decision-making.’

This simple formula became a guiding principle for future instances of Treaty reform since the extension of QMV to new policy areas was always an issue which was placed on the agendas of subsequent IGCs. In the period preceding the adoption of the Maastricht Treaty, government representatives and major political parties in voiced the demand that further pooling of sovereignty through the extension of QMV must be accompanied by granting the EP with legislative powers (see, for instance, Corbett 1992; Rittberger 2005). Following Maastricht, the IGCs leading to the adoption of the Amsterdam and Nice Treaties did invoke the ‘Council QMV-EP participation’-formula. During the Amsterdam IGC, the Benelux governments issued a memorandum in which they explicitly acknowledged the link between the application of QMV and legislative co-decision for the European Parliament (see European Parliament 1996: 20). Similarly, a Spanish government document on the IGC foresaw that “there will be considerable scope for progress through an extension of the field of application of the codecision procedure; this concept should ... logically be viewed in close relation to majority decision-making.” (European Parliament 1996: 47)

During the Nice IGC, the question of parliamentary involvement in QMV-based legislative decision-making procedures (co-decision) was a lesser concern. The Treaty provided for six new cases of co-decision. Yet, among the new cases under QMV, three legislative ones remained outside the co-decision procedure: financial regulations, internal measures for the implementation of cooperation agreements, as well as the Structural Funds and the Cohesion Fund. Since some member states consider these policies to be particularly ‘sensitive’ on account of their major budgetary implications, the call for co-decision in these areas was resisted and the EP bemoaned that “in refusing even to consider switching matters

---

domestic parliaments. The solutions proposed by the British and Danish governments to remedy their mental tensions was not to strengthen the European Parliament but rather to enhance the scrutiny powers of their domestic parliaments (see Rittberger 2005: chapter 5).

already subject to qualified-majority voting to the codecision procedure, the [IGC] was rejecting a basic institutional principle on which significant progress had been made at Amsterdam: as a general rule, codecision should accompany qualified-majority voting in matters of a legislative nature.” (European Parliament 2001: 28) Following the European Council meeting at Laeken and the establishment of the European Convention, a working group on ‘Simplification’ was instituted facing the twin objective of making the European system of governance more transparent and more comprehensible.<sup>16</sup> The report issued by the working group stipulated that the legislative co-decision procedure should “become the general rule for the adoption of legislative acts.”<sup>17</sup>

The Draft Treaty establishing a Constitution for Europe (DTC) and the ensuing IGC which resulted in the signing of the Treaty establishing a Constitution for Europe (TCE) implemented the working group’s recommendation: Article I-34(1) TCE stipulates that what was hitherto known as the co-decision procedure becomes the ‘ordinary legislative procedure’. The logic inherent in the ‘Council QMV-EP participation’-formula had thus not only gained broad acceptance in the post SEA-era. Some commentators have even gone so far as to label this formula a *technical* formula. This label strips the formula of its potential political and normative character and gives credence to the interpretation that the link between Council decision-making by QMV and legislative participation by the European Parliament is a ‘natural’ one and hence not (or not any more) politically or normatively contested (see Norman 2003: 102).

To bolster our argument, we have calculated the percentage of QMV-based legislative procedures in which the EP has legislative participatory rights. We coded the cooperation and codecision procedures as procedures in which the EP has substantial legislative decision-making powers. All other procedures, the consultation procedure and those procedures which exclude the EP from

---

<sup>16</sup> See European Convention, CONV 424/02.

<sup>17</sup> See European Convention, CONV 424/02, p. 15.

legislative involvement, are counted as procedures without substantial legislative involvement. Table 2 indicates that since the entry into force of the SEA the percentage of QMV-based legislative procedure in which the European Parliament has substantial legislative participatory rights has increased from less than one third to over fifty percent in the Treaty establishing a Constitution for Europe (TCE). On the one hand, these figures underwrite Mark Pollack's argument that "the willingness of individual member governments to delegate legislative powers in specific areas has varied substantially as a function of each member government's substantive interest and its calculation of the likely consequence of increase EP powers" (Pollack 2003: 252). On the other hand, the figures also display a clear trend towards increasing legislative power of the European Parliament in QMV-based legislative decision-making procedures. This supports our argument that the 'Council QMV-EP participation'-formula has gained both more determinacy as well as more legitimacy over the past two decades.

<Insert Table 3 about here>

#### *From micro to macro: rhetorical action*

We now turn to the third analytical step in Coleman's model by moving from individual actor dispositions at the micro-level to macro-level outcomes. We argue that *rhetorical action*, the strategic use of norm-based arguments, is a mechanism which helps to explain how the proponents of constitutionalization were capable to rhetorically 'entrap' recalcitrant political actors and 'shame' them into compliance with proposed steps of constitutionalization. We have shown in the previous paragraphs that political actors supporting further constitutionalization have made ample use of salience- and coherence-based arguments. Were these arguments effective in making recalcitrant political actors comply with proposal to further constitutionalization? To illustrate how rhetorical action works, we offer a third example from the area of parliamentarization.

During the course of the IGC leading towards the adoption of the SEA, the national governments were well aware of the possibility that the legislative empowerment of the European Parliament would run to the detriment of their own decision-making influence in the Council. The British, French but also the German governments were not enthused by this prospect even though – as we shown in the preceding sections – they all shared the interpretation that the application of QMV undermined domestic parliamentary prerogatives. Even though the governments of the ‘Big Three’ were privately not committed to push strongly for the legislative empowerment of the European Parliament, how can we explain the victory of the pro-constitutionalization camp, represented most notably by small member states – such as the Netherlands – or medium-sized ones – such as Italy ?

One central indicator for the normative strength of the salience argument is the fact that none of the governments openly launched an argumentative attack against the participation of the European Parliament in the legislative process. Arguments that appealed to material self-interest (‘keeping the power in the Council’) were not voiced publicly. The only argument that was presented to fend off attempts to endow the European Parliament with legislative powers pointed to the potential efficiency-harming effects of legislative empowering. Since all governments had subscribed to create the internal market by improving and speeding up Community decision-making through the use of QMV, it was evident to all that a more influential Parliament would certainly not improve the efficiency of the legislative decision-making process. The fiercest opponents of constitutionalization, the British and Danish governments, insisted that an increase of the legislative powers of the European Parliament would run the risk of complicating or even paralyzing the legislative decision-making process and would thus counteract the overarching objective of creating the internal market (De Ruyt 1989: 75). Against this background, how could the pro-constitutionalization camp ‘convince’ the recalcitrant member states to agree to the EP’s legislative empowerment?

Since the outset of IGC, the British government had pursued a line of argumentation stressing that the main criterion for institutional reform was the *efficiency* of any new decision-making procedure.<sup>18</sup> The British but also the Danish government argued that any involvement of the European Parliament must not be detrimental to decision-making efficiency *and* to achieving substantive policy goals associated with the realization of the internal market. This line of reasoning and arguing, however, left a door open to the pro-constitutionalization camp, or “creative maximalist draughtsmen” (Budden 1994: 327). As long as the recalcitrant member state governments could be presented with a proposal that did not compound the efficiency of the new decision-making procedure and assured that the member states kept the ‘last word’, proposals to empower the European Parliament would have a chance of success.

A proposal by the German delegation – acting under pressure from domestic MPs and MEPs – which foresaw a conciliation committee between Council and EP<sup>19</sup> was quickly hailed by opponents of constitutionalization to fail the ‘efficiency test’ and was scrapped quickly. However, as Budden (1994: 333) put it, the British government’s strategy to play the efficiency-card “left the Government potentially exposed to discovery of a ... procedure which met the [efficiency] criterion.” And so it came. “The introduction of a Council “common position” and second EP reading marked a breakthrough ... Drawing on French ideas to link the Council’s decision-making rule to the EP’s vote, the Presidency introduced a formal procedure offering considerable influence to the EP, while protecting ... Council prerogatives.” (Budden 1994: 338) Having fallen into the efficiency rhetoric-trap, the British delegation lived grudgingly with the proposal of the so-called cooperation procedure which effectively gave the European Parliament a substantial role in the legislative process: At second reading stage, Parliament could pass amendments which (if accepted by the Commission) could

---

<sup>18</sup> Agence Europe, 19 June 1985.

<sup>19</sup> Agence Europe, 27 September 1985.

be adopted by the member state governments by QMV (but amended only by unanimity).

In the inter-state arena, the British government was thus effectively silenced and refrained from advancing new proposals to counter-act parliamentary involvement. To the domestic audience, the British government attempted to sell the co-operation procedure as being both power-neutral as well as efficiency-neutral, claiming that the Council kept the ‘last word’. In his address to the House of Commons, Foreign and Commonwealth Secretary Geoffrey Howe – deliberately or unknowingly – misrepresented the implications of the new cooperation procedure for the Council’s capacity to affect legislative outcomes. He claimed that “the [European] Parliament can in certain circumstances change the Council’s voting provisions back from qualified majority to unanimity. In no circumstances can it change them the other way.”<sup>20</sup> Howe thus talked into existence a ‘protective’ mechanism for the member states which, in fact, did not exist. The exact opposite was the case. Unanimity, as employed by Howe, meant that the Council could only *reject* or *change* amendments tabled by the European Parliament unanimously whereas the Council ‘only’ needed QMV to *accept* them. The ‘illusion’ of unanimity, which Howe refers to here, thus worked to the detriment of the Council and not to its advantage.

## 4. Implications for European integration theory

What have we learned from our different empirical and methodological analyses of constitutional decisions in European integration and how can we interpret our results theoretically? In a QCA of 66 constitutional decisions of the EU from 1951 to 2004, we tested four 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, especially when controlling for time dependence, coherence and consistency. By contrast, publicity does not

---

<sup>20</sup> Hansard, House of Commons, 23 April 1986: 322.

appear to be systematically related to constitutionalization at all. In a first step, QCA has therefore helped us distinguish strong and weak conditions of constitutional change. In a second step, we have empirically scrutinized the mechanisms that connect macro-level events with micro-level cognitive processes (dissonance and analogical/abstract reasoning) which, in turn, feed back to explain collective, macro-level outcomes (rhetorical action). By offering empirical illustrations from the parliamentarization-case, we have demonstrated the plausibility of these causal mechanisms and their operation. What do our findings teach us about European integration theory more broadly?

First, our evidence strongly supports the proposition that if a proposed or implemented decision by the member states to pool or delegate sovereignty at the European level is perceived to curb the competencies of national parliaments and to undermine national or other international human rights provisions, the “democratic deficit” of European integration becomes salient. We have shown that this state of affairs triggers – in first step – cognitive pressure (dissonance and analogical/abstract reasoning), and – in a second step – generates normative pressure on EU actors to redress the situation through strengthening the powers of the European Parliament and human rights provisions at the EU level (rhetorical action). With regard to parliamentarization, these findings are in line with the results of a set of in-depth case studies on this issue (see Rittberger 2003, 2005). But in the area of human rights as well, supranational legal integration and increasing economic integration have systematically triggered demands to commit European law to the protection of human rights, to tame the internal market with social rights, and to complement economic integration with non-discrimination rules. What is more, the parsimonious QCA-analysis suggests that these efforts have not only been necessary but also successful on the whole in producing at least incremental change toward constitutionalization. There is only one case of salience that failed to produce (further) constitutionalization at the following IGC, and there are only three cases in which constitutionalization came about in the absence of salience.

Secondly, the existence of institutional precedent is a second source of pressure on the EU actors to further constitutionalize the EU along an established pathway. The results obtained through QCA offer robust results that suggest that coherence and consistency are necessary conditions for constitutionalization to come about, especially when controlling for time dependence. Furthermore, our case study suggests that these conditions ‘work through time’: actors link ‘like situations to like’ through analogical and abstract reasoning, institutional or legal precedents imbue norms and rules with legitimacy which makes it hard for political actors to discard or ignore them. With regard to coherence and for obvious reasons, this is only true after the initial period of establishing the European Communities. As can be seen in the human rights cases, consistency with rules of other organizations of the European international community is another source of legitimacy that creates pressures in favor of constitutionalization. However, since there are no international rules for the competencies of supranational parliaments, this factor cannot be generalized. 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.

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 and consistency as conditions of constitutionalization corroborate these mechanisms.

## References/literature

Alter, Karen (1998) 'Who are the Masters of the Treaty? European Governments and the European Court of Justice', *International Organization* 52: 125-152.

Breuning, Marijke 2003, 'The Role of Analogies and Abstract Reasoning in Decision-Making: Evidence from the Debate over Truman's Proposal for Development Assistance', *International Studies Quarterly* 47: 229-245.

Budden, Philip 1994. *The United Kingdom and the European Community, 1979-1986. The making of the Single European Act*. D.Phil. thesis. Oxford.

Burley, Anne-Marie and Mattli, Walter 1993, 'Europe before the Court: A Political Theory of Legal Integration', *International Organization* 47: 41-76  
Day, Stephen and Shaw, Jo 2003, 'The Evolution of Europe's Transnational Political Parties in the Era of European Citizenship', in Börzel, Tanja and Cichowski, Rachel (eds.), *The State of the European Union, 6 - Law, Politics, and Society*, Oxford: Oxford University Press.

Corbett, Richard 1992, *The Treaty of Maastricht. From Conception to Ratification: A Comprehensive Reference Guide*. Essex: Longman.

Deutsch, Karl W. et al. 1957, *Political Community and the North Atlantic Area : International Organization in the Light of Historical Experience*, Princeton University Press.

De Ruyt, Jean 1989, *L'Acte Unique Européen*. Brussels: Institut d'Etudes Européen.

Elster, Jon 1992, 'Arguing and Bargaining in the Federal Convention and the Assemblée Constituante', in Malnes, Raino and Underdal, Arild (eds.), *Rationality and Institutions. Essays in Honour of Knut Midgaard*, Oslo: Universitetsforlaget.

Elster, Jon 1998, 'A plea for mechanisms', in Hedstrøm, Peter and Swedberg, Richard (eds.), *Social Mechanisms: An Analytical Approach to Social Theory*. Cambridge: Cambridge University Press.

European Parliament (1996). *White Paper on the 1996 Intergovernmental Conference, Vol. II*, <<http://europa.eu.int/en/agenda/igc-home/eu-doc/parlmentpeen2.htm>>.

Farrell, Henry and Héritier, Adrienne 2003, 'Continuous Constitution-Building in Europe: Co-Decision and Informal and Formal Institutions', *Governance* 16: 577-600.

Farrell, Henry and Héritier, Adrienne 2005, 'A Rationalist-Institutionalist Explanation of Endogenous Regional Integration', *Journal of European Public Policy* 12: 273-290.

Festinger, Leon A. 1957, *A Theory of Cognitive Dissonance*, Stanford: Stanford University Press.

Festinger, Leon A. and Bramel, Dana 1962, 'The Reactions of Humans to Cognitive Dissonance', in Bachrach, Arthur J. (ed.), *Experimental foundations of clinical psychology*, New York: Basic Books.

Franck, Thomas M. 1990, *The Power of Legitimacy among Nations*, Oxford: Oxford University Press.

Garrett, Geoffrey 1995, 'The Politics of Legal Integration in the European Union', *International Organization* 49: 181-191.

Garrett, Geoffrey, Keleman, Daniel R. and Schulz, Heiner 1998, 'The European Court of Justice, National Governments, and Legal Integration in the European Union', *International Organization* 52: 149-176.

Haas, Ernst B. 1958, *The Uniting of Europe*. London: Stevens.

Halter Ulrich 2002, 'Pathos and Patina: The Failure and Promise of Constitutionalism in the European Imagination', *Constitutionalism Web-Papers, ConWEB*, No. 6/2002, <<http://les1.man.ac.uk/conweb/>>.

Hedstrøm, Peter and Swedberg, Richard 1998, 'Social mechanisms: An Introductory Essay' in Hedstrøm, Peter and Swedberg, Richard (eds.), *Social Mechanisms: An Analytical Approach to Social Theory*. Cambridge: Cambridge University Press.

Hix, Simon 2002, 'Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam', *British Journal of Political Science* 32: 259-280.

Holyoak, Keith J. and Thagard, Paul 1997, 'the analogical mind', *American Psychologist* 52: 35-44.

Houghton, David P. 1996, 'The Role of Analogical Reasoning in Novel Foreign-Policy Situations', *British Journal of Political Science* 26: 523-552.

Johnston, Alistair Iain 2001, 'Treating International Institutions as Social Environments', *International Studies Quarterly* 45: 487-515.

Khong, Yuen Foong 1992, *Analogies at War*, Princeton: Princeton University Press.

Kuran, Timur 1998, 'Social mechanisms of dissonance reduction', in Hedstrøm, Peter and Swedberg, Richard (eds.), *Social Mechanisms: An Analytical Approach to Social Theory*. Cambridge: Cambridge University Press.

Maurer, Andreas 1999, '(Co-)Governing after Maastricht: The European Parliament's institutional performance 1994-1999. Lessons for the implementation of the Treaty of Amsterdam'. *Working Paper POLI 104*. European Parliament: DG for Research.

Maurer, Andreas 2006, 'Tue European Parliament between policy-making and control', in Kohler-Koch, Beate and Rittberger, Berthold (eds.), *Debating the Democratic Legitimacy of the European Union*, forthcoming.

Maurer, Andreas and Wessels, Wolfgang 2003, *Das Europäische Parlament nach Amsterdam und Nizza: Akteur, Arena oder Alibi?* Baden-Baden: Nomos.

Moravcsik, Andrew 1991, 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization* 45: 19-56.

Moravcsik, Andrew 1993, 'Preferences and Power in the European Community. A Liberal Intergovernmentalist Approach', *Journal of Common Market Studies* 31: 473-524.

Moravcsik, Andrew 1998, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press.

Norman, Peter (2003). *The Accidental Constitution. The Story of the European Convention*. Brussels: Eurocomment.

Peterson, M.J. 1997, 'The Use of Analogies in Developing Outer Space Law', *International Organization* 51: 245-274

Pierson, Paul 1998, 'The Path to European Integration: A Historical-Institutionalist Analysis', in Sandholtz, Wayne und Stone Sweet, Alec (eds.), *European Integration and Supranational Governance*. Oxford: Oxford University Press, 27-58.

Pierson, Paul 2004, *Politics in Time. History, Institutions, and Social Analysis*, Princeton: Princeton University Press.

Pollack, Mark A. 2003, *The Engines of Integration? Delegation, Agency and Agenda Setting in the European Union*. Oxford: Oxford University Press.

Ragin, Charles C. 1987, *The Comparative Method. Moving Beyond Qualitative and Quantitative Strategies*, Berkeley: University of California Press.

Ragin, Charles C. 2000, *Fuzzy-Set Social Science*, Chicago: University of Chicago Press.

Ragin, Charles C., Drass, Kriss A. and Davey, Sean 2003, *Fuzzy-Set/Qualitative Comparative Analysis 1.1*. Tucson, Arizona: Department of Sociology, University of Arizona, <[www.fsqca.com](http://www.fsqca.com)>.

Rihoux, Benoit and Ragin, Charles C. 2004, 'Qualitative Comparative Analysis (QCA): State of the Art and Prospects', paper presented at the Annual Meeting of the American Political Science Association, Chicago, September 2 - September 5, 2004.

Rittberger, Berthold 2005, *Building Europe's Parliament. Democratic Representation beyond the Nation-State*, Oxford: Oxford University Press.

Rittberger, Berthold and Schimmelfennig, Frank (ed.) 2006, *The Constitutionalization of the European Union*, *Journal of European Public Policy* (special issue), 13: 8.

Sadurski, Wojciech 2003, 'Constitutionalization of the EU and the Sovereignty Concerns of the New Accession States: The Role of the Charter of Rights', *EUI Working Paper Law*, No. 2003/11.

Sandholtz, Wayne and Stone Sweet, Alec 2004, 'Law, Politics, and International Governance', in Reus-Smit, Christian (ed.), *The Politics of International Law*, Cambridge: Cambridge University Press.

Schimmelfennig, Frank 2001, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organization* 55:1, 47-80.

Schimmelfennig, Frank 2003, 'Strategic Action in a Community Environment: the Decision to Expand the European Union to the East', *Comparative Political Studies* 36: 156-83.

Shannon, Vaughn P. 2000, 'Norms Are What States Make of Them: The Political Psychology of Norm Violation', *International Studies Quarterly* 44: 293-316.

Shapiro, Martin and Stone Sweet, Alec 2002, *On Law, Politics, and Judicialization*, Oxford: Oxford University Press.

Snyder, Francis 2003, 'The unfinished constitution of the European Union: principles, processes and culture', Weiler, Joseph H.H. and Wind, Marlene (eds.), *European Constitutionalism Beyond the State*, Cambridge: Cambridge University Press.

Stein, Eric 1981, 'Lawyers, judges, and the making of a transnational constitution', *American Journal of International Law* 75: 1-27.

Stone Sweet, Alec 2000, *Governing with Judges. Constitutional Politics in Europe*. Oxford: Oxford University Press.

Stone Sweet, Alec 2003, 'European Integration and the Legal System', in Börzel, Tanja and Cichowski, Rachel (eds.), *The State of the European Union, 6 – Law, Politics, and Society*, Oxford: Oxford University Press.

Stone Sweet, Alec and Sandholtz, Wayne 1997, 'European Integration and Supranational Governance', *Journal of European Public Policy* 3: 297-317.

Stone Sweet, Alec and Brunell, Thomas 1998, 'Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community', *American Political Science Review* 92: 63-81.

Stone Sweet, Alec, and Margaret McCown 2001, 'Path Dependence, Precedent and Judicial Power in Europe', paper presented at the American Political Science Association Annual Conference, San Francisco, CA.

Weiler, Joseph H.H. 1981, 'The Community System: The Dual Character of Supranationalism', *Yearbook of European Law* 1: 267-306.

Weiler, Joseph H.H. 1999, *The Constitution of Europe*, Cambridge: Cambridge University Press.

Wiener, Antje 2005, 'Normative Conflict: Towards a Typology of Constitutionalisation Research', paper presented at the convention of International Studies Association, 2-5 March 2005, Honolulu, Hawaii.

Table 1: 'Truth Table'

	Salience	coherence	consistency	publicity	constitutional ch	N Cases
1	1	1	1	1	1	5 ND53, CPR00/04, SR00
2	1	1	1	0	1	7 CPR86-97, ND57/97, SR92/97
3	1	1	0	1	1	5 CC/BP53, CA/BP/LP04
4	1	1	0	0	1/0	9/ CC57, CA92, BP57-75, LP86-00, <b>CA86</b>
5	1	0	1	1	-	- -
6	1	0	1	0	1	2 ND51, SR86
7	1	0	0	1	1	2 CA/LP53
8	1	0	0	0	1	3 CC/BP51, LP57
9	0	1	1	1	1	2 <i>ND00/04</i>
10	0	1	1	0	0	2 ND86/92
11	0	1	0	1	0	1 CC04
12	0	1	0	0	0/1	9/ CC86-00, BP86-00, CA <b>CA97</b>
13	0	0	1	1	1/0	1/ <b>CPR53</b> , MR00/04
14	0	0	1	0	0	3 CPR51-57, MR97
15	0	0	0	1	0	2 MR53, SR53
16	0	0	0	0	0	9 MR51-92, SR51/57, CA51/57, LP51

Table 2: QCA solutions

	All cases	Time dependence	
		To 1987	From 1987
<i>Conservative QCA solution</i>	SALIENCE*publicity+ SALIENCE*consistency+ COHERENCE*CONSISTENCY*PUBLICITY	SALIENCE*publicity+ SALIENCE*consistency+ SALIENCE*COHERENCE	SALIENCE*COHERNCE+ SALIENCE*CONSISTENCY*publicity+ COHERENCE*CONSISTENCY*PUBLICITY
<i>Parsimonious QCA solution</i>	SALIENCE+ COHERENCE*CONSISTENCY*PUBLICITY	SALIENCE	SALIENCE+ COHERENCE*CONSISTENCY*PUBLICITY

“\*” reads “and”

“+” reads “or”

Table 3: EP legislative involvement in QMV-based legislative procedures<sup>1</sup>

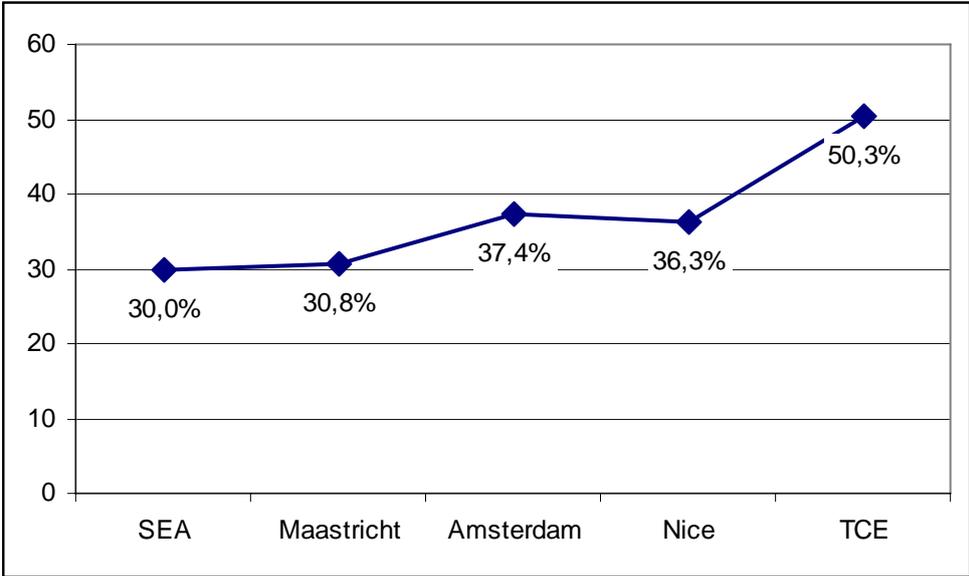


Figure 1: Conditions and mechanisms of rhetorical action in EU constitutional negotiations

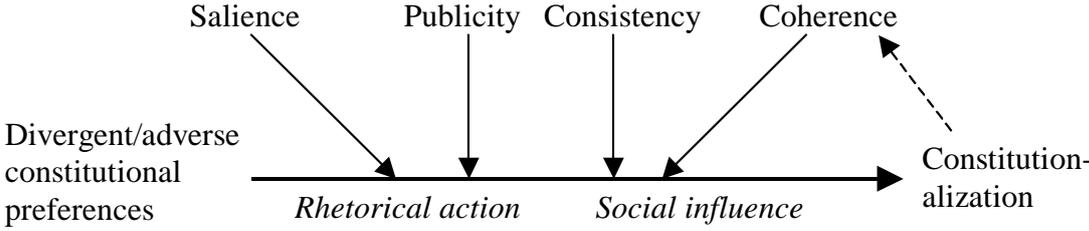
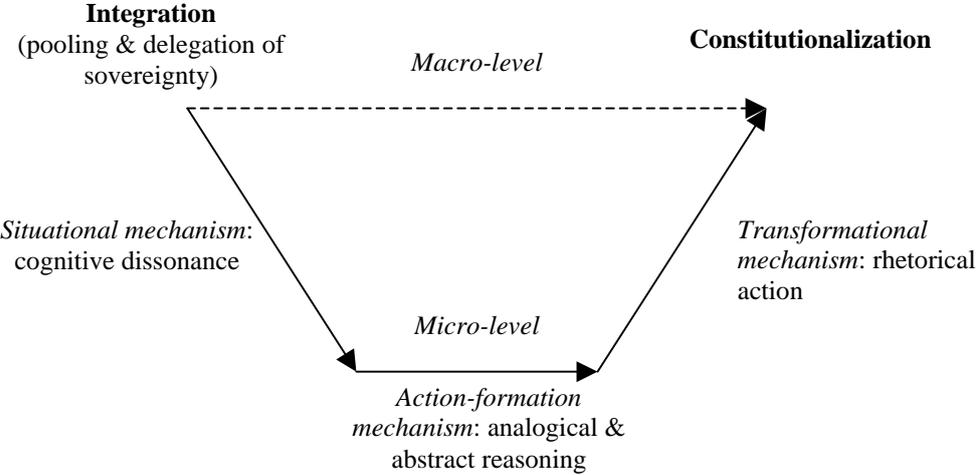


Figure 2: A mechanism-based explanation of constitutionalization



---

<sup>1</sup> We have used the data presented in Maurer (1999; 2006) and Maurer and Wessels (2003) to calculate EP involvement in QMV-based legislative procedures.