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Exploring the EU's social constituency: Patterns of public claims-making in constitutional debates in France and Germany

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Abstract

This article explores public voice formation and its potential impact on EU constitution making. A comprehensive perspective is introduced which analyzes the constitutionalization of the EU as a simultaneous and interacting process of polity building and constituency building. The EU's social constituency is referred to as a particular constellation of public voice and resonance in the media in relation to European constitution making. Mass media are analyzed as the principal arena for amplifying 'constitutional voice' in the member states. Starting from a comparative outline of constitutional claims-making in quality newspapers in France and Germany between 2001 and 2005, the article focuses on ratification as a period of intense politicization on EU constitutional affairs. The article systematically compares how the signal for participation in the ratification process is taken up and transformed into plural voices and debates, and what kind of concerns and demands are put forward by different actors and affected parties within such debates. Finally, justificatory practices of defending particular visions of the EU as a legitimate order will be categorized. The main findings point to a domestically focused French media sphere in which the constitutional debate turned into a prime example of 'contentious politics'. In contrast, German media took the position of an alert but passive observer of the debates in other member states. In this sense, the French debate assumed, at least partially, a substitute function in the German media.

Introduction

The process of European constitution making that was initiated with the Laeken summit of December 2001 has been appraised for its innovative design of Treaty reform.[1] Innovation was linked to the Convention method as a device to circumvent deadlocks of intergovernmental bargaining and to prepare institutional reform through inter-institutional and inter-parliamentary deliberations. Openness and public accessibility were guiding principles of all its proceedings. In addition, hearings and consultations with stakeholders from civil society were initiated. The Convention's aspiration to elaborate a new legitimacy basis of a democratically consolidated EU signified the turn from Treaty reform to constitution making. The new EU polity was not simply designed as an extended problem-solving mechanism; it was designed, above all, as an institutional framework for the protection of fundamental rights and the promotion of transnational citizenship. When in October 2004, the heads of state and government put their signature on what was presented as the first Constitution for a united Europe,[2] everything seemed to be well on track. The document was meant to be a generous offer to enhance citizens' rights and participation. It only waited to be approved by the people and their representatives in the member states.

From this consequential perspective of EU constitution making as a step forward from strategic bargaining and functional problem-solving towards democratic legitimacy, the failure of ratification came as a surprise. Popular responses brought to light what is now commonly recognized as the deep gulf between the elites and the European citizens (European Commission 2006). The ratification crisis of June 2005 was certainly not the first moment to confront the EU with its democratic deficit. It was a rather unique instance, however, in demonstrating that the articulation of public voice *can* actually make a difference.

The people that are called upon to *constitute* the new polity are the unknown and contingent factor of European integration. In ideal terms, EU constitution making has been arranged as an encounter of the emerging polity with its social constituency. The EU's social constituency has been addressed as the principle source of legitimacy of the EU. How is this signal taken up and transformed into plural voices and debates that spread across the national public and media spheres? What kind of concerns and demands are put forward by different actors and affected parties within such debates? And finally, what kinds of justifications are given to defend particular visions of the EU as a legitimate order?

This article introduces a more comprehensive perspective of the constitutionalization of the EU as a simultaneous and interacting process of polity building and constituency building. The EU's social constituency is referred to as a particular constellation of public voice and resonance in relation to EU constitution making. To explore public voice formation and its potential impact on EU constitution making, mass media will be analyzed as the principal arena for amplifying constitutional debates in the member states. Starting from a comparative outline of constitutional claims-making in quality newspapers in France and Germany between 2001 and 2005, the article will focus on ratification as a period of intense politicization on EU constitutional matters. With an in-depth analysis of claims-making, the degree of differentiation of public voice in ratification debates and their quite uneven impact in both countries can be established.

Exploring the EU's social constituency: A research programme

EU constitution making has been a primary subject of institutional and normative analyses that shed light on the emergence of a new kind of polity, its institutional

set-up, its mode of operation and decision making as well as its scope of legitimacy. What is lacking so far is a sociological analysis that links the legitimacy of the emerging EU polity to the constraining and/or enabling social context of legitimation and de-legitimation. This social context of EU constitutionalization refers to the interplay of conflicting actors/institutions and their relevant publics from which the success of European polity building depends. It is manifested in the contention and claims-making of the "people of Europe" and their representatives in the role as constituents of the emerging EU polity.[3] The EU's social constituency can thus be assessed through public communication, preference formation and collective mobilization about the institutional and normative design of the European polity and about the viability and desirability of future paths of integration.

The assessment of the social responsiveness to EU constitution making serves as a complement to studies that focus solely on the EU's institutional and constitutional nature and development. The long-term process of EU constitutionalization would thus be accompanied by simultaneous and intervening processes of polity building and constituency building (Habermas 2001). If these insights hold, we still do not know what kind of actors refer to the EU and what kind of reactions and feedback effects we can expect in the single member states and beyond. The emergence of an EU social constituency is constrained by a number of factors.

A first problem relates to the diversified and fragmented structure of public voice in a multi-level polity. EU constitution makers meet the people, who can assume different roles as sectoral stakeholders, affected parties, diffuse opinion holders, organized civil society, and ultimately national electorates. This indicates a plurality of social formations that represent different layers of popular sovereignty and opposing visions of how to bestow legitimacy on the constitutional project.

A second problem relates to the range of voice opportunities that vary widely in content and intensity across Europe. Unequal public and media attention result from the procedural logics of EU constitution making. During the long period of deliberation and negotiation within so-called strong publics (Eriksen 2005), expectations to reach broader audiences were not met and it attracted only limited media attention. Ratification was instead designed as the period when the shape and content of the Constitution were to be scrutinized and evaluated by general publics (Fossum and Menéndez 2005). Our empirical analysis of constitutional debates will therefore focus on this last period when media attention was highest. Yet, ratification does not necessarily result in a common focus and shared relevance of the constitutional debate across the member states. Confronted with different national procedures of ratification, constitutional debates risked to be fragmented and re-nationalized. This was suggestive of a highly differentiated signal to the people as citizens of the member states and not of a unitary constitutional act of the people in their role as constituents of a European polity.[4]

A third problem relates to the performance of the media in amplifying EU constitutional issues and debates. As will be seen, the attention of the mass media was rather unequally distributed and varied both spatially and temporarily across Europe. While voice opportunities in the early phases of EU constitution making were only partially translated into public and media debates, the belated politicization during ratification has largely contributed to the de-contextualization and re-fragmentation of constitutional debates (Mair 2005; Fossum and Trenz 2006b). Our comparative case studies of France and Germany will allow us to measure the degree of differentiation and re-contextualization of voice in different national arenas. Do we have to speak of autonomous processes of politicization in segmented public spheres, or is constitutional contention

carried by discursive interactions and processes of transnational, inter-public resonance?

A research agenda is needed, therefore, to relate the dynamics and the legitimacy of EU institutional and constitutional reform to the formation of public voice and resonance. In order to understand these dynamics, we have to shift the research focus to those arenas where constitutional debates unfold and public resonance is created. These encounters between institutional processes and the general public are staged in the media.

The media are the unknown player in European politics. For a long time in the history of European integration their role was basically restricted to linking back the activities of national governments (e.g. in the Council) to the national electorates. In absence of genuine European media outlets like European television channels or newspapers, the existing apparatus of EU correspondents has mainly served the national media of the member states. The effects of this rather limited coverage in the national media on EU governance were seen as marginal. Media attention was sometimes desired by European actors and institutions, more often it was avoided. Few high-ranking EU politicians felt the need to deal with the media. Consequently, European integration theory has not paid attention to the dynamics of media communication and public performances within the media as a variable that interferes in the course of administrative and intergovernmental action.[5]

In the ratification period, the progress of the constitutional project relied on the member states' capacities to communicate the Constitution to their citizens. Governments were depending on the mass media to amplify relevant information and to transmit the kind of knowledge that could be used by the "people" to evaluate the performance of the EU and the desirability of possible paths for

reform. On the other hand, mediatization did also increase the likelihood of politicization and open-ended conflicts that could no longer be settled through bargaining or arguing in small elite circles (Meyer 2005). The hypothesis with mediatization is thus that media coverage in the member states would slowly undermine the EU's consensus culture and lead to an erosion of the EU's legitimacy.

In the empirical part of the article, ratification will be analysed as a rather unique political opportunity structure that has accelerated public contention and focused public attention on the legitimacy aspects of EU constitution making. France and Germany, two founding members of the Union have been chosen for comparison. Both share a common legacy as driving forces of integration, but differ fundamentally in voice opportunities in the ratification process.

Methodology

Public demands and expectations concerning the EU constitutional project are raised in a variety of ways, from public statements to protest and collective mobilization. To explore the contentious field of EU constitution making and the positioning of various actors within it, the method of public claims analysis will be used (Koopmans and Statham 1999).[6] An instance of political claims-making is defined as a unit of communicative action in the public sphere (Statham 2005: 12). In more detail, a claim consists of "public acts which articulate political demands, decisions, implementations, calls to action, proposals, criticisms, or physical attacks, which, actually or potentially, affect the interests or integrity of the claimants and/or other collective actors in a policy field" (ibid.). Claims can be put forward by individual or collective actors (including journalists). In both cases, they act as claimants who choose particular forms of action and often speak to addressees. They articulate their concerns and ideally provide justifications to

support their demands. Table 1 depicts the structure of a claim.

Table 1: Structure and example of a claim

Date and Time	Claims-maker	Action form	Addressee	Issue of the Claim	Justification
On 30/03/05	*Valéry Giscard d'Estaing*	*publicly advises*	*Jacques Chirac*	*not to involve himself in the Constitutional Treaty debate as president but rather as private person*	*because the French are dissatisfied with Chirac's government*

Our media sample covers the Laeken summit of December 2001 and stretches to August 2005, in the aftermath of the Dutch and French referenda. Two leading quality newspapers in Germany (*Frankfurter Allgemeine Zeitung, FAZ* and *Süddeutsche Zeitung, SZ*) and France (*Le Monde* and *Le Figaro*) have been considered.[7] The in-depth analysis of the structure of media claims-making focuses on the period of ratification when intense politicization took place in both countries. It covers three key phases: the signature of the *Treaty establishing a Constitution for Europe*" (15 October – 15 November 2004), the referendum in Spain (1 February – 31 March 2005) and the referenda in France and the Netherlands (1 May – 15 June 2005). The dataset contains a total of 1,878 claims collected from 673 articles.[8]

Patterns of constitutional claims-making in France and Germany

The media salience of the constitutional debate

One basic condition for the representation of the EU's social constituency in media claims-making is that constitutional debates are salient over a longer period of time to draw the attention of a wider audience. Over the last four to five years, the constitutional debate has generated a considerable degree of media attention.

Parallel and slowly raising issue cycles with substantial news coverage, comments and editorials focusing on European events, such as the inauguration of the Convention on the Future of Europe, the presentation of the constitutional skeleton by Valéry Giscard d'Estaing and the final phase of the Convention in which the major institutional decisions were agreed upon, reflect the thematic relevance of EU constitution making.

Figure 1: Coverage Constitutional Debate 2002–2005
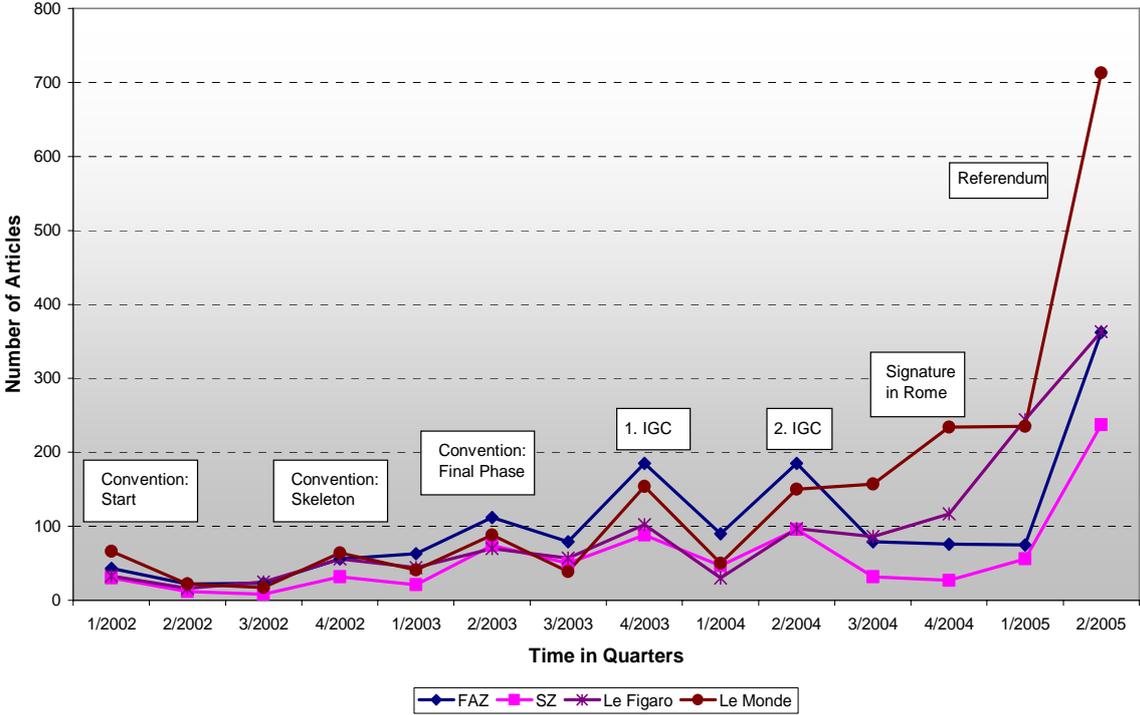
The salience of the debate is displayed in increasing public contention about EU constitutional issues that was steadily amplified in the media. As illustrated in Figure 1, constitutional claims were raised in an average of 1.2 daily articles in the final phase of the Convention. Attention rose slightly around the first and second IGC with an average of 1.4 and 2 articles respectively, and then again significantly in the final phase of ratification to an average of 6.2 daily articles in French newspapers and 4.5 in German newspapers.

After the decision of the French President Jacques Chirac to hold a national referendum on the Constitutional Treaty, the coverage in Germany and France drifted apart, as Figure 2 illustrates. In the French media, the constitutional debate turned into a prime example of 'contentious politics.' The routine of everyday EU politics was severely interrupted by a mobilized public that decided not to remain silent on constitutional issues. The ratification debate was mainly driven by homemade events. The claimants only rarely moved beyond the horizon of French domestic politics, within which nearly 60 per cent of all claims were contextualized.

In Germany, media attention in the ratification period remained at a comparatively lower level. Only from April 2005 on, constitutional contention intensified with journalists reporting on the French case but also on the German parliamentary ratification. One possible hypothesis is that the French 'no' assumed a kind of substitute function for the German public to give way for concerns and anxieties that had been swept under the carpet for a long time (von Oppeln and Sprungk 2005: 461). A first indicator that supports this interpretation is found in the exponentially rising issue cycle of the German debate that reached its five-years peak only after the double rejection of the Constitutional Treaty in early June 2005. In this article, we will look into how this media salience of constitutional contention helped making the voice of the potential constituency audible in both countries.

Figure 2: Coverage Constitutional Debate (2004/2005)

Coverage Constitutional Debate (2004/2005)
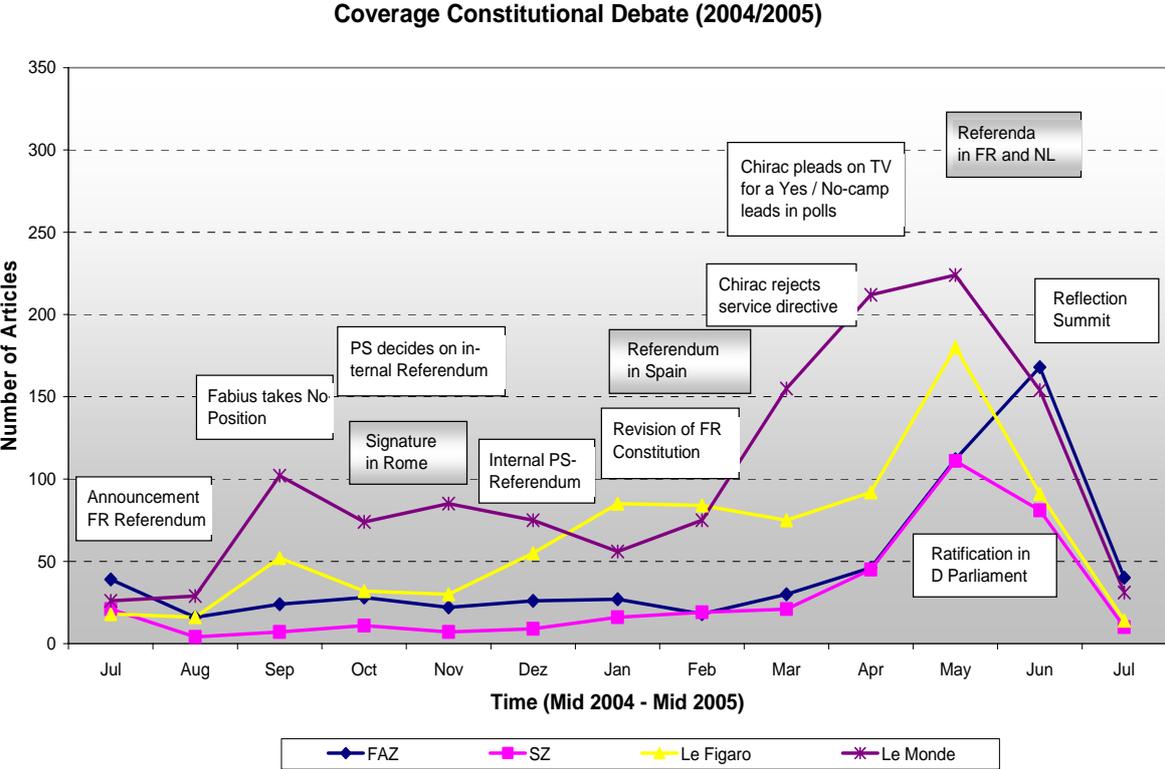
Constellations of claimants

Direct or representative voice?

Constellations of claimants in the media give evidence of whether the potential EU social constituency was made up primarily by the direct voice of the people or by the mediating voice of their representatives. Despite the variations in ratification procedures that resulted in unequal voice opportunities and different degrees of politicization, elected representatives were the dominant actors in the public sphere in both countries. Contrary to our expectations, the strongly politicized referendum in France did not make a difference regarding the intensity of claims–making by ordinary people or civil society organizations. The share of state actors in France (75.8 per cent) was even higher than in Germany (70.6 per cent), where the treaty was ratified by parliament. Non–state actors, including

non-governmental organizations, civil society and interest groups, as well as journalists, single persons, and the general public accounted for 22.5 per cent and 28.3 per cent respectively; among them civil society actors formed the strongest group with an almost equal share of 17 per cent in France and 15 per cent in Germany.[9] Media actors were responsible for 11.5 per cent of all claims in Germany but played a rather modest role in France. Market actors and state bodies (judiciary, police and internal security agencies, central banks and social security executive organizations) remained silent. In general, the share of state and non-state actors is broadly in line with the results from the Europub project studying the general debate on European integration (Erbe and Koopmans 2003; Guiraudon 2004). A slightly broader involvement of civil society was discernible on single occasions, such as the signing of the Constitution on 29 October 2004 and the French referendum on 29 May 2005.

One of the discernible effects of referenda on the structuring of public voice was to enhance partisan competition. Party conflicts, especially the internal conflict of the *Parti Socialiste* and to a certain extent also that of the government parties *Union pour un Mouvement Populaire (UMP)* and *Union pour la démocratie française (UDF)* account for the relatively high percentage of claims-making in France. Within the fragmented French party landscape, politicians with a main interest in contesting and politicizing EU constitutional issues in the referendum debate could be found on both sides of the political spectrum. However, even more startling, why have the German political parties been so much less active, so much less divided on the issue? EU politics in Germany are based on a broad cross-party consensus, which is exposed in a rather low degree of partisan voice on EU affairs. Opposition to the CT was only mobilized by the former Eastern German and now newly formed socialist party *Die Linke.PDS*.

Another indicator of the dominance of representative voice in the media can be found in the forms of action that were chosen for claims-making. An in-depth analysis of different action forms to which state and non-state actors recurred, reveals that contentious claims-making recurring to protest and mobilization was rather exceptional in both countries (16.4 per cent in France and 8.2 per cent in Germany). Interestingly, state actors made use of public mobilizations twice as much as non-state actors (Germany: 5.4 per cent vs. 2.8 per cent; France: 10.5 per cent vs. 5.9 per cent). This means that EU constitutional issues did not lead to waves of bottom-up mobilization in the media arena and that the politicization of ratification was mainly engineered top-down by state actors.

Domestic or European voice?

The constellation of claimants in the media indicates further the spatial scope of the underlying societal basis. Is the EU multi-level polity translated into a multi-level configuration of its constituency? In both countries, claims were primarily raised by national actors with a clear dominance of national governments. EU-level claimants constituted only 18 per cent of all actors in Germany and 13.5 per cent in France. The largest group of EU-level claimants came from the European Parliament, with mostly individual parliamentarians, followed by the Commission either as a body or represented through its single Commissioners (mainly its President, Manuel José Barroso). The European Council acted either through its Presidency or through statements of individual governmental representatives. Even two years after the Convention closed its bi-monthly sessions, its former members, and especially Valéry Giscard d'Estaing, remained active participants in the debate.

One possible explanation for the dominance of domestic actors is that ratification led to a re-nationalization of the constitutional debate. This assumption clearly

holds for France where almost 70 per cent of all national claimants in the newspapers were French actors addressing mainly domestic issues (such as the performance of Chirac's government and the country's poor economic growth). In Germany, however, this re-nationalizing effect of ratification must be qualified in one important respect. Only 36 per cent of national claims-makers that were coded in the two German newspapers were actually domestic actors; almost two thirds were national actors from other countries. Due to the dense coverage of the French referendum, 30 per cent of the claimants came from France and another 30 per cent came from other EU member states. Hence, despite the high share of national claimants, the German constitutional debate was still quite European in its scope, and the public voice from its neighbouring countries was broadly visible. This further nourishes our hypothesis of a substitute function of the French referendum debate in countries such as Germany, where similar opportunities to draw the public's attention to EU constitutional issues were not given.

The relational structure of public claims-making

In the following, we take a closer look at the relational structure of public claims-making as indicators of alliances and cleavages of the kind of constituency that is represented in the public spheres. A public claim can build an interactive or interdiscursive relation between a claims-maker and the person that is directly addressed by his/her claim. The question is whether we find evidence of rather internalized, national public communication or of transnational or even supranational communicative structures. According to Statham and Gray, "claims-making acts which link different levels of polities are important carriers of Europeanization processes for national public spheres" (2005: 67)

Hypothetically, a claims-making act may construct a *vertical-multilevel* relationship between domestic actors and supranational European actors or a *horizontal-transnational* relationship between actors of different origins. Other forms of claims-making remain within the boundaries of the nation state, comprising demands about Europe between domestic claimants and their respective domestic addressees (Statham and Gray 2005: 67). This results in a matrix that distinguishes between nine types of claims-making relationships, as outlined in Tables 2 and 3.

Table 2: Share and Types of Claims-Making over the EU Constitution in Germany

	German Addressee	Foreign National Addressee	EU Addressee	All Addressees
German Claimsmaker	9.4%	10.4%	7.3%	27.1%
Foreign National Claimsmaker	2.1%	44.8%	5.2%	52.1%
EU Claimsmaker	2.1%	10.4%	8.3%	20.8%
All Claimsmakers	13.5%	65.6%	20.8%	100.0%
N	20	13	63	96

Table 3: Share and Types of Claims–Making over the EU Constitution in France

	French Addressee	Foreign National Addressee	EU Addressee	All Addressees
French Claimsmaker	54.2%	4.0%	2,8%	60.9%
Foreign National Claimsmaker	9.5%	8.7%	2.8%	20.9%
EU Claimsmaker	11.9%	0.4%	5.9%	18.2%
All Claimsmakers	75.5%	13.0%	11.5%	100.0%
N	191	33	29	253

In Germany, national claims-making acts between Germans accounted to 9.4 per cent, e.g. the CDU/CSU opposition criticizing the government for details on the constitution, such as a missing reference to God. Another share of 10.4 per cent of horizontal claims refers to Germans who addressed actors from other EU member states. Examples include the open letter of German intellectuals to their French colleagues (*FAZ*, 6 May 2005), a meeting of SPD party leader Franz Müntefering with his French counterpart François Hollande to support his campaign for the Constitutional Treaty (*SZ*, 24 May 2005), or a speech of German chancellor Gerhard Schröder in Nancy (*SZ*, 20 May 2005). Nationals from other EU member states were the main contributors to the constitutional coverage in Germany and accounted for more than half of all claims (52.1 per cent). However, these foreign claimants hardly built horizontal or vertical relationships in addressing German or EU actors. German media thus took the position of an alert but inactive public towards the debates in other member states (especially in France). Constitutional contention in France turned into the substitute that compensated for the passive role of the own electorate and the low levels of domestic politicization. From the perspective of the German media, the

two constituencies were interrelated by close observation but less so by direct discursive interchange.

In comparison, the French debate was clearly focused on domestic contention (54.2 per cent). The active role of the French electorate and the high levels of politicization encouraged a rather self-referential debate. This confirms the hypothesis of a domestication effect of referenda. Interventions from foreign actors or the observation of the debates in other member states took place occasionally but did not result in stable patterns of interaction or transnational resonance. From the perspective of the French media, the fact that the vote of the French electorate would have repercussions to the whole of Europe did hardly affect the formation of a new kind of constituency that was different from the one that was called upon to vote in the referendum.

Finally, of importance for the representation of a potential EU social constituency in media claims-making is the emergence of multi-level liaisons between actors who are allocated at different levels of the EU polity. Yet, vertical linkages between national and EU-level actors remained exceptional. In both countries, there were few instances of bottom-up claims from the national to the EU-level. Top-down claims in which EU actors targeted national actors were more frequent (around 12 per cent in France and Germany), but included several interventions of MEPs in domestic debates. They acted rather as supporters of the national opposition, e.g. *Front National* leader and MEP Jean-Marie Le Pen or his MEP-colleague and leader of *Mouvement pour la France* Philippe de Villiers. In Germany, European actors provided mainly expert knowledge and inside information of EU constitution making but did not intervene in domestic contention. In addition, hardly any attention was drawn to instances of supranational contention such as internal elite communication on the EU arena.

These findings on the relational structure of public claims-making show that the scope for the representation of an encompassing EU social constituency is restricted. The multi-level character of the emerging EU polity was not reflected in the configuration of voice in both countries. We find a nationally focused French public sphere and a horizontally open German public sphere. The former mainly represents the French national electorate as a 'closed constituency' that is called to vote in the referendum, whereas the latter represents the voice of a more 'open constituency' in which those who are deprived of their own voice options can at least observe closely the debates in other member states.

Concerns and cleavages

The social constituency of EU constitutionalization is further represented through the particular issues that come to the attention of a larger audience. The issue to which a public claim refers indicates the concerns of particular actors and their alignment along particular cleavage lines, e.g. national or ideological.

Although Europeanization of actors and levels of claims-making differ, German and French debates are very similar with regard to the scope of the issues debated. In both countries, roughly two thirds of all issues were truly European, such as the content of the Constitution, approval and disapproval of the document, or ratification procedures. The last third of the claims referred to explicit national topics, such as discussions on whether to hold a referendum or not and how this could be made legally possible (Germany), or internal party decisions on which position to choose in the campaign (France). The debates in both countries were less concerned with the contents of the constitution than with procedural aspects of ratification. On the whole, the substance of the constitution - meaning the institutional system, the decision-making procedures and the different policy

fields, as spelled out in the Constitutional Treaty – was discussed in about 11 per cent of all cases in Germany and 7 per cent in France. Technical issues referring to procedures of ratification accounted for 59 per cent of all issues in Germany and 49 per cent in France. Recalling that media coverage on EU constitution making increased towards the dates of the referendums, we observe a change from substantial to procedural questions in both countries.

Overall, German media were more concerned with the people's vote in their neighbouring countries than with the constitutional act passed by their own representatives in Parliament. Attention rose even more in the aftermath of the French and Dutch referendum, sparked by anxieties about the impact and consequences of the failed ratification. This late entry into the politicized constitutional debate is translated rather in by-standing observation than in participatory debate. In France, more space was devoted to the style of campaigning and to the appropriate position towards the constitution (e.g. "In favour or against the CT"). The issue was addressed in almost 28 per cent of all claims, while in Germany only 15 per cent . However, and in this regard there is a strong similarity, both camps had an almost equal say in the two public spheres.

This cleavage between opponents and proponents of the Constitutional Treaty is not identical to a pro- or anti-European cleavage. Pro-European attitudes might give preference to a social market Europe or to market openness, they might give preference to a Europe of cultural diversity and universal rights, or to a Europe of strong identities and common values. In all these cases, it was highly debated what the Constitutional Treaty stands for. Especially in France, an ideological preference of integration as boundary maintaining and boundary building (in the sense of a social Europe) was expressed. This was used for mobilizing against the CT, which was mainly associated with the boundary transcending effects of a neo-liberal market Europe (Ivaldi 2006: 60). We thus have to take into account that

constitutional debates in France and Germany unfolded in a compound field of crosscutting cleavages along ideological and territorial-cultural lines.

Table 4. Share and Position of Collective Actors in Claims-Making over European Integration in Germany and France

	Germany		France	
	Share in Claims-Making (%)	Position on European Integration (-1 to +1)	Share in Claims-Making (%)	Position on European Integration (-1 to +1)
National State and Political Party Actors	60.7	+0.24	73.7	+0.12
National Civil Society Actors	39.3	-0.25	25.9	-0.03
Whole countries/national economies	0.0	0.00	0.4	+0.00
National governments and executive actors	23.4	+0.52	20.7	+0.38
Legislative actors, political parties	31.4	+0.09	46.4	0.01
Media and journalists	17.9	-0.20	4.7	+0.22
Scientific and research experts	8.3	-0.21	5.5	0.00
Politicians and other political actors	4.4	-0.24	3.9	+0.16
Other civil society organizations and groups	11.6	-0.35	8.8	-0.03
Economists and financial experts	1.5	-0.43		
Unions and employees			4.9	-0.11
Pro/Anti European campaigns organizations			2.0	-0.57
All National Actors	100.0	+0.05	100.0	+0.09
Number of Responses (N)	471		1152	

Note: Only actors with a share of at least one percent were taken into considerations. Groups with a smaller share in claims-making were subsumed into "Other civil society organisations and groups".

In the German debate, an all-partisan coalition supported the CT. There were only few claimants with party affiliation from the left (PDS) and from the right (CSU) that expressed critical voices in the media. Critical voices were also

occasionally raised by journalists and individuals without any clear group affiliation. In France, the all-partisan coalition that was formed to defend the CT was far less unitary than in Germany. Deviating voices were expressed within the UMP/UDF-governmental coalition and within the *Parti Socialiste*, which – despite of its official decision of December 2004 to support the CT – remained divided on constitutional issues over the whole period. Other identifiable groups were trade unions, that had an almost equal share of voice supporting and opposing the CT. Actors without clear ideological affiliations, such as pro- and, more likely, anti-European campaign organizations were less visible. Academics and experts were seemingly equally undecided as parties and unions on how to vote on the CT.

In contrast to these diffuse opinions on EU constitution making, there is a clear-cut cleavage line between state and non-state actors in expressing general attitudes on European integration. Table 4 show the actors' general share in claims-making and their position on European integration on a scale from -1 (strongly against integration) to +1 (strongly supportive of integration).

In both countries, national governments and executive actors were the most fervent promoters of European integration. In Germany, the cleavage line between Europhile state actors (+0.24) and more Eurosceptic non-state actors (-0.25) is particularly clear-cut. As the Europhile constituencies were well represented by political elites (government as well as parties in a consensual coalition), the field of non-state and civil society mobilization was mainly occupied by the Eurosceptic voice. The French cleavage structure in contrast is less obvious. Although aggregated numbers show the same picture of an EU-friendly elite and rather sceptical non-state-actors, the latter's position is fairly ambivalent. Only unions and employees as well as anti-European groups kept a distinctly negative position on EU integration. Most other groups were internally

divided and ended up with a value close to zero. Hence, in France, mobilization was both in favour of and against the constitution, and came simultaneously from above (state actors) and from below (non-state actors). Based on our findings, we can conclude that since the outcome of the referendum was uncertain during the whole period, there was a high motivation for all stakeholders in the debate to go public and express their opinions. Civil society could not just rely on state actors to win the game, on either of the two sides.

Taking the public voice: media and public opinion formation

In analysing media impact on EU constitution making, the possible media bias in representing the voice of governments and the voice of civil society must be considered. This refers to the more active role of political journalism in shaping the public's pro- or anti-European attitudes. Seen from this perspective, the media are not simply a neutral infrastructure to amplify public concerns. Journalists raise media voice that is represented as public voice. In doing so they go beyond expressing their own view as one of the many participants in the arena and actually claim to be expressing the public's views and taking the public's voice (Hall et al. 1978: 63). Commentaries are in particular used systematically to turn the collective opinion of the newspaper into the public opinion of the Europeans. The kind of social constituency that informs and motivates the journalistic interventions is thus projected into newspaper discourse.

While politicians sometimes tend to see critical media reports as a scapegoat for the image-problem of the European Union, previous research has shown that media evaluate the EU rather positively. Even though they often criticize single subjects and certain policies or bureaucratic measures, the general attitude of journalists towards the EU – especially in Germany and France – is said to be positive (Sievert 1998: 337; Pfetsch 2005; Statham 2006). Discussing quality

papers' role as opinion makers, Trenz (forthcoming) calls the press "a dynamic forerunner of European integration". According to his analysis of newspaper commentaries, the early phase of the constitutional debate was marked by an active role of leading journalists in "mainstreaming public opinion for the deepening of integration and the staging of consensus and moral superiority of the European community of values" (ibid.). Accusations that were made during the French referendum campaigns are in line with these findings. The "No"-camp blamed the media for supporting openly the government's pro-EU stance. The national TV council even felt obliged to issue a recommendation to TV and radio-stations to report equally on both sides (*LM*, 25 March 2005). On 17 May 2005, a petition under the title "*Le non censuré dans les médias, ça suffit!*" was signed by 15,000 persons as a protest against biased media coverage in favour of the constitution and accusing the media of censorship, the absence of pluralism, and disinformation.

Our findings of the late constitutional debate in 2005 convey a very different picture. The initial enthusiasm of newspaper journalism with the project of EU constitution making that was manifested some years earlier had faded away. The claims made by the media (especially newspaper articles and commentaries) do not confirm an overly positive mindset of the press. As seen with regard to the general position towards European integration, the French press is only slightly favourable and the German media even show a negative attitude. In the journalists' own statements and evaluations (e.g. in editorials), disapproval and disillusion with the outcome of EU constitution making prevailed over affirmative statements.

French journalists were also much more hesitant than their German colleagues to step forward with own claims and opinions and often left commentaries to guest authors and experts. In many instances, the de-politicization of journalism might be interpreted as a logical consequence of the strong societal contestations in the

last phase of the constitutional debate. Confronted with the polarization of their own readership journalists preferred to withdraw from their active campaigning role to the safer harbour of impartial mediation. As a consequence, the representative link between the media voice and the public voice was broken up. In re-presenting visions of the EU polity and its potential social constituency, newspaper discourse became itself diversified and bound to competing perceptions of legitimacy. We now turn to the analysis of this competitive justificatory practice in defending particular visions of the EU as a legitimate order.

Perceptions of legitimacy

In a process of explicit constitution making, the public sphere is needed as the principal arena to defend particular visions of the EU as a legitimate order. The function of a European public sphere is therefore to spread relevant knowledge and information about the EU, to reduce the problem of bounded rationality and to force the participants to justify their claims (Eriksen 2005: 356). The "good arguments" about the shape and contents of a political order are generally developed within strong publics (e.g. the Convention or parliaments) but via public and media debates they must also be conveyed to the general public. Because legitimacy is bestowed upon the governance arrangement from within the public, the constitutional debate as a whole can be read as a modern form of a "social contract" in which the social constituency and the polity of the EU try to work out a sustainable political reality. From this perspective, the justifications of claims would reveal ideas about what type of entity the EU is or should be and which modes of legitimation are put forward to support a certain idea of an entity.
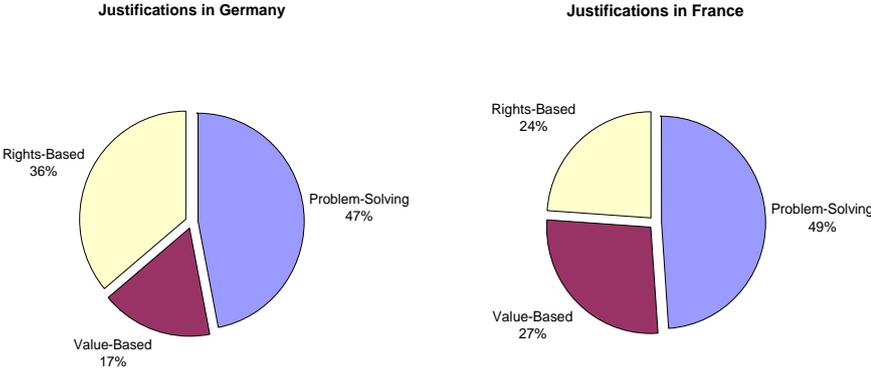
Fossum and Trenz (2006a) distinguish between three propositions of a legitimate order for the EU. The emerging EU polity can be conceived as a problem-solving

entity, a community based on common values, or a community based on universal and cosmopolitan rights. By linking justifications in media discourse to these ideal types of legitimate order, our coding scheme allows us to identify the collective representations of the EU's social constituency as it is emerging in media claims-making.

With regard to a general trust in reason-giving as the driving force of public debates, one central finding of our media survey is that only about one third of all constitutional claims raised in the media were justified. From a perspective of critical media studies, it is certainly not surprising that even quality newspaper do not entirely support the unfolding of reasoning in public debates. This ambivalence in the kind of constitutional choices should be considered as a constituting feature of media debates.

Among the claims that were justified, references to problem-solving clearly prevailed in the ratification phase in both countries, as illustrated in Figure 3. Thus, the emphasis on output-efficiency that was traditionally claimed to legitimize EU policies is almost routinely reproduced in the constitutional debates. The emphasis on rights, democracy and identity as the major innovation of the constitutional proposal clearly steps back as a justificatory device of public claims-making. In addition, the French and the German debates developed in slightly different directions with regard to the reference to normative and identitarian justifications. Public claims-making in Germany gave preference to the expression of universal rights rather than common values in defending the constitutional choices. In the French debate, value-based justifications were more widely used, which can be easily explained by the higher degrees of politicization in the media.

Figure 3: Germany and France: Types of Justifications in Categories

Justifications in Germany

Rights-Based
36%

Problem-Solving
47%

Value-Based
17%

Justifications in France

Rights-Based
24%

Problem-Solving
49%

Value-Based
27%

These findings can be further differentiated to identify certain actors' preference for certain justifications. In Germany, state actors tended to favour problem-solving justifications (50 per cent of all justifications), whereas non-state actors used these means of validation far less (34 per cent) and tended to prefer value-based (23 per cent) and even more rights-based (43 per cent) justifications. In France, on the other hand, state and non-state actors used almost the same patterns of justification. This indicates that in Germany, the perception of the EU's legitimacy is differing considerably between state actors and non-state actors and we thus see a parallel to the earlier identified cleavage line. In France, however, the results indicate that political elites and the citizens have a more or less similar idea about the EU, and about the conditions needed for it to be a legitimate political order.

Within the problem-solving category of justifications, the French and German debate predominantly made use of functional explanations. A typical reasoning based on functionality is illustrated by Dutch Prime Minister Jan-Peter Balkenende, when stating that the ratification process should be continued after the Dutch referendum, "because this would be the only way to find out where other member states are standing" (*FAZ*, 2 June 2005). Often, this type of

justification constructed a no-choice situation in which the CT had to be adopted simply because there were no other viable alternatives.

The justifications linked to the EU as a value-based community are based on references to identity, history and traditions that delineate a European commonness. For instance, 21 mayors of European capitals wished that the citizens preserve the common patrimony by voting for the treaty, "because this Constitution prolongs the visionary ideal of the founding fathers and because the Treaty stands for common values like peace and democracy" (*LF*, 26 May 2005). A further example is the German delegate to the Convention who justified the importance of the Constitution with its historical values, "because the Treaty was the culmination of a lesson learned from terrible history" (*FAZ*, 25 February 2005).

In the rights category, we find references to general principles such as solidarity or liberalism and principles of legitimation, e.g. democracy, transparency and federalism. Examples are the EU heads of state who signed the constitutional document in Rome, "because they expected to make the EU more democratic and transparent" (*SZ*, 30 October 2004). Opponents, such as the French leftist Jean-Luc Mélenchon claimed that the Constitution deserved a "No", "because it is not democratic" (*FAZ*, 22 May 2005). Proponents, such as French Prime Minister Raffarin even brought all three justificatory dimensions together defending the CT, because "the EU of 25 needs more efficient political organization" (problem-solving justification with a functionality argument), "the EU needs to be more human" (rights-based justification referring to general principles of what is fair/good for everyone), and "it is a historic choice" (value-based justification with a reference to an identitarian concept of a common history) (*LM*, 01 February 2005).

The data finally allows us to take a closer look at the French debate and at the particular dynamics that led to the rejection of the CT in the referendum. For that purpose, the arguments and justifications made by the proponents and opponents of the CT in France are clustered around thematic fields in Table 5. The most frequent reference within the no-camp links the idea of a social Europe and the repudiation of liberalism, including criticism of the Services Directive. The cluster "Others" bundles a whole array of different justifications that do not fall into one of the bigger categories. This indicates the diversity of arguments used by the no-camp. It is followed by the reference to "Frenchness", which grasps the anxiety about a loss of French sovereignty or of French laicism, if the Constitution would be ratified. The cluster of "EU politics and content" refers to the intransparency of EU politics, a lack of democracy, and opposition to a federal model. "Turkey, outside, and others" links the referendum to the rejection of Turkey's accession to the EU. "Globalization" is only occasionally brought in to criticize or de-legitimize the CT.

Table 5. Thematic Clusters of Justifications in the French Media Arena

Opposed to Constitutional Treaty (82 claims, 139 codes applied)	N	%	In favour of Constitutional Treaty (81 claims, 167 codes applied)	N	%
1 Social Europe/no liberalism	37	27	1 EU functioning	40	24
2 Others	24	17	2 Destiny/no choice	29	17
3 "Frenchness"	21	15	3 Values, democracy, peace	20	12
4 EU politics and content	21	15	4 Social standards	20	12
5 Democracy, Values	15	11	5 EU's international role	16	10
6 Turkey, outside, and others	14	10	6 Others	16	10
7 Globalization	7	5	7 Future of EU	15	9
			8 French interests	11	7
	139	100		167	101

Within the yes-camp, arguments most commonly refer to "EU functioning" and often concentrate on the actual content of the CT. In the cluster "destiny/no choice", the CT is justified as a historical necessity, as a common destiny that is fulfilled by its ratification. As such, it is often related to a defensive reasoning (saying no to the "no") that restricted the political choices of the electorate. This confirms the findings of Ricard-Nihoul (2005: 7) that the CT had been promoted reactively, in a defensive response to the arguments brought forward by the no-campaign. The cluster "values, democracy and peace" contains references to political stability, liberty and fundamental rights as assets and ultimate benefits of the Constitution. "Social standards" relates to defending the achievements of the CT in terms of social rights, mostly as a response to attacks against the alleged neo-liberal bias of the CT. The cluster "EU's international role" encompasses the positioning of the EU in a globalized world, in the international system, and as a balancing power against the USA, China, and India. The call for a stronger Europe, equipped with a common foreign and security policy, was a common topic. Among the many other thematic references that were used for defending the "yes" in the referendum, only the expectation of future benefits and the promotion of French national interests appeared with some regularity.

Due to the rather incoherent argumentative structure in negotiating the pros and cons of the CT in France, the electorate did not align along the different justificatory dimensions. Among the wide range of categories used for justifications, frequent changes of argumentation were made, pointing to a strategic style of campaigning. On both sides, we further find a mixture of "leftist" and "rightist" arguments that were used to serve different fractions of the electorate. Despite the miscellaneous strategic interests and functionalist concerns that were expressed in the debate, we were able to identify some crucial issues of concern around which normative and identitarian debates evolved. The

contestation about the social dimension of Europe was probably the most pertinent among these debates, which represented a broader and not necessarily domestically confined constituency. Public voice in the media focused less on a general concern with the prospects of a transnational or European democracy, but rather on a very concrete and tangible concern with social justice and welfare.

Conclusion

The comparative case study of constitutional debates in French and German newspapers in the final phase of the ratification of the CT reads as an almost experimental design of the opportunity structure model. In the EU multi-level setting, important structural transformations (such as EU constitution making) do not translate into unitary options for collective action and mobilization as long as political opportunities remain bounded to the nation state (Marks and McAdam 1996). The aspiration that the EU constitutional project would automatically enhance the democratic process is qualified by the rather irregular attention of general publics and their propensity to become actively involved in public debates. The formation of public voice structurally depends not only on long-term institutional arrangements, but also on short-term incentives. In this sense, referenda clearly matter in terms of the quantity and quality of the debates that make the EU constitutional project publicly visible and linked to public opinion and will formation.

In the German-French comparison, it furthermore becomes clear that referenda help to accentuate cleavage structures in the electorate that is called upon as the constituent of the new polity. However, the type of ratification procedure chosen, especially the national referendum, has rather fostered a re-nationalization of the debate in France. This contrasts with the German case where only limited domestic opportunities were provided and where the newspapers rather took the

position of a participant observer of France. The close observation of the referenda debates thus resulted in a considerable degree of horizontal Europeanization, through which national publics that had not been given direct voice evaluated the relevance of the public voice in their neighbouring countries. In this sense, we found evidence that the French debate assumed, at least partially, a substitute function in the German media. Yet, the consolidation of such resonance structures beyond single opportunities and their long-term impact on the transformation of national public spheres remain to be tested in further analyses.

In spite of the above-mentioned differences, we can group popular attention in Germany and France around similar patterns. In both countries, EU actors participated regularly in the debate, but only occasionally entered the front stage. The constitutional debate was mainly led by national political elites, and national governments were the strongest supporters of the CT. Political parties, on the other hand, were far more ambiguous in their position towards the Constitution. Especially in France, internal cleavages about the CT, primarily within the socialist party, led to a politicization, and consequently to a polarization about the EU constitution. However, the contention around the CT did not automatically support a reasoned examination of the pros and cons of the document. In both countries, the debate focused more on technical issues of ratification than on the actual content of the Constitution.

Looking at the justifications of the claims, we found that pragmatic problem-solving was by far the most frequently used mode of ascribing legitimacy to the EU. Thus, legitimacy based on policy output seems to hold a dominant position. At the same time, the discourse about a "social Europe" has gained prominence and has a potential of mass mobilization against the EU. This can be read as a reconfirmation that European citizens ask for even more output-efficiency from

Brussels and for the allocation of new competences for launching a redistributive social policy. In some instances, especially in France, the emphasis on social Europe also indicates a shift in rhetoric from material interests to rights and to the defence of global justice. Above all, this new cosmopolitan perspective is defended by claimants from civil society who tend to be fundamentally anti-EU.

To conclude, we argue that the structural patterns of public claims-making on EU constitutional issues uncover latent structures of an emerging social constituency of the EU polity. Primarily, however, these communicative networks of claims-making mirror a projection of a discourse, which only to a limited extent is manifested in organizational forms or in cross-border networking and mobilization. Still, these discursive configurations express structural patterns of an attentive transnational constituency. This social constituency is affected by encompassing processes of polity building, it develops similar expectations towards institutional performance and reform and, not least, it becomes engaged in normative and identitarian discourses about past experiences and future prospects of integration.

Acknowledgments

Notes:

[1] Among the many see Bohmann 2004; Eriksen et al. 2004; Fossum and Menéndez 2005, Liebert et al. 2006.

[2] The *Treaty establishing a Constitution for Europe*, henceforth called Constitutional Treaty (CT).

[3] A framework for analysing the interrelation between system building and the political/social structuring of Europe can be found in Bartolini (2005). The "contentious Europe" of social movements and civil society has been analysed for instance by Imig/Tarrow (2001) and Ruzza (2004).

[4] A comparison between France and Germany confirms this impression. Despite the parallel time schedule that had been arranged with the intention to create cross-national resonance of constitutional debates, the outcomes were strikingly different: whereas in the French case we observe a high density of public debate and campaigning that resulted in the final rejection of the CT by 54,9 % of the electorate, the German Bundestag approved the CT after short debate with an overwhelming majority of 95 %.

[5] The new perspective of the media was brought in by so-called European public sphere research. In this context, the emphasis was mainly on the potential role of the media public sphere as an enhancement of European democracy (Norris 2000; van de Steeg 2004; Peters et al. 2005), but less so on the performance of the media as an autonomous arena of contention with a direct impact on European institution-building and rule-making. Turning the media from a dependent to an independent variable requires a shift of the research focus to the selective biases, agenda-setting mechanisms and framing devices that are applied by particular media formats in constructing the political reality of Europe.

[6] Public claims analysis has for example been used in the Europub.com project (*The Transformation of Political Mobilisation and Communication in European Public Spheres*), see http://europub.wz-berlin.de/.

[7] The choice of quality newspapers reflects an ideological bias toward centre-right (*FAZ* and *Le Figaro*) and centre-left (*SZ* and *Le Monde*). Electronic databases (LEXIS-NEXIS, FACTIVA, newspaper archives on CD) were used for the sampling of the articles through standardized key-word searches. Each article that contained the terms "constitution* and (Europe* or EU)" and had more than one paragraph on constitutional issues was included in the sample. For the whole period from December 2001 until June 2005, a total of 12,632 articles were sampled, of which 5,830 articles fulfilled the sampling criteria. For more information and the Codebook, please refer to the "EU-Constituency" DFG project homepage at <http://www2.hu-berlin.de/struktur/constituency/index.htm>.

[8] German newspapers contained 661 claims found in 260 articles, French newspapers yielded 1,035 claims from 413 articles. To cope with the large sample, every two articles were selected for coding. Due to the dense coverage in the last phase before the referenda, an additional selection criterion was applied to the French newspapers coding only every third article. Intercoder reliability during the 60 day coding phase involving 12 coders was ensured through a three-day training workshop, supervision of project leaders during the coding, and a systematic cross-checking of the coding results.

[9] Civil society comprises unions, churches, various organizations for consumers, migrants, solidarity, welfare and environmental groups, as well as pro- and anti-European campaign organizations.

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