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The Constitutional Debate Revisited

Patterns of public claims-making in constitutional debates in France and Germany 2001 – 2005

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Abstract

The debate about the European Constitution has generated a considerable degree of media attention over the last years. This article takes a bird's eye view on the whole process aiming for an understanding of how the dynamics of public debate changed when the baton was passed from the Convention to the Intergovernmental Conference and to the different national arenas that were expected to ratify the Constitution. Based on a comparative outline of constitutional claims-making in quality newspapers in France and Germany between 2001 and 2005 it investigates to what extent the debate on the "Treaty establishing a Constitution for Europe" contributed to the development of a European public sphere. Such a European or Europeanised public sphere implies that actors, content and interpretations found in public discussions in European states increasingly reach out beyond the borders of nation-states and become transnationalised. Furthermore, the media's alleged role in generating support for the European integration process or creating scepticism towards the EU Constitution will be further investigated.

The findings show that by and large the agendas in France and Germany were fairly similar. Yet, despite the Convention's aspiration to be particularly inclusive, the debate was dominated by elites in every single phase, although the share of non–state actors finally increased during the ratification period. Looking at the degree of transnationalisation, strong linkages between the EU level and the nation states evolved neither in times of high nor in times of low EU involvement. While EU actors were in charge of the earlier period there was very little exchange with the nation states. Later, the discussion was organised horizontally within or among the nation states and an increasing re-nationalisation in France was followed by an ever closer observation by the German media. Finally, with regard to the tone that was conveyed; media coverage was neither unconditionally positive nor entirely negative. There was a general decline with regard to the position towards the EU over the years but

proponents and opponents of the Constitution were equally present and different developments within and between France and Germany became visible.

Introduction

With the agreement on a Reform Treaty by the European Council the EU's Constitutional process has officially been abandoned. Even though the content of the document has not change dramatically and it is likely that there will still be referenda in order to ratify (or reject) the Reform Treaty, all constitutional ambitions were more or less dismissed – and the same seemed to hold true for ambitions to make the process as transparent and inclusive as possible. The new Intergovernmental Conference (IGC) was largely conducted without any public notice and very little media attention. Ironically, at the beginning of this century inverse ideas and motivations inspired the launch of the constitutional process: The Convention on the Future of Europe was set up in order to reconnect the citizens with the European project, to draft a new treaty that perhaps would later become a Constitution and to make sure "for the debate to be broadly based and involve all citizens" (European Council 2001).

Neither the Constitution nor the public debate turned out to be a real success story and member states as well as EU institutions had difficulties to understand how this situation came about. Thus, it makes sense to aim for a better understanding of the constitutional process, the citizens' role and the communicative dynamics that developed. Apart from a vast literature on the institutional side of the constitutional process, several studies tried to make sense of the outcome of the French and Dutch referendum (Ivaldi 2006; Ricard-Nihoul 2005; Hurrelmann 2007) or looked at civil society's perspective on the debate (Bertelsmann Stiftung 2002; Lombardo 2004; Fossum/Trenz 2006). In addition, students of the European public sphere have analysed media debates on different phases of the constitutional process. Especially the coverage on the first steps (Maurer 2003; Packham 2003), the Convention on the Future of Europe (Vetters 2007; Kurpas 2007; Gleissner/de Vreese 2005) and the final phase during the French and Dutch referendum (Liebert 2007 and the Consteps-Team; Vetters/Jentges/Trenz 2006) received a lot of attention. Though, there is a lack

of studies that take a bird's eye view on the whole process aiming for an understanding of how the dynamics of the public debate changed when the baton was passed from the Convention to the IGC and to the different national arenas that were expected to ratify the Constitution.

This article follows a more comprehensive approach by looking at the constitutional debate between 2001 and 2005, as how it was represented in quality newspapers in France and Germany. Using the method of claims-analysis it concentrates on the participatory structure of the debate and investigates who raised its voice and what kind of concerns, demands and positions were put forward. The points of departure for this analysis are the above mentioned expectations and hopes that accompanied the constitutional process right from the start. In doing so, the media debate on the "Treaty establishing a Constitution for Europe" (TCE) becomes a test case to verify these assumptions and to assess the debates' potential to foster the development of a European wide debate.[1] At the same time, presumption that inform many studies on the European public sphere such as the ability to foster legitimacy and thereby to generate support for the European integration process will be called into question.

Expectations and Misconception on the Constitutional Process

When the constitutional project was launched in December 2001, the new Convention on the Future of Europe was widely praised for its openness, its transparent mode of working and its ability to enforce practical reasoning amongst its delegates. In contrast to the Intergovernmental Conference the new

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[1] Europeanisation in this context refers to a process in which actors, content and interpretations found in public discussions increasingly reach out beyond the borders of nation-states and become transnationalised. As the common realm of reference beyond the nation-state is usually the political entity of the European Union, this Europeanization is often connected to political and above all normative expectations with regard to the development of democracy, consensus and identity within the European Union.

body was greeted as saviour and redeemer of apparent shortcomings such as the lack of transparency, insufficient participation of parliaments, blockades caused by the predominance of national interests, power-games, wheeler-dealing and horse-trading as well as compromising decisions instead of far reaching reforms. As Wessels puts it: "Marathon sessions or 'Nights of the Long Knives', that produce decisions in the small hours of the last night which contain not necessarily matured formula compromises, have repeatedly proven to be not optimally suitable as repeated hours of birth for Europe's future design" (Wessels 2001: 22).[2] The Convention, on the other hand, was supposed to make the Union "more democratic, more transparent and more efficient" and "to bring citizens, and primarily the young, closer to the European design and the European institutions". The Laeken Declaration even explicitly asked the Convention to investigate "what initiatives we can take to develop a European public area" (European Council 2001). Thus, according to this institutional logic, legitimacy was supposed to be engineered by putting in place a new (deliberative) body that would not only reform the institutions but also communicate with the European citizens, stimulate open debates and public involvement, create a deepened understanding between Europeans and perhaps even soften the widely debated democratic deficit.

Normative political theory supported these expectations by underlining the "catalytic effect" of constitution-making for the development of a European public sphere (Habermas 2001). From this angle, the EU's constitutional experiment seemed virtually unthinkable without a close connection between the Convention and the wider public. It was called "for a major role for representative institutions, 'strong publics'", accompanied by an active public sphere that "must be well-connected to the process ('general publics')" (Fossum/Menéndez 2005a, 2005b). The mediation between these strong and weak or general publics was almost taken for granted. In this perspective,

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[2] Author's translation.

constitution-making is not just like any other case study on the development of a European public sphere, but provides a particular opportunity structure both with regard to the content that touches at the very heart of the Union's existence as well as to the process.

After the Constitutional Treaty had failed, some still defended the Convention method along the same lines. Risse and Kleine for instance argue that the Convention was not to blame for the current crisis but that it "strongly increased the transparency of the EU treaty-making process" as well as the legitimacy of EU constitutionalisation in general.[3] In order to underline the significance they also point to the necessity of "publicity and transparency" as "pre-conditions for the ability of citizens to hold their representatives accountable for their decisions" (Risse/Kleine 2007: 76). Yet, it makes a huge difference whether something is published and accessible and therefore *transparent* or whether it is also widely recognised, of interest to a larger audience, and widespread *publicity* is reached.[4] Transparency is by no means a guarantee for publicity. In fact, it is the more difficult obstacle to overcome in the quest for legitimacy and it is exactly the point were the transition and spillover from strong publics to general publics takes place or fails. And while several studies have shown that transparency clearly improved during early years of the constitutional process, any achievement of publicity is rather questionable and there is still a research deficit to measure the publicity of the constitutional process. Eurobarometer surveys conducted shortly after the Convention finished its work already showed that less than half of all Europeans had actually heard about the Convention and its work (EU Commission 2003). However, those statistics on the people's knowledge are not automatically good indicators of a European debate; even in the national

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[3] The authors also praise the Convention with regard to its input legitimacy (participation of national and European parliamentarians) and its output legitimacy through better institutions and improved decision-making procedures. Both dimensions are out of the scope of this article.

[4] See Hüller 2007 for an in-depth discussion of the concepts transparency and publicity.

context awareness levels and name recognitions of political events and actors are often quite poor.

By almost the same token, approval and disapproval do not necessarily provide information on the existence of a common debate. As, again, a comparison with domestic politics shows it is usually contestation and controversy and not agreement that arouse public debates. Nevertheless, some expectations towards the constitutional process seemed to suggest exactly such a link between the constitutional process and enhanced goodwill and understanding. Many politicians and PR-strategists somehow seem to assume an almost linear connection between public debate and political consent. Accordingly, political communication is seen as a tool in order to steer towards certain strategic goals. Others conceive precisely the opposite mechanism and hold public debates, or negative media coverage responsible for political discontent. Moravcsik's harsh criticism on the EU's constitutional endeavour as a failed PR-project is one example of this perspective when he states: "If the ultimate purpose of the constitutional draft was to increase the legitimacy, then surely it failed. The discourse surrounding the EU turned nasty and public opinion support for the EU declined slightly, though it has subsequently rebounded. (…) Even insofar as they participated, and, to a limited extent, deliberated about Europe's future, this did not translate into either trust or affection" (Moravcsik 2006: 232). Without getting involved in the discussion of Moravcsik's general argumentation it seems worth to further examine the alleged relationship between heightened media interest on the one hand and consent or dissent on the other. The aim here is not to explain why the Constitution was rejected and to assign responsibility to the media nor to assess the quality of the media debate but simply to further investigate the assumptions about the possible effects of publicity and mediatisation and to show which positions were represented in the media.

Instead of opinion surveys and election outcomes, media analysis offer another, complementary way to test to what extent expectations connected to the constitutional process were met and what communicative dynamics evolved during the debate. After all, media are the primary arena of public communication on the issue and necessary mediator and provider of any public sphere of a wider reach and meaningful size. They can even be seen as the first and main representative of general publics as they are the obvious opposition (and control) of strong publics. In addition and according to normative assessments on the media's role, they are supposed to inform about the EU, to enable citizens to judge the Union according to its authorities and achievements and to make European influences in our daily live visible and render reasoned opinion building possible (Neidhardt et al. 1998; Trenz 2005). In practical terms, looking at the media allows to investigate all points in question: the publicity, inclusiveness and degree of Europeanisation of the constitutional debate as well as the general tone of the discussion and the positions that were expressed – with regard to the European integration process in general and the TCE in particular. To operationalise these questions, the following indicators will be assessed:

a) The *salience of the topic*, expressed in the number of articles published on the issue, shows the public visibility on a larger, mass media scale and how this developed over time. Furthermore, in combination with the topics that were discussed during the different phases it can show to what extent similar issues were taken up in the different national public spheres.

b) The *types of actors* that raised their voice in the debate point to the participatory structure of the debate and point out who mobilised on the issue and got involved. Although the inclusion of actors beyond political representatives are no prerequisites for a European public sphere, the participation of actors beyond the political elite, e.g. civil

society organisations, can be seen as an indicator for a more inclusive and far reaching debate.

c) The *origins of actors* and the *linkages* that were set up in the communicative exchanges signify whether the debate reached beyond the different nation states and the debate actually had a "European character" (Fossum/Menéndez 2005a) as demanded in the Laeken Declaration.

d) The *tone* and *positioning* of the debate as expressed by the actors that raised their voice in the public debate hints at the relationship between media debates and public approval or disapproval. It is also one way to assess, whether the media took an active role in the debate – for example by giving preference to one side and thus campaign for a certain position – or whether they rather operated as neutral mediators. In addition, it is another indicator to assess the interconnectedness of the debate as it can be taken as allusions to the existence of similar structures of meaning and relevance across countries.

With these criteria the research design ties up to a range of studies on the European public sphere that all look for the same topics at the same time in different national public spheres, mutual observation and quotation and finally the same structures of relevance (e.g. Downey/König 2006; Grundmann et al. 2000; Trenz 2004). Some also try to analyse the discursive interaction between actors (Brüggemann et al. 2006; Tobler 2002, 2006) – as it will be done here with the linkages set up between actors – or look for indications of a European identity e.g. through the use of a European "we" (van de Steeg 2006; Risse 2004) – which will not be part of this article. In contrast to many of those studies and in particular those on the Constitutional Treaty mentioned earlier, this article does not only look at a snapshot of the debate but analyses the development of a European public sphere during a wider time span. In doing so, European constitution-making – as presented in the print media – can be

analysed as a process whose levels and forms of mediatisation changed over time. In fact, it might even allow looking at the factors that have influenced the different communicative dynamics.

Sampling and Method

The comparative design of this study concentrates on France and Germany, two founding members of the Union which share a common legacy as driving forces of integration and bring in similar economic and political weight. At the same time, there are differences between them with regard to their ideas of a Constitution, of the state, nation, sovereignty, and the future of European integration (Jachtenfuchs 2002; Hurrelmann 2002; Schauer 1997). Moreover, while both countries started with very similar conditions in the first years of the constitutional process they developed in different directions with a parliamentary vote in Germany and the referendum in France and therefore allow different forms of comparison.

Table 1: Phases of Coding

Broad Phases	Coding Phases/Events		Dates chosen for coding	Duration
Conven-tion	1	Declaration of Laeken	December 2001	4 weeks
	2	Start of the Convention	February – March 2002	8 weeks
	3	Civil Society Hearing & Youth Convention	June - July 2002	8 weeks
	4	Presentation of constitutional Skeleton	October – November 2002	8 weeks
	5	Final Phase of the Convention	April – June 2003	13 weeks
IGC	6	Intergovernmental Conference – Part I	October – December 2003	13 weeks
	7	Intergovernmental Conference – Part II	June 2004	4 weeks
Ratifi-cation	8	Signature of the EU Constitution in Rome	Mid-October – Mid-November 2004	4 weeks
	9	Referendum in Spain	February – March 2005	8 weeks
	10	French/Dutch Referendum & EU summit	May – Mid-June 2005	6 weeks

The underlying sample of newspaper articles covers the whole period of constitution-making: from the Laeken summit of December 2001 until the aftermath of the Dutch and French referenda in August 2005. Two leading quality newspapers in both countries were chosen: *Frankfurter Allgemeine Zeitung (FAZ)* and *Süddeutsche Zeitung (SZ)*; *Le Monde* and *Le Figaro*.[5] Electronic databases were used for the sampling of the articles through standardised keyword searches.[6] From this dataset an overview of issue-cycles during the

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[5] The choice of quality papers reflects an ideological bias between centre-right papers (FAZ and Le Figaro) and centre-left papers (SZ and Le Monde) in order to balance possible ideological cleavages, e.g. a more conservative view on Europe in defence of national sovereignty or a more progressive view on Europe promoting transnational rights and citizenship.

[6] A combination of keywords was used. Every article that contained the terms "constitution or convention* and (Europe* or EU)" and had more than one paragraph on constitutional issues was included in the sample. Newspaper sections dealing with book reviews, sports, or television were excluded. Articles with coincidental hits of the keywords or those not fulfilling the "one-paragraph or more" criteria were filtered out manually. For more information and the Codebook, please refer to the project homepage: http://www2.hu–berlin.de/struktur/constituency/index.htm

constitutional debate was developed and distinct phases were identified. The actual analysis concentrated on the main events during the constitutional debate for which a total of ten different phases was selected for coding (see Table 1).[7] In the following they will often be subsumed into three broad phases: Convention, Intergovernmental Conference and Ratification.

In contrast to the majority of studies on the European public sphere that rely on content or frame analysis, newspapers were analysed with the method of claims analysis. The claims-making approach was developed in the field of social movement research, to show the dynamics of contentious politics in the media. An instance of political claims-making is defined as a unit of communicative action in the public sphere (Statham 2005: 12).

Table 2: Numbers of Coded Articles and Claims

| | FAZ | | SZ | | LF | | LM | | Total | |
Phases	Art.	Claims	Art.	Claims	Art.	Claims	Art.	Claims	Articles	Claims
1	10	13	5	6	4	9	12	29	31	57
2	27	76	22	73	19	48	36	89	104	286
3	19	35	9	28	13	31	9	24	50	118
4	12	66	18	91	18	48	18	72	66	277
5	60	166	46	224	37	123	36	117	179	630
6	82	210	40	118	45	108	62	187	229	623
7	42	98	16	42	17	46	29	86	104	272
8	24	40	7	17	16	40	41	80	88	177
9	23	63	22	44	48	119	80	210	173	436
10	84	298	70	189	76	166	125	408	355	1061
Total	383	1065	255	832	293	738	448	1302	1379	3937
Claim per Art.	2.8		3.3		2.5		2.9		2.9	

[7] In some phases, the numbers of articles were extraordinarily high, thus only every second article from the quality newspaper was coded; for the phases 9 and 10, only every third article from the French newspapers was used. The coding was done within 60 days by a team of 12 coders. All coders had a good knowledge of the European integration process and were trained in a three-day coding school. Throughout the whole period of analysis, the project leaders provided supervision and systematically cross-checked coding results to ensure common standards and intercoder reliability.

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 made by individual or collective actors (including journalists). In both cases, they act as claimants who choose particular forms of action, often speak to addressees, and ideally justify the issues they talk about. Claims-analysis answers all questions around a claim: It registers when and where a claim was made, who or which actor made the claim, how it was inserted into the public sphere and what it was about. Some claims also give additional information on the addressee at whom the claim was directed and what the actors' stance towards European integration is. With these indicators this analysis provides again almost all criteria many media content analysis on the European public sphere work with, such as topics, actors, their interconnectedness, and similar structures of meanings.

Finally Growing Salience of the Constitutional Debate

The debate on the European Constitution has generated a considerable degree of media attention over the last years. The thematic relevance of EU constitution-making is reflected in parallel and slowly raising coverage cycles with substantial news coverage, comments and editorials over the whole period. Figure 1 marks the common peaks in the issue cycles focusing on 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 on. In the final phase of the drafting period, claims related to the EU Constitution were found in an average of 1.2 daily articles. Behind this was a total of 26 plenary sessions of the Conventions, more than 1800 accepted requests to speak adding

up to more than 5400 minutes of public debate and about 6000 amendments there were brought into the discussions as well as concerted journalistic efforts to cover the Convention continuously (FAZ 2003; Gleisner/de Vreese 2005). The following IGC rose already slightly more attention with 1.4 daily articles in 2003 and even 2 articles per day in 2004.

Figure 1: Coverage Constitutional Debate 2002–2005
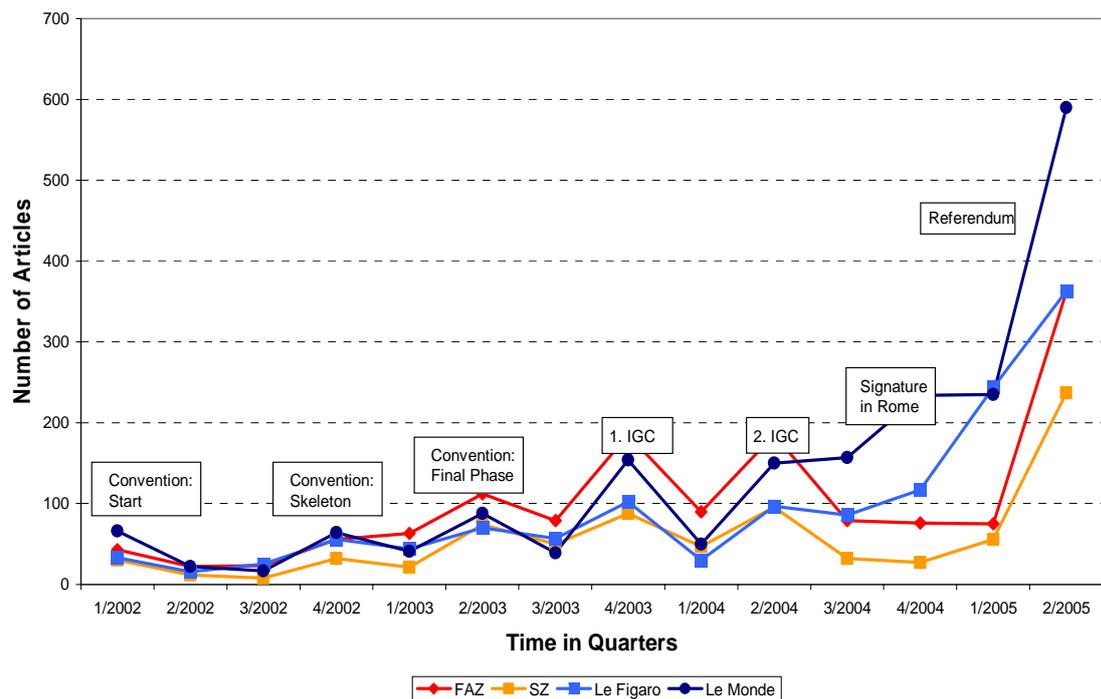
The agendas in the two countries investigated were fairly similar at that time and differences only become visible on less aggregated levels. During the Convention, the idea of an EU President, the question which policy fields should be decided upon with qualified majority, the future of the Common Foreign and Security Policy (CFSP) as well as everything around the new Convention method and its leader Giscard d'Estaing were particular important. As a result of the French advocacy to maintain a national veto in cultural affairs, *Le Figaro* and *Le Monde* also gave a bit more space for culture, research and education. *FAZ* and *SZ* on the other hand, eagerly reported on the two interlinked themes of a catalogue of competences and the subsidiarity principle.

During the prolonged Intergovernmental Conference some hard-fought topics dominated the agendas, e.g. the weighting of votes in the Council, the reference to God in the preamble, the future size of the EU Commission and qualified majority voting. In Germany, particular emphasis was also given to economic policies, e.g. the role and independence of the European Central Bank. These themes were brought up almost three times more often than in the French press.

In general, the IGC was obviously more successful in attracting media attention than the Convention and in this respect the new method did not fulfil the hopes that were placed on it. Not well thought-out arguments, but rather power and a prominent position were decisive for an appearance in the newspaper. This was the case, although the Convention did attract some constant presence in the media during in the first one and a half year of the constitutional process. However, still more important and salient was the contention that was stirred during the ratification phase. Right after the decision of French President Jacques Chirac to hold a national referendum on the TCE the until then fairly synchronised coverage cycles of France and Germany drifted apart, to an average of 6.2 daily articles in French and 4.5 in German newspapers. Particular in France the routine of everyday EU politics was severely interrupted by a mobilised public that decided to voice their interests on constitutional issues; even though the ratification debate was mainly driven by domestic events. *FAZ* and *SZ* only re-entered the fray shortly before the double rejection of the Constitutional Treaty. And while in the French media opponents and proponents of the Constitution had an exchange of blows, Germans were more interested on speculations about the EU's future after the referendum failure. On a more general level the two countries still had a lot in common: The debates shifted from the actual content to the procedures of ratification and the positioning towards the TCE. Topics that dealt with the institutional system and procedures of decision-making as well as with the content of different policy fields spelled out in the Treaty dropped from values above 50% during the

Convention to less than 15% during the ratification period. Meanwhile, technical questions, ratification methods and results rose from around 3% to about 50%. Thus, while the content of the Constitution was debated, media attention was relatively low and at the time the media coverage increased, the debate did not deal with the actual content of the document anymore.

An Elite Project … and Some Non-State Latecomers

The constellation of actors involved in the constitutional process logically changed from year to year depending on the body in charge of deciding upon the document's future. Convention delegates were present all around during its one and a half year of work. The heads of government took over during the Intergovernmental Conferences in 2003 and 2004. As could be expected, legislative actors, political parties and civil society showed more interest in the debate when they were given the opportunity to have their say and when they knew that they would be heard in the ratification period. Questions that arise are rather, who was and who felt responsible for the Constitutional Treaty and whose project was it? A first answer to these questions can be found in a division between state and non-state actors, including non-governmental organisations, civil society and interest groups as well as journalists, single persons, and the general public.

Figure 2: Share of State and Non-State Actors in France and Germany
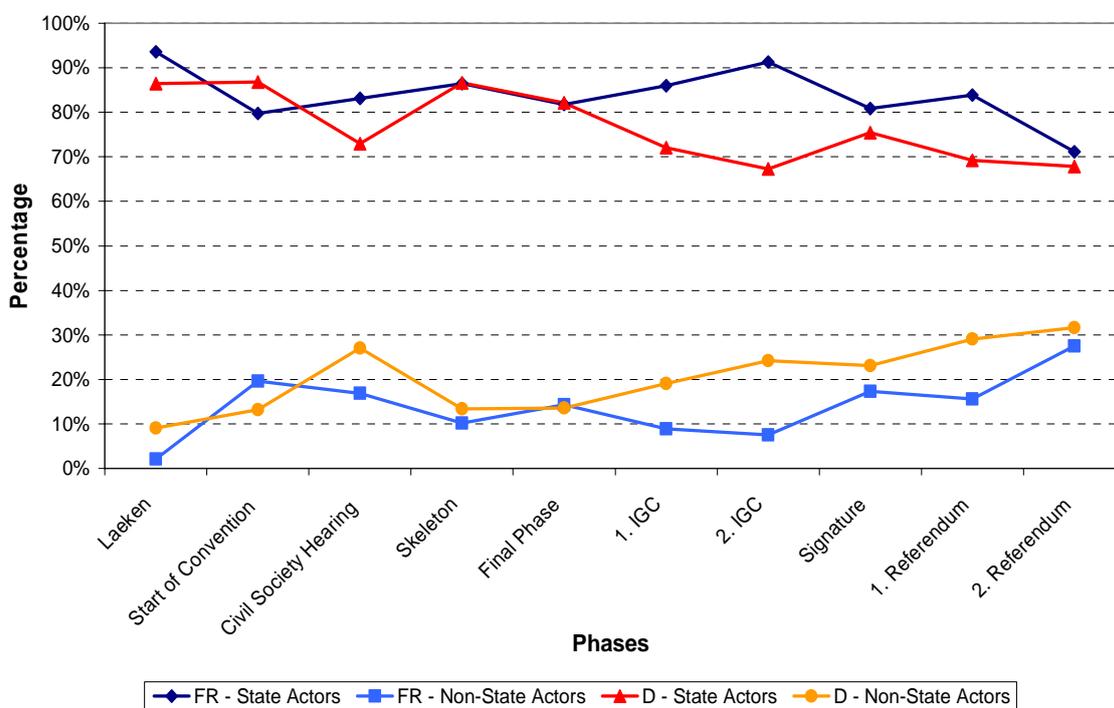
The graph in Figure 2 illustrates that the constitutional process in France and Germany was dominated by political elites in every single phase. With shares of claims-making between 94% and 71% in France and 87% and 67% in Germany, political communication around the Constitution remained largely in the hands of state actors. However, there are some variations across countries and across time. First of all, the Convention whose proceedings were supposed to be guided by openness and public accessibility polls badly in terms of civil society engagement. Its share remains on average around 5% and 7%. Only the weeks in June and July 2002 – particularly chosen for the analysis, because it was the time of the Youth Convention and civil society hearings – led to an increase in civil society's share of claims-making to 24% in the German print media. In the two French broadsheets, on the other hand, there was only a slight raise up to 10 %. Yet, in both countries the share of civil society actors increased during the ratification phase. Despite the highly politicised referendum, the general share of

civil society actors in France of 13.7% is only negligibly higher than the German value of 12.1%. The fact that overall Germany displays more non-state actors than France is mainly due to the active role of the German media that accounted for almost 13% of claims-making in the ratification phase, compared to only 4% of media claims in France.

Looking more closely into the category of civil society actors we can see some further variations over time. During the Convention and IGC, churches and religious organisations that fought for a reference to God in the Constitution's preamble were the most active groups behind these aggregated numbers. Later, unions and employees were particularly engaged in France and at least above average in Germany. In addition, pro- and (even more important) anti-European groups, solidarity and human rights organisations but also employers' organisations mobilised. Opinions and analyses of educational experts and social scientists were also more often heard the further the discussion proceeded. Anyhow, the broader public only came in after the important details of the Constitution had already been finalised. What is now commonly recognised as the deep gap between the elites and European citizens (EU Commission 2006) is clearly pictured in the participatory structure of communication on the European Constitution. The Convention's aspiration to elaborate a new legitimacy basis of a democratically consolidated EU with an allegedly innovative and particularly participatory and all-inclusive approach must thus be called into question – at least when looking at the media resonance it created and the participatory structure that became visible in the media debates.

Delving deeper into the bigger category of state-actors a few more country variances become apparent. During the drafting of the Constitutional Treaty, the Convention was much more present in the German newspapers (49%) than in the French (33%). France instead paid more attention to governmental claims that accounted for 36% compared to 20% in Germany. The dedicated effort of

the French government to establish an EU Presidency might have played a role in that.

With the beginning of the Intergovernmental Conference the Convention more or less disappeared from the scene in both countries, except for periodical comments from its former chairman Giscard d'Estaing. In Germany the government gained importance while they lost ground in France, where President Chirac was already confronted with politicised political parties and the parliament. In fact, increasing importance of legislative and party actors turned out to be the biggest difference between the two countries. Starting from equal levels of around 11% during the Convention, there was already an increasing divergence during the IGC in which claims-making in France emanated to 27.5% from legislative and party actors but only to 16% in Germany. Although the French government was still in charge of deciding on the Constitution's future, several parties already mobilised and tried to influence the bargaining process between member states from outside. In addition, calls for a national referendum on the TCE and the discussion on whether to ratify the document in parliament or to give the people a voice aroused contention. In Germany, similar demands were quickly turned down with reference to the legal situation that does not allow referenda. In addition, dissenters in the larger parties that might have favoured a national referendum were silenced by their party leaders in order to avoid conflicts about Europe. Consequently, differences between France and Germany increased further. During the ratification period the share of legislative and party actors in France was around 43%, compared to 28% in Germany.[8]

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[8] A qualification to this is the comparatively high score in the German media in the category "other political actors", including single politicians, former statesmen and alike that added up to 16% during the IGC and still more than 7% in the months of ratification. It seems as if politicians without important positions and unbound by party discipline and other obligations were more outspoken about the Constitutional Treaty.

European or National Actors but Limited Communication between Them

While the types of actors remained largely stable over time there were more changes in the degree of transnationalisation of actors and the multi-level configuration of claimants. Theoretically, there are several different indicators that can be used in order to understand the transnationalisation of political communication in the constitutional process and the degree to which different European public spheres interlocked:

- The *actors' origin* displays the openness of the debate towards actors from other member states and also shows the diversity of actors involved.
- The *scope of actors* ignores the national background but looks at the level the claimant is acting upon (e.g. regional, national or European).
- The *relationship between claimants and addressees* indicates the spatial scope of communication and the linkages between national publics or different political levels. Those claims are often more comprehensive than statements in which actors merely express an opinion. In addition, they can be seen as constituting a stronger form of Europeanisation if they entail explicit communicative linkages between actors from different public spheres.

With regard to the actors' origins, there was a high degree of similarity between France and Germany during the Convention and the IGC and growing differences during the period of ratification. In France, the national referendum led to an increasing presence of domestic actors: The share of French actors rose from 40-45% in the years from 2002 to 2004 to 65% in 2005. Accordingly, the number of other actors diminished. Only Germans and British as well as Dutch and Spaniards (the other two countries where referenda were held) still reached some kind of visibility expressed in a share of at least two percent of all actors.

Generally speaking, the constitutional debate in both countries was shaped by actors from less than a dozen countries of which few dominated the discourse. In Germany, during all periods a third of all actors were domestic Germans. Inversely to France, where Germans were constantly the second largest actor group, the French were the most prominent actors in the German media. During the ratification phase, the rise of claims-making in France was partially reproduced in the German media as the share of French speakers rose from 10% to 25%.

Looking at the level of governance on which the claimants acted upon further similarities between France and Germany become visible. In both countries, EU actors were the main claims-makers during the Convention and national actors controlled the time of ratification. The importance of EU players diminished steadily in the discussion on the European Constitution: In the end, they constituted only 18% of all actors in Germany and 13.5% in France[9] and the discussion was mainly organised horizontally within or among the nation states. Thus, there was a strong vertical Europeanisation at the beginning, when attention was rather low and weakened or hampered Europeanisation – either in the form of re-nationalisation as in France or of rather passive horizontal observation as Germany – when the contestation and salience rose. Figure 3 portrays this decline in the share of EU actors over the course of time. In addition, it illustrates which EU actors were decisive in which phase.[10]

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[9] In proportional terms the relevance of EU actors sank in Germany from 0.72 EU actors per claims during the Convention to 0.18 during the IGC and in France from 0.66 to 0.16.

[10] The percentages do not include all actors but refer solely to European actors, member states were considered European when acting on the EU level, for instance during a summit.

Figure 3: European Actors in France and Germany
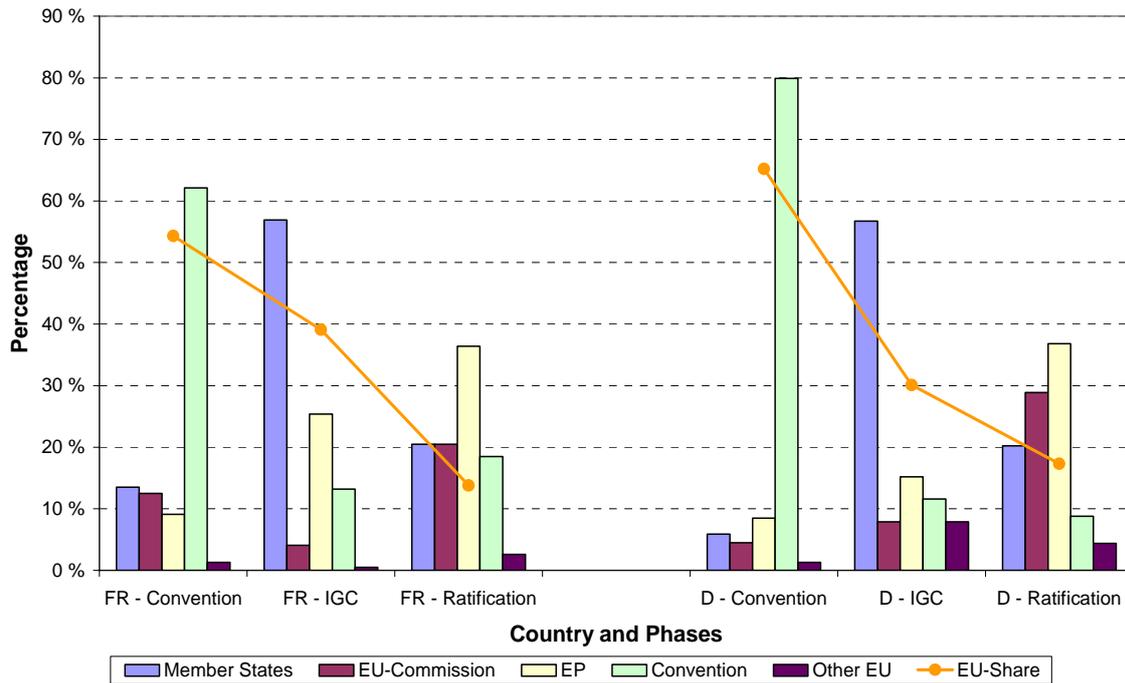
There are again more similarities than differences between the two countries under investigation. Each period had a different main actor on the European level: The Convention on the Future of Europe in the first, member states and their government representatives in the second and members of the European Parliament in the third phase.[11] The latter grew in importance from year to year and its role is less self-explanatory than that of the Convention and member states whose significance simply corresponds to the bodies that were in charge of the Constitution at the phases concerned. In contrast to the overall dominance of government actors in the nation states, the European Parliament was also almost constantly stronger than the EU Commission. Lacking a clear mandate and the competences to initiate proposals on the TCE the Commission basically abstained from the constitutional process. Its stance of being more at rivalry with the Convention (at least when it came to the personal relations between Giscard and Prodi) and the discordant views on the Constitution among the

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[11] Some actors only changed hats between the different phases, especially MEPs that were delegates in the Convention and later continued to fight for the Constitution as parliamentarians

Commissioners further exacerbated the problem. The slight increase of claims during the last phase was only part of a crisis-management after the referenda. Hence, one of the major EU actors and daily provider of information on the EU was basically missing. What is more, it seems as if there was a lack of engaged advocacy for the Constitution: Several former Convention delegates felt no longer responsible for the project and only a small number of MEPs and the former Convention Praesidium felt the need to fight for the Treaty's future.

Further evidence of a gap between many Europeans and "their" constitutional project can be found with regard to the spatial scope of claims-making. The numbers give evidence of the communicative linkages that developed around the TCE: Who talked to whom and who responded.[12] 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 origin. 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/Gray 2005: 14-15). This results in a matrix that distinguishes between nine types of claims-making relationships. In both countries one can see a development from a debate that was mainly between actors on the European level to a debate within member states, with a particular prevalence of the French debate − in both countries (see Table 3).

During the Convention nine out of ten claims were addressed at EU actors, mainly the Convention itself. The biggest share of this was due to communication between European actors but about a fifth can be traced back to national claims-makers addressing EU actors. Yet, there was far less response from EU actors to German, French or other nation-state actors (about 5% in

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[12] Only about a third of all claims were directed towards an addressee, with some variances between the different phases and countries.

France and 3% in Germany) via the media. Besides, only very little discussion within the nation states reached the media threshold and accompanied the EU debate on the national level.

The beginning of the IGC kicked off discussions within the nation states. A growing number of claims in France and Germany were exchanged among compatriots, but even more French and Germans were still trying to influence what was happening in Brussels and targeted the EU level. Although the Convention no longer existed, it was still referred to, but the main addressee was clearly the IGC or the heads of governments forming it. Again, efforts to establish communication in both ways turned out to be unsuccessful as there were still no endeavours on the European side to establish communication with the member states. Apparently, neither the heads of government nor the EU institutions tried to involve national parties or civil society actors into the decision-making on the Constitutional Treaty. On the whole, exchanges between politicians on the EU level remained dominant.

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

	FRANCE				GERMANY			
	French Addressee	Foreign National Addressee	EU Addressee	All Addressees	German Addressee	Foreign National Addressee	EU Addressee	All Addressees
Convention								
National Claims-maker	5.3 %	0 %	19.5 %	24.8 %	3.6 %	0 %	15.3 %	18.9 %
Foreign National Claims-maker	0.8 %	0.8 %	10.3 %	11.8 %	0 %	0.3 %	6.9 %	7.2 %
EU Claims-maker	4.2 %	1.1 %	58.0 %	63.4 %	1.9 %	1.4 %	70.6 %	73.9 %
All Claims-makers	10.3 %	1.9 %	87.8 %	100.0 %	5.6 %	1.7 %	92.8 %	100.0 %
N	27	5	230	262	20	6	334	360
IGC								
National Claims-maker	15.3 %	0.8 %	16.9 %	33.1 %	11.4 %	4.5 %	14.8 %	30.7 %
Foreign National Claims-maker	2.4 %	8.9 %	7.3 %	18.5 %	2.3 %	11.4 %	12.5 %	26.1 %
EU Claims-maker	4.8 %	3.2 %	40.3 %	48.4 %	1.1 %	1.1 %	40.9 %	43.2 %
All Claims-makers	22.6 %	12.9 %	64.5 %	100.0 %	14.8 %	17.0 %	68.2 %	100.0 %
N	28	16	80	124	13	15	60	88
Ratification								
National Claims-maker	53.3 %	3.8 %	2.7 %	59.8 %	9.5 %	11.6 %	7.4 %	28.4 %
Foreign National Claims-maker	9.6 %	9.2 %	2.7 %	21.5 %	2.1 %	45.3 %	5.3 %	52.6 %
EU Claims-maker	11.9 %	0.4 %	6.5 %	18.8 %	2.1 %	8.4 %	8.4 %	18.9 %
All Claims-makers	74.7 %	13.4 %	11.9 %	100.0 %	13.7 %	65.3 %	21.1 %	100.0 %
N	195	35	31	261	13	62	20	95

In the ratification period the nature of the debate changed completely. In France the national referendum provoked contention, leading to a debate held mainly between the French (53%). This can largely be attributed to the internal party dispute within the *Parti Socialiste*, criticism on the Constitution which initially targeted Chirac's government as well as calls from politicians to the general public on how to vote in the referendum belong to this category. The latter is also reflected in the types of addressees. Whereas civil society actors accounted for only a limited share of addressees during the first two phases, almost a third of all claims in the French media and about a quarter in the German press were directed towards civil society actors during the ratification phase – a large part of them rather unspecificly targeted the general public. At the same time, the EU lost significance. The share of EU actors being addressed dropped in both countries. Particularly in France national actors no longer addressed EU actors. The latter, on the other hand, now tried to address the French more often, but received hardly any response from the nation state.

Meanwhile, Germans cut back their own discussions and mainly observed communication in other member states (45%) – above all the debate in France. In fact it seems as if the constitutional debate more or less circumvented Germany by passing from Brussels to Paris and from European decision-makers to French nationals without ever gaining real power in Germany. Only the claims in which Germans addressed foreign national actors, again notably the French, point to some active involvement of Germans and perhaps even the establishment of some truly transnational communicative linkages. Although one can discern only some feedback from the French to its neighbours, *Le Figaro* and *Le Monde* show that these interventions from outside were also noticed: Almost 10% of claim-relations in the French press were between foreign national claims-makers and French addressees.

# Opponents and Proponents of the Constitution and the EU

In order to get an impression of the debate's general tone, to what extent support or opposition towards the Constitutional Treaty or the European Union was expressed and the degree to which these trends and positions were comparable in the two countries observed, the data provide two different indicators. One is the matter of support and rejection of the Constitution mentioned directly by actors when raising a claim, the other is the position towards European integration that was code for every issue.

In France approval and disapproval started to become an important feature long before the document was finalised. Figure 4 shows how the two issue-categories grew in importance and became already significant during the IGC in France, while they continued to play a relatively minor role in Germany. While the coloured graphs represent the number of times someone expressed support or dissatisfaction with the TCE, the dashed graphs show the share of these claims as percentage of all claims. During the ratification phase positioning towards the Constitution was doubtlessly the most common issue in France. Within *Le Monde* and *Le Figaro* the negative position received 13% and the positive position 14% – or 190 versus 208 responses.[13] Thus, both camps had an almost equal say and the media acted as rather balanced transmitters. In Germany claims on the impact and consequences of the referendum remained more important and support and rejection of the Constitution were slightly subordinated, but the distribution of the two camps was also fairly similar. Claims that demanded a "disapproval or rejection of the Constitution" appeared to 6.4% and "approval/support for the Constitution" was named in 7.7% of all cases (64 and 77 responses). Part of this is due to the fact that the German media closely

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[13] The percentage of claims that contained approval or disapproval is even higher (seea dashed graphs) as the coding scheme allowed to code up to three issues per claim which increased the basic value for topics.

followed the French debate and thereby inevitably imported the French agenda into the German public sphere (Vetters/Jentges/Trenz 2006).

Figure 4: Disapproval and Approval of the Constitution as Issues in France and Germany
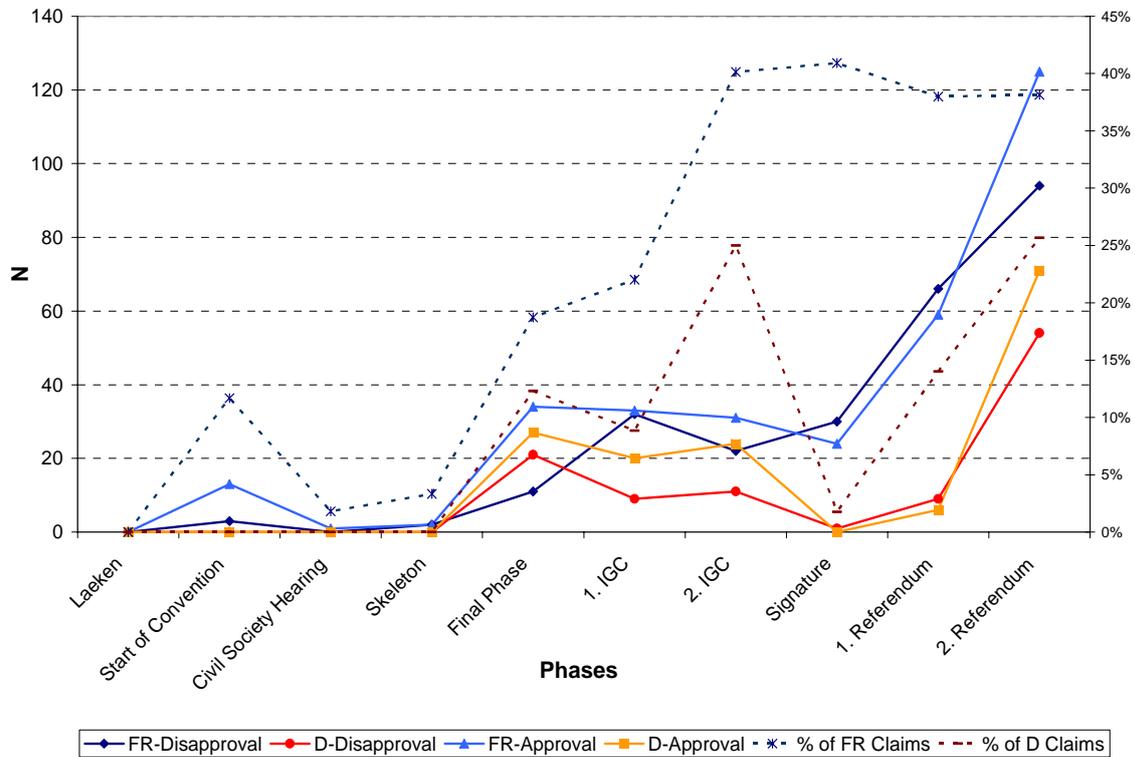
Looking at the actors behind the claims, a compound field of cross-cutting cleavages along ideological and territorial-cultural lines unfolds. In both countries, support and opposition to the TCE ran across actor types and party lines and could not be grouped along pro- or anti-European cleavages. Only the role of national governments was relatively clear-cut, they were the strongest supporters of the Constitutional Treaty, accounting for 36% of all positive statements in France and 40% in Germany. With regard to parties and legislative actors, the French were more pronounced on the pro- as well as on the contra-side. As the issue got more and more contested, actors became active on both sides and accounted for a 28% of all proponents and even 57% of all opponents (compared to 16% and 31% in Germany). In terms of party affiliation, opposition

came mainly from the left: More than 60% of all opponents but only a bit more than 30% of the proponents had a leftist party affiliation. Nevertheless, the TCE was generally supported by political parties from both sides. Although the *Parti Socialiste* was stronger on the no-side, it was also quite present among the supporters of the Constitution attesting to the party's internal divide on the constitutional issue. In the *UMP/UDF*-government coalition that mainly supported the Constitution some deviating voices also torpedoed the government. The Greens were equally strong on both positions, only the Liberals backed the TCE unanimously.

In Germany, the withdrawal of political parties from opposition against the Constitution was quite apparent and an expression of the conflict avoidance strategy of the German party landscape with regard to European matters (Schild 2003). While party actors accounted for a third of all negative comments during the Convention, they made up less than 10% during the ratification period. Looking again at the party background, criticism on the Constitution came mainly from the right and only in few instances from the left. One reason for this was that the leftist *PDS* only had two parliamentarians in the German Bundestag during the time of analysis and was not present as a fraction. The other, and probably more decisive factor, was the social democrats responsibility as governmental party which made them logical supporters of the constitutional project. After all, their government was the first to agree on it. As in France, the opposition was present on both sides; conservative parties on the right not only rejected but also supported the Constitutional Treaty. The Bavarian *CSU* was rather critical towards the CT while the *CDU* was stronger in its support for the Treaty.

In addition to the differences between France and Germany regarding the position of party actors there are also distinctions concerning the position of non-state actors. In France, civil society actors (excluding journalists and

scientists) were only slightly more negative than positive and accounted for about 12% of all proponents and 17% of all opponents of the Constitution. In contrast, civil society actors in the German media formed not more than 5% of the pro- but 23% of the contra-camp. During the last year of the constitutional debate they even presented nearly a third of all claimants rejecting the Constitution. Hence, civil society was the strongest voice against the Constitution in the German media.

Some of these cleavage lines were repeated with regard to general positions on European integration, others got even more pronounced. In order to control for the different shares of foreign actors, only French and German actors were compared. Taking the complete sample from 2001 to 2005 into account, state-actors had not only a command of the discourse in terms of their share in claims-making in both countries but also agreed in their positive attitude towards European integration on a scale from -1 (against integration) to +1 (support for integration). The position score was based on the coders understanding of the issue and reached by aggregating the values of all claims of certain actor types and then calculating a mean. The top rows show the aggregated data for state and non-state actors. Underneath the actor types are broken down to show the shares of specific groups, such as national governments, media, scientific and research experts or unions.

In both countries, the general disposition towards the European integration process declined considerably over the years. Apart from a few exceptions most actor groups expressed more negative views towards European integration during the ratification period than during the Convention. In France, not even one important actor type insisted on its clear positive stance towards the EU, even the government became more and more reserved in its support for the EU. French legislative and party actors were obviously quite sympathetic towards the EU in the beginning but this attitude changed the more polarised positions on

the EU's future, and the fiercer the internal division became. Only French non-state actors were still more radical in its withdrawal of support: their general position over EU integration dropped from +0.61 to − 0.03. This shift was largely driven by media and scientists who stepped back from their strongly positive positions as well as from new civil society groups such as anti-European organisations and certain trade unions that only entered the debate during the ratification phase. Many other non-governmental groups were internally divided and ended up on values around zero. In general, the trend among state and non-state actors in France was the same and does not point to a complete division between elite and non-state actors. Both were fairly positive in the beginning and less positive or even a bit sceptical in the end. There was a pro- as well as a contra-mobilisation both from above and from below among state and non-state actors. Only the French government remained distinctively positive, with the elite media remaining halfway loyal but rather quiet on their side.

Table 4: Share and Position of French Actors in Claims–Making over European Integration

FRANCE	Convention		Trend	Ratification	
	Share in Claims–Making	Position over European Integration		Share in Claims–Making	Position over European Integration
French State & Political Party Actors	83.0%	0.48	↓	74.1%	0.12
French Civil Society Actors	16.6%	0.61	↓	25.9%	–0.03
Governments & Executive	29.6%	0.50	↘	20.7%	0.38
Legislative actors & Parties	18.7%	0.40	↓	46.4%	0.01
Convention	29.8%	0.51	↓	3.1%	0.14
Politicians, other political actors	4.9%	0.41	↓	3.9%	0.16
Media and Journalists	5.5%	0.72	↓	4.7%	0.22
Scientific & Research Experts	3.3%	0.63	↓	5.5%	0.00
Other Professional Groups	3.6%	0.81	↗	0.2%	1.00
Unions and Employees	0.5%	1.00	↓	4.9%	–0.11
Pro– and Anti–Europeans	0.7%	1.00	↓	2.0%	–0.57
Other Civil Society	3.0%	0.00	↘	8.6%	–0.03
All French Actors	100.0%	0.50	↓	100.0%	0.09
Number of Responses (N)	581			1152	

Table 5: Share and Position of German Actors in Claims–Making over European Integration

GERMANY	Convention		Trend	Ratification	
	Share in Claims-Making	Position over European Integration		Share in Claims-Making	Position over European Integration
German State & Political Party Actors	79.5%	0.39	↘	60.7%	0.24
German Civil Society Actors	20.7%	0.29	↓	39.3%	-0.25
Governments & Executive	19.6%	0.37	↗	23.4%	0.52
Legislative actors & Parties	17.4%	0.26	↘	31.4%	0.09
Convention	40.4%	0.48	↗	1.5%	0.57
Politicians, other political actors	2.1%	0.08	↓	4.4%	–0.24
Media and Journalists	13.4%	0.38	↓	17.9%	–0.20
Scientific & Research Experts	3.5%	0.17	↓	8.3%	–0.21
Economists & Finance Experts	0.0%	0.00	↓	1.5%	–0.43
Other Civil Society	3.8%	0.08	↓	11.6%	–0.35
All German Actors	100.0%	0.37	↓	100.0%	0.05
Number of Responses (N)	649			471	

Note: Only actors with a share of at least one percent in one of the two phases were taken into considerations, while smaller shares were subsumed into "Other"-categories. The arrows in grey cells indicate that the development between the phases is based on very few cases.

The German government developed in the opposite direction as the French from a general positive to a distinctively positive position. As a result, the overall value for German state–actors remains clearly positive, despite the fact that political parties and other politicians also retrieved their backing. German non–

state actors on the other hand, started from a moderately positive position towards the Union but reversed their attitude to a clear negative stance. These different trends led to a clear-cut cleavage-line between generally Europhile state actors and more Eurosceptic non-state actors. Especially journalists and scientists raised their voice more often in the last phase while becoming increasingly critical and sceptical at the same time. Other civil society actors, no matter if people that wrote letters to the editor, campaign groups or the general public, showed the same pessimistic trend. Hence, civil society mobilisation in Germany was mainly driven by negative voice, while in France it was both in favour of and against the EU, and came simultaneously from above and from below. 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.

Combining these findings again with the general development, the increase in contestation in the final year of the debate was seemingly accompanied by declining support towards the European integration process. This, however, does not establish any causal relationship as implied by Moravcsik. First of all, media coverage was never distinctly negative but gave voice to both sides. Secondly and on a more general level, the development on part of the media and its content does neither explain nor project the outcome of the referenda and it most certainly did not cause it. In fact, what is more likely is that there was more reporting on the Constitution *because* different positions were expressed and made the issue more newsworthy – which in turn might be the reason why even more people became interested and engaged. Media can not be simply used as tools to promote support and enhance legitimacy but they operate on their own rules. They prefer conflict compared to consensus, failure to success and they like to depicture politics as a competition that ultimately creates winners and losers (Marcinkowski 2005: 352; see also Trenz 2006). These operating logics may not

correspond with the demands and expectations on the side of EU institutions, member states or social scientists – but they also do not point to any reverse effects.

Conclusion

Zooming in from a bird's eye view of the constitutional debate to some very detailed pictures of individual phases some general characteristics and developments of the communicative dynamics of EU's constitutional venture were put out. There was neither a static German nor a stable French discussion on the Constitution, not to speak of one coherent European debate. Actors, issues and positions changed over time, sometimes with similar tendencies in the two countries studied, sometimes in opposite directions.

All in all, the debate was dominated by elites in every single phase. Despite Giscard d'Estaing's insight that "citizens of Europe feel that they are not being listened to, that their views are not being taken into account" and that it was the Convention's task to change this (Guardian 22/03/02), this phase appeared particularly elitist. Only during the weeks when the explicit hearing of civil society groups took place the share of civil society organisations leaped a bit.[14] During the ratification phase the politicisation of the issue led to an increased share of non-state actors in France and in Germany, but the French referendum did not lead to a higher share of non-state actors than in Germany where the Parliament ratified the TCE.

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[14] How well the small number of lobbyist and Brussels-funded civil society organisations such as the European Women's Lobby, the European University Institute, Young European Federalists or the Council of European Regions represented the ordinary citizen remains another question (for a critique on the hearing's participants cp. FAZ 26/06/02; Le Figaro 26/06/02; Daily Telegraph 29/06/02).

The multi-level configuration of claimants further underlines the changes of the debate. It illustrates an increasing re-nationalisation in France followed by an ever closer observation by the German media. European actors steadily lost ground in the discussion on the TCE, indicating a discussion that was organised horizontally within or among the nation states. Strong linkages between the EU level and the nation states evolved neither in times of high nor in times of low EU involvement. During the Convention, German as well as French claims-makers addressed EU actors, but there was very little response in the other direction. The same holds true for the IGC period where national discussions gained importance but EU actors were still most important and neither heads of government nor EU institutions responded to national parties or civil society organisations. Only during the French referendum some EU actors made an effort to talk to the French. Yet, it was too late; now the French media focused on the contention that arose within the nation state. In Germany, the development was about the same, except for the absence of a national discourse on its own. The constitutional debate passed from Brussels to Paris and from Europeans to French nationals but never really reached Germany.

Looking finally at the proponents and opponents of the Constitution as well as at Eurosceptic and Europhile minds it was shown that governments were the strongest supporters of the TCE while parties were more ambiguous in their position towards the Constitution and EU integration. In addition, a steady decline in the general disposition towards the EU in both countries became visible. In France there was a general decline without a strong distinction between elite and non-state actors. In contrast, public opinion in Germany developed in different directions leading to a clear-cut cleavage-line between generally Europhile state actors and more Eurosceptic non-state actors. Despite high levels of media coverage in both countries and – if not mutual at least one-sided – observation, patterns in the two countries not simply converged to one common set of relevance structures.

Contrary to earlier expectations, the constitutional process did not create an all-encompassing European public sphere, nor did a public debate automatically generate understanding and acceptance for the EU Constitution or for European politics in general. Actually, both, those that had hoped to steer public opinion into a more positive direction and those that blamed the debate for its negative effects were proven wrong. The print media did report on the constitutional process and lived up to the expectations to provide basic information on the topic; but their capacity and willingness to do so was limited and dependent on typical selection criteria such as conflict, prominence, consequences or possible future impact. By the same token, media coverage was neither unconditionally positive nor entirely negative; both camps were present and different developments within and between the two countries investigated became visible. Not even the shift towards greater scepticism towards integration in the later phase of the debate can be attributed or causally linked to the media; the shift might just as well be due to different actors that got engaged in the discussion. Media neither act on behalf of EU institutions nor on that of Eurosceptics. Mediated debates do not lead to simple processes of cause and effect, let alone politically intended or controllable consequences. Instead, politics and the media operate on very different logics and any interactions between them increases the risk of unforeseeable and contingent effects. This implies that possible outcomes can hardly be predicted and debates may have unintended consequences beyond anything EU communication strategists have in mind when establishing new concepts to reach the European citizens.

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