

Assessing the infrastructures for democracy in Europe: Civil society and the public sphere

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Summary: This paper is premised on the assumption that in the struggles about a democratically legitimate legal order in Europe, the evolving structures of European political communication play a pivotal role. In view of the ongoing process of reconstituting the EU, we argue that the normative persuasiveness as well as practical viability of the competing models for democratic legitimacy varies, depending on the preconditions for European political communication. A social science perspective is adopted to develop a framework for assessing the performance of Europe's communicative infrastructures aimed at testing these claims. In particular, the analysis brings together normative democratic analyses of European constitutional politics on the one hand, and analyses of the mass media and civil society as constitutive elements of the public sphere on the other hand. The article is structured in three parts: The first draws on debates about European integration and constitutionalisation to develop a typology of three logics of EU constitutional politics, each with different assumptions regarding the requirements for public communication. The second part develops a framework for assessing the practices of public communication in European politics. The third part illustrates how discourse analysis is empirically operationalised for assessing the quality of European public communication, in three fields of comparative empirical research: mass media, party-parliamentary and civil society discourses. In the conclusion, propositions are formulated about the viability of the three competing models of democratic constitutionalism in light of the role of the mass media and real civil society in European political communication.

"The phase following the Cold War was an unusual and laudable decade in European history. It expanded the borders of freedom and democracy and made the reunification of Europe possible. Today, we are facing a completely different reality. Even though we have seen the triumph of the capitalist revolution, the democratic revolution is on the decline."
Ivan Krastev, Centre for Liberal Strategies, Sofia

1. INTRODUCTION

Twenty years after the fall of the wall, a new struggle over European integration is underway - apparently, one of the most fundamental legitimacy tests that the European project has lived through so far. In this radically changing global context, the question about how to use the RECON models for assessing these preconditions for reconstituting democracy in Europe acquires an additional meaning. At stake is not only the question as to which democratic model fits best – in descriptive, normative or prescriptive terms - regarding the various

processes involved European constitutional politics. Moreover, the fundamental question to be tackled is to whether any model of democracy would stand chances of surviving a possible “regulatory Trilemma” – irrelevance, failed regulation and self-destruction vis-à-vis complex problems of regulation (Teubner 1982: 13ff, cited after Habermas 1992: 466).

This paper is premised on the assumption that in these struggles about a democratically legitimate order in Europe, the evolving structures of European political communication play a pivotal role. In view of the ongoing process of reconstituting the EU, we argue that the normative persuasiveness as well as practical viability of the competing models for democratic legitimacy varies, depending on the preconditions for European political communication. The research program on which this article draws contributes to assessing the viability of competing models of democracy in the enlarged Europe, by adopting a political-sociological approach to EU politics and polity-making, and by developing a framework for assessing the performance of Europe’s communicative infrastructures, in particular. These analyses bring together normative democratic accounts of European constitutional politics on the one hand, and social scientific analyses of the mass media and civil society as constitutive elements of the public sphere on the other hand. Focusing the performance of civil society actors, political parties, and the mass media in the public sphere, our aim is to explore competing European procedural and substantive orders from the angle of the extra-legal communicative infrastructures for democratic legitimacy.

The analysis is structured in three parts: The first part draws on debates about European integration and constitutionalisation to develop a typology of three logics of EU constitutional politics, each with different implications regarding the requirements for public communication. The second part develops a normative democratic framework for assessing the practices of public communication in European politics. The third part illustrates how discourse analysis is empirically operationalised for assessing the quality of European public communication, in three fields of comparative empirical research: mass media, party-parliamentary and civil society discourses. In the conclusion, we summarise empirically testable propositions regarding the viability of the competing models of democratic constitutionalism in Europe.

2. THE EUROPEAN INTEGRATION & CONSTITUTIONALISATION DEBATE: IMPLICATIONS FOR POLITICAL COMMUNICATION

Starting with the Maastricht treaty reform, the method of deepening European integration through law had progressively turned into a process of post-functional integration conducive to embedding law in social context and subjecting it to public political debate (Hooghe & Marks 2009). After Laeken, the EU's constitutional project has become increasingly debated in terms of competing models of reconstituting democracy in Europe (Eriksen 2007; Eriksen & Fossum 2007, Fossum 2008, Fossum & Menendez 2005). But in the aftermath of September 15th, 2008, the challenges of managing the global financial and economic crisis seem to undercut the achievements of the post 1989 democratic revolutions in new member states, to threaten established democratic practices in the old member states, and to weaken the democratic standards underlying the EU's constitutional order – that is the common objectives, formal norms and practical conventions for regulating social and political power within and beyond the European region.

For the purpose of our social scientific assessment of the communicative preconditions for democracy in Europe, we turn from the static framework of the EU polity models to a process perspective, namely the logics underlying constitutional politics and their implications in terms of communicative requirements. The three logics distinguished here have a lot in common with but are by no means identical with the three “RECON models” of democracy in Europe. Following Castiglione and Schönlaue (2006), there are two broad narratives of constitutional politics in EU scholarship: On the one hand, the “constitutionalisation narrative” is based on incremental Treaty reform through Intergovernmental Conferences, on “low politics” and a mass public “permissive consensus”; and, on the other hand, the “supranational constitution narrative” based on the high politics of explicit Constitutional drafting. Moreover, we suggest bringing in a third narrative. Importing James Tully's concept from the Canadian context into the EU, Jo Shaw has introduced the notion of “postnational constitutionalism in the European Union” (1999; 2000, 2003). Following Tully, postnational constitutionalism is defined as an “intercultural dialogue” in which the culturally diverse sovereign citizens of contemporary societies negotiate agreements on their forms of association over time in accordance with three conventions of mutual recognition, consent and cultural continuity (Tully 1995, 30).

2.1 The “constitutionalisation narrative”: incremental treaty reform, low politics and permissive mass public consensus

In debating the future of European integration and possible paths towards democratic legitimacy EU constitutionalisation has mainly followed the logic of integration through law (Mancini 2000). The idea that the EU’s constitutional order is the outcome of incremental treaty reforms, rationally calculated member state interests and intergovernmental bargaining is claimed to bring about the most stable solutions (Tsebelis 2008). In order to maintain its integrative dynamics, openness and participation of this process must be restricted. The basic consensus about a European constitutional order or the fragile interest equilibrium must be protected at all costs from possible outside interferences. Democratic procedures are thus not essential to the basic legitimacy of the EU (Majone 2005, 1998; Moravcsik 2006) but, to the contrary, are often seen as counterproductive.

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

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

might even necessitate restricting integration and the excessive competences of supranational bodies.

2.2 The narrative of “supranational constitutional settlement”

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

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

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

This logic is based on a progressive notion of EU-constitution-making as a catalyst for the building of an EU polity and a corresponding EU-social constituency. In this case, the legitimacy of the EU essentially relies on the implementation of democratic procedures through constitutional design. There would be no need for a pre-established collective identity as citizens could, in the long run, be expected to support and identify with the new democratic

procedures and institutions and to recognize its surplus in terms of legitimacy in comparison to the traditional model of national democracy. The launching of a constitutional project could thus be used to expand basic consensus with regard to supranational integration and to build trust and solidarity among the citizens of Europe. Following this model, democratic legitimacy is based on intermediation from strong deliberative publics to general mass publics and a channelling and filtering of voice through participatory and inclusive arenas. In terms of polity design, the consensual logic envisages the possibility of European statehood in terms of a federation (federal Europe) or alternatively promotes the allocation of authority to multiple sub- or supranational bodies coordinated by international law (cosmopolitan Europe).

2.3 The “transnational democratic dialogue” narrative of constitutionalisation

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

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

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

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

3. ASSESSING THE DEMOCRATIC PERFORMANCE OF THE PUBLIC SPHERE

Drawing on the typology of three different logics of EU constitutional politics developed above, in this second part a framework is proposed for assessing the democratic qualities of the practices of public communication in European politics. Against the normative background of the three logics of democratic constitutionalism we will examine whether and in what ways mass media debates interact with EU constitutional politics. The question is whether and how the mass media have engaged with the democratic dimensions of the TCE supporting either the path of constitutional low politics, justifying the high politics of supranational constitution-making, or enhancing a contentious approach to European integration with its concomitant ambivalent repercussions for the constitutional endeavour. More specifically, we will measure the scope and performance of constitutional media debates, see here as an indicator of the democratic quality of the process. Translated into empirical indicators, the democratic quality of media debates on the EU-constitutional project is measured in terms of visibility (coverage intensity), language (different framings of same

topics), substance (argumentative strategies deployed and the extent of deliberation, and hence of reason giving) and pluralism (inclusion of diversity of voices).

3.1 Key questions

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

- 1) What are the patterns, resources and dynamics of mass media communication in relation to the EU-constitutionalisation process? How do constitutional debates unfold in the mass media, what kind of issues and particular concerns are raised, involving what kind of actors are involved and what kind of publics are addressed?
- 2) What is the degree of Europeanisation in public and media debates on EU-constitution-making? Does political contestation in the different national media spheres follow similar conflict lines? How do speakers and addressees from different national backgrounds relate to each other discursively?
- 3) Through what kind of meaning structures and justificatory logics do constitutional debates unfold? Can attitudes expressed towards European integration be grouped along a similar cleavage line to that existing between opponents and proponents of the Constitutional Treaty? Can the typical justifications used to defend particular visions of the EU as a legitimate order be classified?

To answer these questions, a framework for comparatively assessing mass media coverage is developed for reconstructing cognitive as well as normative characteristics of mass-mediated public discourses within the normative framework of our three “logics of constitutional politics”.

3.2 Operationalisation of the three constitutional logics

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

- a) *The exclusive-bargaining logic of treaty reform:* Five indicators establish whether this logic is reflected in constitutional media debates: preferences would be negotiated in rather closed arenas without major need for media attention. The expression and mobilization of public concerns outside these arenas would not be necessary. Communicative inputs would be provided mainly by national governments qua legitimate representatives of national interests, or by experts. EU institutions would play a minor technical role as there would be no need for the generation of legitimacy beyond the representative procedures of national democracy. Justificatory discourse would mainly emphasis national interests, efficiency and functional problem solving.
- b) *The inclusive-consensual logics of democratic Constitution-making:* In order to fulfil the criteria required by the logic of limiting diversity as a means of accommodating conflict in EU-constitution-making, mass media communication would have to limit growing popular contention and partisan conflict about European integration, giving voice primarily to representatives of the governed. In other words, mobilisation by affected groups and civil society would not become visible in the media. The contested meaning of the EU would be displayed in stable cleavage structures across national arenas. Politicisation would decrease over time and the issue cycles in the media would indicate recurrent debates about the EU that are stimulated by supranational actions and events. Justificatory discourse would highlight the European collective good, and promote rights and collective identities.
- c) *The transnational democratic logic of constitutionalisation:* According to the logic of inclusive, transnational, open-ended procedures of constitutionalisation, overlapping public spheres of mass media communication must exist, structured by expanding public debates amplified through mainstream mass media. We expect these overlapping media

debates to respond to a growing demand for information about the EU constitutional project within national publics. This facilitates cross-border interactions and communicative exchanges involving a wide range of actors, the participation of both state and civil society actors at different levels of governance, and growing understanding among citizens, manifested in general support for the goals of European integration and the contents of constitution-making. Constitutional referenda would be not simply a one-off opportunity for popular mobilisation but the starting point of a new contentiousness that would unfold further in the reflection period. Justificatory discourse would focus on contested sectoral and territorial interests and identities.

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

Table 1: Three Logics of Constitutional Politics in European Public Communication

	Small “c” - quasi-constitutionalism through treaty reform	Capital “C” representative Constitution-making	Transnational democratic constitutionalisation
1. Visibility (coverage cycle)	<ul style="list-style-type: none"> - hidden process - limited, nationally segmented strong, sectoral, and general publics <i>* coverage cycle of EU low, with peaks for national EU politics</i> 	<ul style="list-style-type: none"> - Strong publics (EP), translating into general public spheres (mass media) <i>* coverage cycle of EU high with peaks for EU topics/events</i> 	<ul style="list-style-type: none"> - Transnational public spheres <i>* coverage cycle of EU variable, with peaks for non-national EU-politics</i>
2. Actor type and origin	<ul style="list-style-type: none"> National exclusivity: Judiciary (ECJ, national courts) and IGC, Council <i>* dominance of national origin and national state/government/court elites</i> 	<ul style="list-style-type: none"> Multilevel inclusiveness: EU actors, European parties, European civil society <i>* similar share of EU elites vis-à-vis national actors</i> 	<ul style="list-style-type: none"> Social inclusiveness: Culturally diverse groups, sovereign citizens <i>* similar share of national and non-national actors, including elites and civil society</i>
3. Logic of interaction	<ul style="list-style-type: none"> Logic of intergovernmental bargaining & compromise, structured by integration through law <i>* depoliticised national relations and discursive interactions centred on national representatives, experts, courts</i> 	<ul style="list-style-type: none"> Logic of political polarisation, structured by political cleavages and majority-opposition dynamics (majority rule + alternance in power) <i>* polarised relations and discursive interactions encompassing EU and national elites</i> 	<ul style="list-style-type: none"> Logic of contention, contingent on issues and contexts, structured by deliberation, negotiation and aimed at consent <i>* contentious and deliberative transnational relations and discursive interactions encompassing social and political actors</i>
4. Salient topics/issues of constitutional politics - policies - institutions - processes	<ul style="list-style-type: none"> - “Treaty Reform”, national sovereignty, - “Union of democratic states” - national ratification referenda - national elections 	<ul style="list-style-type: none"> - “Treaty establishing a Constitution for Europe” - “Federal Republic of Europe” - Pan-European treaty reform referendum - European elections 	<ul style="list-style-type: none"> - Ongoing EU constitutional reform process - Deliberative Convention - Citizens’ legislative initiative - International human

	- Economic costs and benefits of EU enlargement <i>* low salience and low politicisation</i>	- EU absorption capacity vis-à-vis further enlargement (Turkey...) <i>* high salience linked to consensus orientation, (or structured articulation and accommodation of conflict),</i>	rights and democratic practices in candidate countries <i>* high salience, with strong polarisation (or contentiousness)</i>
5. Argumentative strategies and justifications	Efficiency, functionality, national interests, national identities <i>* justification codes</i>	Collective European interests, values, history, future <i>* justification codes</i>	contested interests, values and norms <i>* justification codes</i>

3.3 Varieties of public spheres in European political communication

The research program of WP5 is premised on the assumption that different from other regime forms, democracy requires a variety of plural public spheres that are autonomous, yet related among each other and vis-à-vis the market as well as state or non-state political authorities. From this perspective, the outcomes of the processes of reconstituting democracy in Europe that are currently underway will depend critically on the patterns and dynamics of how the different mechanisms of the overall communicative infrastructures interact in public opinion formation and how they impact political decision making.

For the purpose of mapping these patterns and dynamics of communicative interaction and for empirically identifying how they have evolved as the context of post-Laeken European constitutional processes, we introduce a distinction between three different categories of public spheres (see Eriksen, Eriksen/Fossum 2002):

- (1) “segmented publics”, that is organized civil society; Eurosceptic networks, internet based communities;
- (2) “general mass publics”, focusing the mass media, and including public intellectual discourses¹; party political campaigns as well as mass public opinion;
- (3) “strong publics” that are institutionally connected to political decision-making, namely parliamentary arenas, with legislative public debates.

¹ Here, „intellectual“ is used in the cultural sense, as defined by Stephen Collini, that is those “regarded as possessing some kind of ‘cultural authority’ that is who deploy an acknowledged intellectual position or achievement in addressing a broader, non specialist public” (Collini, S. 2006, *Absent Minds. Intellectuals in Britain*. Oxford).

From this distinction, four research questions are derived:

- Which among these three different categories of public forums are the most hospitable for the dynamics of Europeanisation on the one hand, and which are most open to cosmopolitan transnationalisation, on the other hand?
- Which of these public spheres are the most resistant against such Europeanisation/globalisation dynamics, and most likely will remain locked into national boundaries?
- How do their respective patterns vary in cross-national, or in West-East comparison, did they converge or diverge over time?
- How are these three forms of public spheres connected, to what extent and under what conditions do they interact?

The aim of exploring these research questions in the context of sectoral publics, general mass publics, and institutionalised strong publics is to identify public communicative preconditions and constraints of reconstituting democracy in Europe.

4. ASSESSING THE INFRASTRUCTURES OF EUROPEAN PUBLIC SPHERES: COMPARATIVE DISCOURSE ANALYSIS

For empirically mapping and assessing the public communicative performance in these different fields, the research program of WP5 differentiates between three research clusters, each approaching the research questions outlined above (see part 3) from a different, specifically designed sub-angle:

- (1) “General mass publics”:
 - a. National mass media debates (WP5 media report 2008),
 - b. public intellectual discourses (Francois Foret, Justine Lacroix, Kalypso Nicolaidis)
 - c. organized civil society, namely Eurosceptic networks and internet based communities (Hans-Jörg)
 - d. party political electoral campaigns (Kathrin Packham);
 - e. mass public opinion (Alexander Gattig, Ewelina Pawlak);
- (2) “Strong publics”, that is arenas for public debate that are institutionally connected to political decision-making:
 - a. National parliamentary ratification debates (Aleksandra Maatsch).
- (3) “Segmented publics”:
 - a. Students’ European identities (Ulrike Liebert & Rosemarie Sackmann)

The methodology applied to several of these fields is comparative political discourse analysis (CPA), based on an Atlas.ti supported coding scheme². The application of this instrument combines three key components: a deductive, an inductive and a comparative strategy:

- Following a deductive approach, we construct “ex-ante” a coding instrument that “translates” the normative conception of the three RECON models into “empirical indicators” (or “codes”) capable of capturing the terms used by public discourse; this coding-scheme is applied to a sample of relevant published texts and allows for testing the salience of any of the three competing models of democracy in the public spheres (either segmented, mass public or strong);
- Adopting the inductive strategy of “open coding”, we go beyond re-constructing the salience of the three models, and develop suggestions for further refining the RECON models of democracy:
 - o Identifying the variety of “frames” and their positive/negative connotations used for each of the three models;
 - o Developing hypotheses for explaining the three models, in terms of discursive justifications (or motivations) given for or against them;
 - o Assessing the legitimacy of the three models, in terms of who supports or opposes them;
- By our comparative strategy, we identify cross-national variations as well as divergences between segmented, mass public and strong publics, allowing for
 - o recommendations regarding the viability of the models, alternative framing strategies and interaction dynamics between different kinds of public spheres.

The ambition of this methodology is to map, reconstruct and explain a particularly crucial dimension involved in the reconstitution – and that is legitimization - of democracy in Europe: the discursive processes of European information, political communication and public justification. Thus, WP5 seeks to contribute to the legal, institutional, etc. frameworks and methodologies adopted by the other RECON WPs.

In the following, it will be illustrated how this methodology is applied to the different arenas and subfields of public spheres in European political communication that are examined by WP5. The following three questions will structure these accounts:

² See Maatsch/Gattig (2008)

- a. How are the RECON models – and namely the three logics of European constitutionalism – applied for assessing the communicative performance in the different kinds of public spheres?
- b. How suitable is each of the RECON models to the public debates in each of the different spheres? Do they cover the main lines of debate?

***4.1 Mass media debates: the method of qualitative-quantitative discourse analysis*³**

To examine to what extent each of these competing logics of EU constitutional politics resonates with the public sphere, the analysis of national mass media debates draws on an unique data set: A large and encompassing print media data set on constitutional ratification and reflection debates (2005-7) including fourteen old and new Member States (Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Netherlands, Poland, Spain, Sweden, United Kingdom) and a candidate country (Turkey). These data were collected as part of the RECON project “*Reconstituting Democracy in Europe*”. This data set enables us to assess and explain patterns of mass mediated political communication through a cross-national comparative analysis. In addition, it is planned for a later stage to compare these patterns to findings from two related research projects: ConstEPS project “*Constituting the European Public Sphere*” (University of Bremen)⁴ and by the ESF project “*Building the EU social constituency* (University of Oslo and Humboldt University Berlin)⁵.

As regards research question a) about the democratic quality of mass media coverage of the EU’s constitutional process, we comparatively assess the quality – that is intensity, pluralism and transnational interactions - of mass media debates in the light of the three logics of “intergovernmental bargaining”, “supranational consensus-building” and “transnational dialogue” involved in EU-constitutional politics during the period May 2005 – June 2007,

³ See Liebert & Trenz, et al. 2008

⁴ For publications of initial results from the ConstEPS project, see "Europe in contention: debating the constitutional treaty", ed. U. Liebert, with contributions by P. Rakusanova (Czech Republic), Tatjana Evas (Estonia, Latvia); Sönke Maatsch (France), Aleksandra Wyrozumska (Poland) and Kathrin Packham (UK) <http://www.informaworld.com/smpp/title~content=g780767412~db=all> (Liebert 2007).

⁵ For publications of the findings from the ESF project, see Fossum/Trenz 2006, Jentges, Trenz, Vettters 2007, Vettters, Jentges, Trenz 2008, Trenz, Conrad, Rosén 2007, 2008, Trenz/Losada/Menéndez 2008; Statham/Firmstone 2007.

hence in terms of both, the patterns of communication and the kinds of narratives that prevailed in the mass media spheres.

Regarding research question b) about the underlying structures to account for the varying performance of the mass media, we will explain the varying salience and quality of mass mediated European political communication in terms of the different types of media systems in Europe, with more or less dominant vs. marginal types of agency (governments, public intellectuals, political parties, civil society). Thus the underlying infrastructures of European political communication will be explored.

With respect to research question c) about the role of the mass media in explaining the failure of ratifying the Constitutional as well as the Lisbon Treaty, without focus groups or indepth-interviews it will hardly be possible to establish to what extent the mass media have successfully cued mass publics and/or influencing political and social decision-makers. But our data allow assessing the success or failure of the communication strategy promoted by European leaders in the aftermath of the negative votes in France and in the Netherlands with the aim of closing the gap between the EU and its citizens (Plan D and the subsequent White Paper on European Communication issued by the Commission in February 2006).

A three-step discourse analytical approach to mass media communication in EU constitutional politics has been chosen:⁶

- a) Sampling of 40 print media articles per country and qualitative coding by country specialists following a shared coding scheme; drafting qualitative country report;
- b) Output of cross-national tables for descriptive comparative analysis of distribution of frequencies of actors, topics, justifications, interactions, context issues etc.
- c) Based on theoretical supercodes that are linked to models/logics, Excel-based output of comparative tables providing quantitative data on resonance of models.

⁶ For details, see the Liebert/Trenz: Media Report 2008.

4.2 National Parliaments deliberating about Constitutional and Lisbon Treaty ratification⁷

The Laeken process has initiated important reforms in the European Union, aiming to transform the EU into a more effective and a more democratic community of citizens. The research of the communicative infrastructural preconditions and constraints of this process - conducted within the WP-5 of the RECON project as well as in the ConstEPS and ESF projects – cannot be limited to assessing the quality of mass mediated vs. civil society public discourses about these reforms in selected EU member states. It is necessary to contextualise and relate these previous results to the arenas of institutionalised European public communication and decision-making: namely, national parliaments.

National parliaments, apart from their functions of legislation, government formation and control of the executive also perform as institutionalised forums of democratic deliberation, serving as channels of social and political interest representation, impacting (via the mass media) on public opinion formation, and influencing political decision-making. The parliamentary function of public communication through plenary deliberations has become particularly salient under conditions of wide-spread availability of mass-media: Plenary debates are no longer exclusive meetings held behind the closed door; rather, they have become open for the public in each and every EU member state. Parliamentary plenary debates are not only well-reported in the television but also easily accessible in the Internet. Parliamentarians are aware that by means of the mass media their speeches target a potentially very large, often even transnational, audience. Therefore, it can be said that due to the spread of the mass-media and the Internet, parliamentary deliberations have entered the national, and arguably transnational and European public spheres for good.

The aim of this research cluster is to analyse national parliamentary discourses (plenary debates) on the constitutional principles and institutional reforms of the EU initiated at the Laeken summit. The dependent variable of this project is composed of the three RECON democracy models, namely, Europe of the nation-states, federal Europe and a cosmopolitan Europe (in the research translated into institutional indicators). The discourse analysis is going to explain support (or its lack) for each of these models in national

⁷ For more details, see Aleksandra Maatsch (research design, Jan 2008)

parliaments of the selected EU member states, namely: Germany, United Kingdom, France, Poland, Czech Republic and Hungary.

In addition, for assessing the larger question about the quality of parliamentary ratification procedures in relation to the three logics of constitutional politics, the project applies not only the methodology of discourse analysis (both qualitative and quantitative) to the analysis of the parliamentary plenary debates, but also conducts the method of process-tracing in the analysis of the legislative processes (i.e. identification of actors who came up with the legislative initiative, number of readings, the outcome of the final vote etc...). The parliamentary discourse analysis will be conducted with the support of the Atlas.ti software.

The plenary debates are selected from the following time-period: 01.01.2004 – 28.02.2009, being the time when the most important institutional reforms of the EU were discussed. The units of the analysis are plenary debates that concern (1) Constitutional Treaty ratification act and (2) Lisbon Treaty ratification act in each state under study. The analysis will cover all plenary debates devoted to the discussion of these two ratification procedures, both in the lower and the higher chamber (approximately six plenary pro state with a bicameral parliament).

4.3 Cross WP's project integration

The methodology and assessment frameworks developed above also promise to heighten project integration, by cross-fertilizing other contributions in the report, namely WP8⁸ and WP3.

WP3: Constitutional controversies in national courts: counter-majoritarian contestation in legal forums as instruments to forge (supra)national democracy?⁹

The polarizing controversies related to the constitutional reforms of the European Union are increasingly debated and settled in the highest national courtrooms. The national courts are

⁸ WP8 European identity, see H.J. Trenz (Oslo 2009); and U. Liebert & R. Sackmann: Q-methodology for comparatively testing RECON identity (Budapest, 2008)

⁹ For more details, see Tatjana Evas (2009)

used by the political elites (Klaus, CZ), opposition or minority parties (Germany, UK?) or citizens (Latvia, Slovenia, UK?) as public forums to advance and debate politically contentious issues. Thus, the European integration becomes politicized through national fora where national highest courts have an authority to decide on the issues potentially of the Union wide effect.

In addition to the legal normative impact on the legal system and political decision making constitutional judgments are also a part of the public sphere. The coverage of the national constitutional hearings and debates receive wide mass media coverage and final judgments in full text are accessible to the publics. Gradually, the role of courts is shifting from the exclusive ground of judges and lawyers into the contestation ground of minority/opposition publics. Therefore, constitutional courts are part of the 'strong publics', institutionally connected to political decision making, that have a potential to influence the dynamics of Europeanization and formation of the public opinion, and the legitimization of the political decision in the national contexts.

The method employed in this cluster is discourse analysis of the decisions of the national Constitutional courts on the issues related to the constitutional reforms of the European Union (Accession Treaties, Constitutional Treaty, Lisbon Treaty).

The key research questions are:

- To what extent are national courts hospitable to European integration (and, in particular, to which of the three logics of EU constitutionalism)?
- Under what national-legal conditions will court cases tend to arise?
- Who are the litigants that bring the legal action – companies, public entities, ordinary citizens, non-nationals?
- What types of arguments and justifications do national courts use for justifying the supranational authority of the Union?
- How are national democratic principles protected vs. the delegation of political authority to EU justified?
- How do legal issues, justifications and argumentation patterns used by courts vary cross-nationally?
- Where are the justifications/arguments of the courts reflected in the context of national public spheres?
- Do they tend to support the party political majority in government? Mainstream public opinion? political minority groups? certain institutions?

The following national court cases are examined:

1. Germany (Lisbon, constitutionality), Judgment pending
2. Latvia (Lisbon, referendum), Ongoing hearing
3. CZ (Lisbon, constitutionality) + Constitutional Treaty (Klaus), decided
4. Slovenia (Lisbon, referendum), hearing pending
<http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/D7912D2823D758C0C12574EB002F564B>
5. UK (Lisbon, referendum) <http://www.stuartwheeler.co.uk/details.html>, decided
6. Poland on Accession Treaty (constitutionality)
7. Hungary (Accession Treaty)?

5. CONCLUDING PROPOSITIONS

This paper has developed a theoretical framework and described the empirical methodologies for exploring the evolving communicative infrastructures of a democratically legitimate European order. In conclusion, a number of propositions shall be formulated about the viability of the three competing models of democratic constitutionalism in terms of the evolving infrastructures for communication in and about the EU. In a social science perspective, these propositions are competing claims that can be tested in the light of the performance of Europe's communicative infrastructures.

From a political sciences perspective, the operationalisation and application of the (RECON inspired) logics of European constitutionalism for assessing mass media debates in the member states potentially makes a contribution to three distinct research questions:

- a) To comparatively assess the democratic quality of how the EU constitutional reform process has been reported by the media, and
- b) To analyse the underlying structures to explain unequal distribution of access among different types of political agents and their views;
- c) To assess the impact the media have on the processes of reconstituting democracy in Europe.

For developing a line of reasoning, we will keep these three facets distinct and focus here largely on the first and second questions.

Three basic alternative propositions shall be formulated: First, if public spheres continue to be fragmented along national boundaries, while European integration becomes more politicised, they will promote the re-nationalisation of democracy in Europe. Second, to the extent to which Europeanisation triggers a pan-European public sphere, this will strengthen the communicative infrastructures favourable for legitimising a supranational European polity. And, third, depending on whether and how processes of transnational communication will open up nationally closed public spheres and foster transnational dialogue, potential for cosmopolitan type of discourse democratic legitimacy can be expected to emerge in Europe.

However, taking the contentious nature of the ongoing process of reconstituting the EU into account, we argue that the nature of European constitutional treaty development and reform cannot be framed any more as an un-political, technocratic, functional process (Ipsen, Maione, Bartolini 2006) but, instead, as a “post-functional” framework of legally underdetermined political choices and contentious politics (Weiler 1999; Hix 2006, Fossum & Trenz; Liebert et al. 2007; Hooghe & Marks 2009; Schmitter 2009; Kriesi 2009; Börzel & Risse 2009). If we accept this claim, the issue is whether and in which sense - from a post-functionalist democratic perspective on European integration - the EU is capable of developing a democratically legitimate constitution, and which its prerequisites are. We argue that the normative persuasiveness as well as practical viability of the third “transnational dialogic” model of constitutionalism depends on the available infrastructures for discursively negotiating the input as well as output based democratic legitimacy of the EU multilevel polity; hence, it will depend on the structural preconditions for transnational discursive interactions that are in place or evolving – at the level of transnationalisation of national mass media systems, of cross-national party-parliamentary forums, of European citizens platforms and of transnational civil society communicative networks.

More specifically, in the post Maastricht, and especially post-enlargement context of post-functional European integration, the logics of (1) EU quasi-constitutional development (through successive intergovernmental treaty reforms) as well as (2) the logic of supranational Constitution-making by representative consensus-building (Constitutional Convention) both appear constrained by the increasing dissensus of critical segments of national as well as transnational publics. By contrast, by reframing the critical publics from “constraint” of supranational reforms to “catalyst” of European transnational public debate, we can expect (3) the logic of “transnational dialogue” to offer the greatest promises in terms of the discourse

theoretical requirements for the democratic legitimacy of the EU polity, by benefiting the performance of real civil society and public communication in the EU.

In view of the impacts of the global crises on these processes – and despite the uncertainties and lack of knowledge from which experts, policy-makers and citizens suffer alike, three alternative scenarios shall be envisaged: (1) Vis-à-vis the global pressures, the EU's asymmetric, economically integrated and politically fragmented constitutional order constrains EU leaders too much to bring about the necessary regulatory changes for correcting national, European and global market failures. As a consequence, the EU will suffer delegitimation, EMU will falter and, arguably, European integration in other fields, too. Second (2), under the new global challenges, the EU leaders' succeed in jointly stepping up federal constitutional provisions for upgrading supranational market regulation, but failing to encourage the extra-legal infrastructures for democratic legitimacy, namely a pan-European public sphere and civil society, the divide between political economic integration and nationally fragmented social policies will deepen, and the EU's legitimacy deficit increase. Alternatively (3), if the EU's constitutional development is supported by a transnational civil society and a public sphere, capable of ensuring public information, communication as well as the control of socio-economic multilevel policy-making, these evolving infrastructures will benefit the democratic input as well as output based legitimacy of the EU.

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