Norms as Negotiation Resource: The Empowerment of the European Parliament in the Lisbon Treaty

Alexander Bürgin

Assistant Professor, Izmir University of Economics, Department of International Relations and EU

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ABSTRACT

Despite diverging preferences concerning the role of the European Parliament in the institutional architecture of the European Union, the EU member states have accepted a significant increase of its power in the Lisbon Treaty. This paper argues that bargaining power alone cannot explain this result. Instead, it postulates the importance of normative pressure: arguments based on shared norms of democratic governance at the national level add legitimacy to the preferences of the supporters of a parliamentarization of the EU and mobilize social pressure on opponents of the empowerment of the EP. The impact of norms as negotiation resource is demonstrated in an analysis of three controversies in the European Convention: the appointment and budget competences of the EP and the role of national parliaments.

Keywords: European Integration Theory, Parliamentary Democracy, Norms, Discourse Analysis

Müzakere Kaynağı olarak Normlar: Lizbon Antlaşması'nda Avrupa Parlamentosu'nun Yetkilerinin Artırılması

ÖZET

Avrupa Parlamentosu'nun Avrupa Birliği'nin kurumsal yapısındaki rolüne ilişkin farklı görüşlere rağmen, Lizbon Antlaşması'nda Parlamento'nun yetkileri artırılmıştır. Bu çalışma, bu sonucun sadece AB'nin pazarlık gücü ile açıklanamayacağını, normatif baskının Parlamento'nun yetkilerinin artırılmasında etkili olduğunu iddia etmektedir. Makale, demokratik yönetişimin ortak normlarına dayalı argümanlarının, bir yandan ulusal düzeyde Avrupa Birliği'nin parlamenterleşmesini destekleyenlerin tercihlerine meşruiyet kazandırırken, diğer yandan Parlamento'nun güçlenmesine karşı çıkanların üzerinde toplumsal baskı oluşturduğunu vurgulamaktadır. Bu çerçevede, makalede müzakere kaynağı olarak normların etkisi, Avrupa Konvansiyonu'nda gündeme gelen Parlamentonun atama ve bütçe yetkileri ile ulusal parlamentoların rolüne dair anlaşmazlıkların incelenmesi ile açıklanmaktadır.

Anahtar Kelimeler: Avrupa Bütünleşmesi Kuramı, Parlamenter Demokrasi, Normlar, Söylem Analizi

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[*]   Assistant Professor, Department of International Relations and EU, Izmir University of Economics, Izmir. E-mail: alexander.burgin@ieu.edu.tr.

Introduction

Over the past decades, the European Parliament (EP) has been gradually transformed by the member states from a consultative assembly to a directly elected legislator which co-decides nearly all EU law on equal footing with the Council of Ministers. The last step of the empowerment of the EP has been initiated by the European Convention, which had the goal of launching a process to make the EU more democratic, more transparent and more efficient. After one and a half years of public deliberations the Convention drafted the Treaty establishing a Constitution for Europe (TCE) in June 2003. The treaty was signed by the Head of states after minor changes in an intergovernmental conference on 29 October 2004. It was then ratified by 18 member states, which included referenda endorsing it in Spain and Luxembourg. However, the rejection of the treaty in the referenda held in France and the Netherland in May and June 2005 brought the ratification process to an end. Following a period of reflection, the Treaty of Lisbon was elaborated to replace the Constitutional Treaty. The new treaty contained most of the changes originally placed in the Constitutional Treaty, but these changes were formulated as amendments to existing treaties. Signed on 13 December 2007, the Lisbon Treaty was rejected by Irish voters in June 2008. But it got overwhelming support in a second referendum in the Irish Republic on 2 October 2009 and entered into force on 1 December 2009. The new competences of the EP in the Lisbon Treaty had already been accepted in the Constitutional Treaty, which in turn, included almost all the Convention's suggestions as regards the power of the EP.

The Lisbon Treaty extended the co-decision procedure, which puts the EP on an equal footing with the Council in almost all areas where the Council decides by Qualified Majority Vote. Thus, the EP's veto rights have been expanded from 40 to 85 areas, including agriculture, energy policy, immigration, asylum and EU funds. Moreover, its power over the EU budget was further strengthened, as well as its power over the conclusion of the EU's external treaties. In addition, the accountability of the European Commission to the EP has been strengthened. The whole Commission, including the High Representative of the Union for Foreign Affairs and Security Policy, needs Parliament's approval to take office.

This development is surprising because, in the past as well as before and during the Convention, many governments voiced their opposition against the empowerment of the EP. The strengthening of the EP competences in spite of the diverging preferences of the member states has been explained by Schimmelfennig and Rittberger by the impact of norms as negotiation resource in intergovernmental constitutional debates.[1] They argue that the supporters of a stronger EP can denounce their opponents of a stronger EP as norm-violators if they refuse to transfer the standards of parliamentary democracy, a shared norm by all member states in the domestic context, to the EU level. Out of concern for their public images, opponents will be forced to accept this analogous application of parliamentary democracy standards in the EU context. In a comparative study of treaty revisions between 1951 and 2004, Schimmelfennig, Rittberger, Schwellnus and

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1 Berthold Rittberger and Frank Schimmelfenning, "Explaining the Constitutionalization of the European Union", *Journal of European Publich Policy*, Vol.13, No.8, 2006, p.1148-1167.

I have shown that, whenever the prerogatives of the national parliaments are eroded by the pooling or delegation of national sovereignty to the EU level, the EP gained new competences in the subsequent treaty revision.[2] Rittberger has also shown the correlation between perceived democratic deficit and empowerment of the EP in the three case studies: the creation of the Common Assembly of the European Coal and Steel Community, the acquisition of budgetary powers (Treaty of Luxemburg, 1970) and of legislative powers through the Single European Act (1986).[3]

The aim of this article is to assess the potential of the parliamentary democracy norm as a negotiation resource in the European Convention. An analysis of the discourses in the European Convention has an additional benefit compared to the abovementioned case studies of Rittberger, because the setting and context of the European Convention differed in four aspects from former treaty revisions. First, as the member states realized the failure of previous efforts to bring the EU closer to the citizens, they agreed for the first time on a Convention which preceded the constitutional debate in the subsequent intergovernmental conference. The intention of the Convention was to broaden the debate about the European integration project, and included members drawn from the national parliaments of member states and candidate countries, the European Commission, the European Parliament and representatives of member state governments. It was clear from the beginning that the Convention outcome would constrain the discretion of the government in the subsequent intergovernmental conference. Second, a discourse which argues in favor of more control rights for national parliamentarians instead of an extension of power of the EP could be expected because the members of the national parliaments were included in the debate. Third, it could be expected that the candidate countries, that have in general stronger reservations about the delegation of national competences to the supranational level, would feel less tied to the parliamentarization path, chosen by the old member states in previous treaty revisions. Finally, it could be expected that the inclusion of experts, the long duration and the publicity of the debates would lead to a sophisticated debate about the nature of the democratic deficit in the EU and possible alternatives to a further parliamentarization of the EU. Thus, the European Convention was a favorable setting in which to challenge the analogous transfer of the credentials of the national parliamentary democracy to the European level.

Indeed, the Convention led to new legitimating strategies: A full time European Council President for a two-and-a-half year term (instead of the semiannually rotating presidency) shall increase the visibility of the EU; direct democracy has been strengthened by the citizens' initiative, which allows one million EU citizens to participate directly in the development of EU policies, by calling on the European Commission to make a legislative proposal. However, the findings of the discourse analysis of key plenary debates show that the parliamentary democracy is still the dominant constitutionalization path, whose analogical application to EU governance is finally also accepted by those governments

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2   Frank Schimmelfennig *et al.*, "Conditions for EU Constitutionalization: A Qualitative Comparative Analysis", *Journal of European Public Policy*, Vol.13, No.8, 2006, p.1168-1189.

3   Berthold Rittberger, *Building Europe's Parliament: Democratic Governance beyond the Nation State*, Oxford, 2005.

who actually argued against a further parliamentarization of the EU. Contrary to public statements before the Convention, these governments avoided a normative discussion in the plenary debates, and did not achieve a modification of the Convention outcome in the subsequent intergovernmental conference.

The article proceeds as follows: First, I present the theoretical argument about the impact of dominant norms in intergovernmental negotiations. Then, in order to illustrate that alternative legitimating strategies are feasible, I develop a typology of arguments derived from different dimensions of legitimate governance. Finally, three case studies demonstrate the impact of the dominant parliamentary democracy norm in the interaction in the Convention.

Explaining the Empowerment of the European Parliament: The Legitimacy-Gap and Normative Reasoning

Schimmelfennig and Rittberger demonstrate that the strengthening of the EP is difficult to explain on the basis of both rationalist intergovernmentalist as well as constructivist premises. From a liberal rationalist perspective, governments chose an institutional architecture for the EU which is most likely to maximize their utility in future.[4] However, because the competences of the EP undermine the power of the Council, many governments are reluctant to increase its power. Against this background, also supporters of intergovernmentalist bargaining theories acknowledge the deficits of these theories to explain the empowerment of the EP.[5] Constructivist approaches refer to the role of norms, identities and socialization processes which lead to a common problem view, and are thus able to explain the formation of member state preferences concerning the appropriate institutional architecture of the EU. However, according to Schimmelfennig Rittberger, they are also ill-suited to explain the empowerment of the EP, because the EU-related identities and constitutional ideas of the member states differ strongly and also have changed little over time. Yet, if ideational convergence or international socialization has not taken place,[6] it is puzzling why the EU should have undergone progressive empowerment of the EP.[7]

As a solution to the theoretical puzzle, Schimmelfennig and Rittberger offer an approach which combines rationalist and constructivist assumptions. On the one hand, the approach assumes that governments have stable interests and act strategically to achieve an outcome that maximizes their utility. On the other hand, the approach assumes that the pursuit of political goals is not only dependent on the constellation of actor

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

5   Marc A. Pollack, *The Engines of Integration? Delegation, Agency and Agenda Setting in the European Union,* Oxford University Press, 1998.

6   Markus Jachtenfuchs *et.al.*,"Which Europe? Conflicting Models of a Legitimate European Political Order", *European Journal of International Relations*, Vol.4, No.4, 1998, p.409-445; Martin Marcussen *et.al.*, "Constructing Europe? The Evolution of French, British and German Nation State Identities", *Journal of European Public Policy*, Vol.6, No.4, 1999, p.614-633.

7   Rittberger and Schimmelfennig, "Explaining the Constitutionalization, p.1156.

preferences, their relative bargaining power and formal decision making rules, but that shared norms constrain the involved actors. Actors have to justify their positions on the basis of shared norms. Parliamentary democracy is such a shared norm – at least in the domestic context. Thus, actors who are in favor of a stronger EP can – with reference to the shared democratic standards at the domestic level – add legitimacy to their positions. Actors who are opposed to a further parliamentarization of the EU are in the weaker argumentative position. The supporters of a stronger EP can, by naming and shaming their opponents as norm violators, exert normative pressures on them. As they are concerned with their public image they finally back down and behave norm conform. Thus, neither social learning[8] nor persuasion[9] are necessary in order to generate norm conform behavior.

According to Schimmelfennig and Rittberger, the success of using the parliamentary democracy norm in order to generate normative pressure mainly depends on two context conditions: salience and coherence. *Salience* describes a perceived gap between the status quo of European governance and shared standards of parliamentary democracy. This perceived democratic deficit is the result of a sovereignty transfer to the European level, which undermined the prerogatives of national parliaments. The greater the sovereignty transfer, the better the context for the exercise of normative pressure. *Coherence* refers to established EU norms and practice. The possibility of exercising normative pressure in constitutional negotiations is strongest when the demands can be based on a precedent of empowerment of the EP, such as an earlier treaty revision or an informal practice. Thus, a formerly selected constitutional path develops its own dynamic.[10]

Discourse Analysis: Typology of Arguments and Assessment Criteria

In order to show the relevance of salience and coherence in the interaction process in the Convention, I took three actions. The first step was to develop a typology of basic arguments deduced from three dimensions of legitimate governance, namely efficiency and procedural and social legitimacy.[11] These three dimensions, while not being mutually exclusive, cannot be fulfilled simultaneously to the same degree.[12] Actors have to decide, on which legitimacy dimension they put more weight. The efficiency dimension stresses the legitimacy of a political system by its performance. The basic principle of procedural dimension is that governments have to be accountable to the people. The social dimension addresses the question of who the people are, and thus the question as to whether

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8   Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change", *International Organization*, Vol.55, No.3, 2001, p.553-588.

9   Thomas Risse, "Let's Argue! Communicative Action in World Politics", *International Organization*, Vol.54, No.1, 2000, p.1-39.

10 See Paul Pierson, "The Path to European Integration: A Historical-Institutionalist Analysis", in Wayne Sandholtz and Alec Stone Sweet (eds.), *European Integration and Supranational Governance,* Oxford, 1998.

11 Thomas Jensen, "Living Reviews in Democracy", 2009, http://www.livingreviews.org/lrd-2009-2 (Accessed on 31 January 2011).

12 Paul Magnette and Christopher Lord, "E Pluribus Unum? Creative Disagreement about Legitimacy in the EU", *Journal of Common Market Studies,* Vol.42, No.1, 2004, p.183-202.

democracy beyond the nation state is possible. As democratic governance presupposes "an institutional context characterized by intense communication and socio-cultural cohesion"[13] governance theorists disagree as to whether the necessary European public space and European identity exists that would allow the acceptance of a governance system that is at least partially majoritarian.[14] In addition, several scholars argue that the EP is too distant from the citizen or that due the multi-level governance character of the EU "the democratic control of European politics by the EP is subject to structural limits that are to a large extent independent of its range of power."[15] Alternatives to the parliamentarization of the EU, such as deliberative models of stakeholder inclusion or a lesser degree of integration are therefore suggested.[16] This academic debate is also reflected in the political discourse. Even such a dedicated European as the former German Foreign Minister Joschka Fischer is disappointed with the EP's lack of potential to bring the EU closer to its citizens: "The legitimate power of the European Parliament as opposed to the national sovereign states is – let me put it mildly – very small indeed. The European Parliament also stands for the distance of Brussels and *not* the representation of each of the national sovereign states on a European level".[17]

Table 1 summarizes possible basic institutional models of legitimate governance in the EU. Actors who favor a *technocratic governance* of the EU stress the value-added function of European governance in comparison to governance at the national level. They claim that citizens are primarily interested in the results of EU governance, and not how they come into existence. According to this output-oriented perspective, the lack of accountability of EU governance is therefore rated as less problematic.

Actors in favor of *intergovernmental governance* share the view of the supporters of technocratic governance that the main purpose of the EU is to deliver results. However, they are against the strengthening of the supranational pole of EU governance because they fear a loss of national sovereignty. Instead, they favor a strengthening of the Council's role.

Actors in favor of a *European parliamentary democracy* refer to the accountability principle of the procedural legitimacy dimension. They either claim that there is enough European cohesion and sufficient public sphere for a parliamentary system at EU level, or they argue that the strengthening of the EP contributes to the development of such a European public and to the emergence of a European identity of the citizens.

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13 Lars-Erik Cederman, "Nationalism and Bounded Integration: What it would Take to Construct a European Demos", *European Journal of International Relations*, Vol.7, No.2, 2001, p.139-174.

14 Frank Decker, "Governance beyond the Nation State: Reflections on the Democratic Deficit of the EU", *Journal of European Public Policy*, Vol.9, No.2, 2002, p.256-272.

15 Ulrich Beck and Edgar Grande, *Cosmopolitan Europe*, Cambridge, 2007.

16 Christian Joerges, "Deliberative Supranationalism – A Defence", *European Integration Online Papers*, Vol. 5, No 8, 2001 - Beate Kohler-Koch, "Framing: the bottleneck of constructing legitimate institutions", *Journal of European Public Policy*, Vol. 7, No 4, 2000, p. 513-531 - Giandomenico Mayone, "Transaction costs, efficiency and the democratic deficit", *Journal of European Public Policy*, Vol. 17, No 2, 2010, p. 150-175.

17 http://www.eurozine.com/articles/2011-08-26-habermas-en.html   (Accessed   31   January 2012).

Actors in favor of the *national parliamentary democracy* are also concerned with the procedural legitimacy of the EU, but doubt that the EP has the capacity or the legitimacy to control EU governance. Their reference point of the social legitimacy remains the nation state. Therefore, they demand a stronger role for the national parliaments in the governance of the EU.

Table 1. Dimension of Legitimacy and Institutional Models of EU Governance

Dimensions of legitimacy	Social	
	European citizen	*Nation state*
Efficiency	Technocratic Governance	Intergovernmental Governance
Procedural	European Parliamentary Democracy	National Parliamentary Democracy

The different emphasis of these three dimensions of legitimacy lead to the following typology of arguments: *Nation-Arguments* justify a position with the nation state as the primary source of legitimacy, *Citizen-Arguments* with the European citizen. *Efficiency-Arguments* defend a proposal with the improved functioning of the governance process. The procedural aspect of legitimate governance is stressed by *Salience-Arguments,* which justify a position with a perceived lack of procedural legitimacy. *Coherence-Arguments* justify a proposal by presenting it as being in line with the existing institutional practice in the EU.

The second stage with regard to the interaction process was to develop four categories which allowed me to assess whether the mechanism of normative pressure worked successfully. I argue that it is plausible that arguments based on the standards of parliamentary democracy make a difference in the negotiation process, if: (1) the result of the Convention does not reflect the initial constellation of positions among the governments, especially between France, Germany and UK, (2) the development of draft articles until the final version of the intergovernmental conference reflects rather the demands of the pro-EP camp, (3) actors of the contra-EP-camp avoid a normative debate over the appropriateness of a further parliamentarization, assuming that theirs is the weaker normative position, (4) actors change their position or arguments during the negotiation process due to the exposure to normative pressure.

The final step was to map the argumentative constellation of key plenary debates about the competences of the EP. In doing so, I assumed that all conflict lines and argumentative types are covered in an analysis of the speeches of the delegates of a selection of larger and smaller member states with opposing preferences on further parliamentarization. Among the selected larger member states, Germany has a rather pro-parliamentarization approach, while France, the UK and Poland, a rather intergovernmental approach. Among the selected smaller countries, the Benelux countries and Ireland are more in favor of parliamentarization, whereas Finland, Austria and Denmark tend to favor of intergovernmental solutions.[18]

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18 For national approaches to European integration see Nick Clegg, "Restoring Legitimacy: Parliaments and the EU", in Ulrike Rüb (ed.), *European Governance: Views from the UK on Democracy, Participation and Policy-making in the EU*, London, 2002, p.31-44.

The Appointment Function of the European Parliament

The Conflict: The Appointment Function of the EP

It is a shared norm of national parliamentary democracy that governments are appointed by the parliament. However, at the EU level the old – but ongoing – debate is as to whether the European Commission is a technical agent of the member states or an autonomous actor with a quasi-governmental function providing leadership for the EU. Only if the latter is accepted, can the accountability of the Commission to the EP be framed as a democratic necessity. Prior to the Maastricht Treaty, the European Commission was not at all accountable to the EP. In fact, the Commissioners were just appointed by common accord of the governments of the member states. However, since the Maastricht Treaty (1992) the governments gradually accepted the quasi-governmental function of the Commission[19] and strengthened the appointment competences of the EP. With the Maastricht Treaty, the member states obliged themselves to consult the EP on who should be Commission President, and the college of Commissioners had to be confirmed by the EP. The Treaty of Amsterdam (1997) extended the EP's competences and also gave it the right to approve the appointment of the Commission President, who is, however, still nominated by the governments. The Treaty of Nice (2001) further strengthened the image of the Commission President as Prime Minister of a government: He now supervises the other Commissioners and can – with approval of the colleague – dismiss a Commissioner. Despite these developments, the governments continued to downplay the governmental function of the Commission, trying to present the Commission in the Convention as a technical actor which should not be politicized by allowing the EP to elect the Commission President by a simple majority vote.

Governmental Positions: Large Member States Favoring Council Solutions

The large member states were reluctant to allow a strengthening of supranational pole of the EU. Especially France, Spain and Great Britain opposed any step that would recognize the Commission as an equal partner of the Council in building the executive of the Union. Several governments resolutely argued against an election of the Commission President by simple majority vote in the EP. In his speech in Cardiff, Tony Blair defined the role of the Commission as a nonpolitical agency "responsible for keeping member states to the commitments they have agreed. This role as enforcer is unenviable, but essential". Opposing the election of the Commission President by the EP, he stated: "We must avoid at all costs turning the election of its (the Commission's) President into a partisan wrangle, or allowing the Commission to become a prisoner of the parliamentary majority. We cannot simply see the Commission as an executive accountable to the Parliament." The French President Chirac stated in his speech in Strasburg that the Commission has to be completely independent of political parties. In addition, the French Foreign Minister Villepin made clear French opposition to the election of the Commission President by

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19 For such a characterization of the Commission, see Lisbeth Hooghe, *The European Commission and the Integration of Europe: Images of Governance*, Cambridge, 2001.

the EP: "Such a mechanism would change the institutional balance"[20] (translation, A.B.). Although the German Chancellor Schröder voiced its support for a strong Commission and EP, the Franco-German position paper of January 2003 demands an election of the Commission President by a three-fifth majority in the EP.

Evolution: Limited Council President and Politicized Commission

As there was no working group on the institutional architecture "institutional issues that would have to be resolved in the constitutional treaty swirled around the periphery of the Convention sessions for the whole of 2002."[21] On 28 October 2002, after intense communication with the capitals, Convention President Valery Giscard d'Estaing published the first skeleton of the constitution. The articles about the Commission reflected a technical interpretation of its role: "The European Commission is called *on to give voice* to the general European interest". Further, the draft intended to give the EP the right to confirm the Council candidate, rather than to elect the Commission President: "*Following the European elections*, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the presidency of the Commission. The Parliament shall reach a view, *by a majority of three-fifths of its constituent members*, on the candidate put forward by the European Council" (article 18a).[22] After the expression of strong discontent by Convention members, the Presidium modified Giscard's draft articles; defining the election procedure for the Commission President, article 18a now stated that the EP "*elects the Commission President by the majority of its members*" and that the "*European Council has to take into account the elections to the EP* when choosing the candidate". This wording remained unchanged until the end of the Convention.

Assessing the Impact of Normative Reasoning

The evolution in the Convention is puzzling in view of the reluctance of many member states to accept the simple majority for the election of the Commission President. In the analyzed plenary debates of 20/21 January 2003 and of 15 May 2003,[23] the supporters of further parliamentarization claimed that the election of the Commission President with a simple majority is a democratic necessity and thus framed the Commission as a political, rather than a technocratic actor with a quasi-governmental function. The opponents of further parliamentarization responded by emphasizing that the technocratic, nonpartisan function should not be politicized by a parliamentary election of the Commission President.

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20 Dominique de Villepin, "Discours sur l'Europe", Marseille, 2 December 2002, http://www.am-bafrance-ro.org/index.php/fr_FR/dossiers-archives/europe-union-europeenne/discours-sur-l-europe-du-ministre-des-affaires-etrangeres-m-dominique-de-villepin (Accessed on 20 August 2010).

21 Peter Norman, *The Accidental Constitution*, Brussels, 2003, p.135.

22 Ibid., p.343.

23 Convention debates are archived on the Convention website: http://www.european-convention.eu.int (Accessed on 20 August 2010).

It is plausible that reference to standards of parliamentary democracy (salience argument) successfully generated normative pressure because some opponents changed their positions in the course of the Convention. In the January debates, the German and French Foreign Ministers, Fischer and Villepin, defended the Franco-German position paper of January 2003 (election of the Commission President by a qualified majority vote of three fifth) as the best possible compromise, supported in the plenary by the UK government representative, European affairs Minister Peter Hain. Villepin refused a politicized Commission, stating that the institutional balance has to be maintained and that the previous French acceptance of a qualified majority vote was a considerable commitment. Hain assented that an election of the Commission President would destroy the independence of the Commission. However, in the debate in May the governmental representatives of Germany, France and the UK retracted their demand for an election of the Commission President with a qualified majority vote in the EP. Villepin accepted the politicization of the Commission, stating that "the Presidium has the courage to defend a vision and ambition: (…) a more political Commission" (translation, A.B). Additionally, Fischer no longer felt obliged to keep to the terms of the Franco-German position paper of January and argued for an election of the Commission President with the majority of the members of the EP, as a step designed to strengthen European democracy.

The Budget Power of the European Parliament

The Conflict: Full Parity of the EP with the Council in Budgetary Issues

Before the Single European Act (1986), the legislative powers of the EP were rather weak; under the consultation procedure, the EP was just asked for an opinion, which had no binding effect on the Council's decision. The Single European Act then created two new procedures. Under the cooperation, procedure legislative amendments of the EP can only be overcome in the Council by unanimous vote. Under the co-decision procedure, a legislative proposal of the Commission is only adopted with the agreement of both, the Council of Ministers and the EP. The last treaty revisions have increased the scope of application of the co-decision procedure, and thus acknowledged the role of the EP as co-legislator.

The conflict in the Convention was how consequent the co-legislator competences of the EP should be applied to the budget of the EU. This conflict has two levels: budget revenues and expenditures. The main revenues of the EU budget are contributions of the member states, which are fixed in the Council, and which have to be approved by the national parliaments. Additional contributions consist of custom duties, agricultural levies and a part of the value-added tax of the member states. Modifications have to be decided unanimously in the Council. The EP has to be consulted, but has no competence to change revenue side of the EU budget.

On the expenditure side, the financial perspective and the annual budgetary procedure have to be distinguished. The financial perspective, applied since 1989, is the central instrument used to fix the ceiling for different expenditure categories. Despite

its importance, it is not part of the treaties, and decisions are taken unanimously within the Council. However, an inter-institutional agreement gave the EP the possibility of negotiating with the Council.[24] In the annual budgetary procedure, the EP had the competence to decide on the compulsory expenditures, while the European Council had the final say over the non-compulsory expenditures (mainly farm guarantees which represent almost the half of the annual budget).

Governmental Positions: France and UK Against Extended Rights

As in the Convention the debate over the budget began, France repeated its former position, refusing any interference by the EP in the compulsory expenditures. "In the budget procedure the category of compulsory expenditures has to be maintained" (Villepin, debate at 5 December 2002; translation A.B.). Hain also demonstrated his reluctance to extend the budgetary rights of the European Parliament: "We need a strong EP which concentrates on what it does best – *improving* legislation (…) its voice should *be heard* in all annual decisions on the EU spending". However, "be heard" and "improving" does not imply veto rights. The position of the German government in favor of allowing the EP full budgetary control is only partly reflected in the Franco-German position paper of January 2003, which called merely for a discussion on the possibility of more EP competences in the budgetary procedures, provided it is not allowed to increase the global level of expenses.

The Evolution: Successful Extension of Budgetary Rights – Unsuccessful Demand for EU-Taxes

The budget power of the EP was covered in the working group on simplification,[25] which proposed to abolish the distinction between compulsory and non-compulsory expenditures and give the last word to the EP on the entire expenditures. Concerning revenue, the group proposed to maintain the current system of unanimity in the Council, and the subsequent ratification in the member states.

In the plenary debate on 5 December 2002, some Conventioneers wished to give the EP additionally a voice in budget revenues; or to introduce "Qualified Majority Voting" in the Council, in order to avoid a blockade in an enlarged Union. In addition, notably the Commission, as well as the Belgian and Austrian governments were in favor of a special EU tax. Concerning the budget procedure, a majority was in favor of the abolition of the distinction between compulsory and non-compulsory expenditures. The EP's final right of approval over the entire budget, however, was highly contested.

The first draft on the Union finances[26] reflected this division in the Convention. Although leaving unchanged article 269 TEC on the Union resources (the new article. 38), the Presidium considered whether unanimity in the Council and ratification in the

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24 1999/C172/01.

25 CONV 424/02.

26 CONV 602/03.

member states "is able to guarantee in the future the adoption of the measures required for the financing of the Union policies, bearing in mind the weight of number". The budget procedure (article 40) only stated that "the EP and the Council shall jointly adopt the Union's annual budget". Following this, coordination groups on the revenues of the EU and on the budget procedures were put in place. The only consensus among the members was the idea that the financial perspective should be institutionalized in the constitution. Dissension persisted on the budget procedure, on EP participation in fixing the revenues and on the involvement of the EP in the adoption of the financial perspective via consent or co-decision.

The plenary debate on 4 April 2003 was dominated by controversy over the budget procedure and EP competences in the revenues. A majority tendency appeared to be emerging in favor of applying co-decision to the budget procedure, in spite of continuing strong resistance, while the notion of a new EU wide "Community tax" remained much more controversial.

The revised Part I of the Constitution of 26 May 2003[27] did not transfer new competences to the EP in the revenue side of the budget. Unanimity in the Council remained. However, the new draft envisaged the possibility of creating European taxes by unanimity (article I-53). The financial perspective – renamed as multi-annual financial framework – was institutionalized (article I-54). The EP was only allowed to consent on the financial framework, as many representatives of the governments insisted on a limited influence of the EP in the financial framework as condition for their acceptance of the abolition of the distinction between compulsory and non-compulsory expenditures.[28] As regards the budget procedure, the new draft abolished the distinction between compulsory and non-compulsory spending and gave the EP the final say over the entire budget (article III-306, 8).[29] The final draft[30] did not change the articles on the Union Finances (article 53) anymore. However, the subsequent intergovernmental conference slightly modified the budgetary procedure: If the conciliation procedure between Council and EP does not reach a consensus, the Commission has to present a new draft for the budget[31] (article III-404). Thus, the budget still cannot be adopted without the consent of the EP, but – contrary to the draft constitution of the Convention – it must also obtain the consent of the Council.

Assessing the Impact of Normative Reasoning

In view of the unwillingness of many governments to extend the budgetary competences of the EP, it seems contradictory that the EP has gained new competences, even though counterbalanced through the multi-annual financial framework. In the analyzed plenary debates of 5 December 2002 and 4 April 2003, the most frequently used argument of the supporters of a stronger role for the EP in the budget is salience (need for democratic control over the whole budget), followed by the coherence-argument, that the EP has

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27 CONV 724/03.

28 OJC 172, 18.6.1999.

29 In revised Part III, CONV 725/03.

30 CONV 850/03.

31 CIG 87/04.

to become the right of co-decision in the multi-annual financial framework because the inter-institutional agreement had informally already given the EP such a right. The opponents of a change to the status quo were only able to counteract these claims with the rather vacuous and indistinct principle of not upsetting the institutional balance, and the warning against a more complicated budgetary procedure (efficiency argument).

It is plausible that the supporters of a stronger role for the EP could put other actors under normative pressure with salience- and coherence-arguments. Whereas the French government at first rejected the abolition of the distinction between compulsory and non-compulsory expenditures, it revised its position in the plenary debate on 4 April 2003. Also, the British government announced that it could accept the abolition of the distinction, as long as the Council maintains its predominance in establishing the ceilings in the multiannual financial perspective.

The influence of normative pressure can also be shown in the reaction to it: The opponents of a stronger EP did not argue from a normative standpoint, but used the abstract norm of institutional balance. This suggests that they felt themselves to be in a weak normative position, and thus tried to avoid an open normative confrontation. They formally accepted the normative standard of the EP as budget authority, but tried at the same time to limits its rights through the financial framework, which is decided unanimously by the governments, and on which the EP can only consent.

In the subsequent non-public negotiations in the intergovernmental conference, several governments tried to limit the budgetary power of the EP again. In particular, France and the UK (but also Germany), were against the EP having the final budget decision. However, the Irish Presidency insisted that modification of the draft constitution could only be made with the consent of the representatives of the EP. For the first time in an intergovernmental conference, the voice of the EP delegation had the same weight as that of a member state. This explains why the compromise changed the budget procedure only slightly – giving the Council and the EP equal rights in budget decisions.

In contrast, the fact that no new competences were transferred to the EP in the budget revenues reflects the rejection of such measures by many governments. Here, the most frequently used argument of the "pro EP"-camp was efficiency (required unanimity in the Council no longer works in an enlarged EU), followed by salience (competence on revenues as democratic right of parliaments). The opponents of a stronger role of the EP in determining EU budget revenues were able to rebut the claim of a democratic deficit, mainly through the argument that national parliaments decide on the national budget, including EU contributions, and that therefore their prerogatives are not eroded.

The Role of National Parliaments in EU Legislation

The Conflict: National Parliaments – An Additional or Alternative Democratization Strategy?

Two declarations attached to the treaty of Maastricht (1992) defined for the first time the participation and control rights of national parliaments (NP) in EU legislation. The Amsterdam treaty transferred these declarations into the binding protocol number nine.

Beside the information rights, the protocol fixed the involvement of NP at the European level via the COSAC, the conference of the committees of the national parliaments of the European Union member states dealing with European affairs as well as representatives of the European Parliament. COSAC can submit (non-binding) contributions about the legislative activity of the Union – inclusive the application of the subsidiarity principle (Title II, 6). According to this principle, established in the Treaty of Maastricht, the EU may only act (i.e. make laws) where action of individual countries is insufficient.

The conflict in the Convention was as to whether the involvement of NP at the European level is complementary to the empowerment of the EP or is an alternative strategy. The idea to control the subsidiarity principle via an early warning system, which gives the NP the right to comment on draft laws, but with no right to stop Commission proposals, can be considered as part of an additional, complementary democratization strategy, which does not interfere with the prerogatives of the Commission or the EP. However, the suggested veto rights of NPs in the early warning system, or the demand for an institutional representation of NPs in the institutional architecture of the Union via a second chamber, can be considered as part of an alternative democratization strategy at the expense of the EP and the deeper integration of the Union.

Governmental Positions: Arguments against the European Parliament

The democratization of the EU via the empowerment of the EP was a strategy that was highly contested before the start of the Convention. Joschka Fischer, then the German Minister for Foreign Affairs, argued against a further empowerment of the EP in his speech at the Humboldt University Berlin.[32] Instead, he proposed to go back to the system before 1979 – a parliament composed of national parliamentarians, arguing that the EP lacks legitimacy because of its unsatisfactory connection to ordinary citizens. He said that the national state remains the priority frame for the citizens, a European demos does not exist.[33]

Only a few months later, Tony Blair promoted the idea of a new chamber composed of national parliaments whose task would be "to provide political review by a body of democratically elected politicians"[34] – this can be interpreted as implying that he believes that the EP lacks democratic legitimacy. Although Blair had abandoned this option by 2002, he still proposed that "if a sufficient number of national parliaments" oppose a Commission's proposal, the latter would have to revise its proposal.[35] Denmark tried to

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32 Joschka Fischer, "From Confederation to Federation, Speech at Humboldt University, 12 May 2000", *Themenportal Europäische Geschichte*, http://www.europa.clio-online.de/site/lang__de/ItemID__17/mid__11373/40208215/default.aspx (Accessed on 21 August 2010).

33 "Plenary debate in German Bundestag, 19 May 2000", Ausschuss für die Angelegenheiten der Europäischen Union, Texte und Materialien, Band 11, p.221.

34 "Speech to the Polish Stock Exchange", Warsaw, 6 October 2000, http://www.cvce.eu/content/publication/2005/1/17/f8c765d9-ad33-4ce3-bfbe-7dd6d01141d7/publishable_en.pdf (Accessed on 31 January 2012).

35 "Speech in Cardiff, 28 November 2002", http://www.cvce.eu/content/publication/2005/4/29/c8e73a30-5b3d-4117-bb0a-3f1263d95ac2/publishable_en.pdf (Accessed on 31 January 2012).

strengthen the COSAC during its presidency in the second half of 2002, and to establish a permanent secretariat that would continuously monitor EU legislation and become a real institution. Also, the French President Chirac recommended "the transfer of new competences to national parliaments in EU legislation" (translation A.B.).[36] The French Prime Minister Lionel Jospin argued for a Congress of national parliaments, "which would meet regularly to monitor the application of the principle of subsidiarity, and would hold an annual debate on the state of the Union".[37] Convention President Giscard strongly promoted the idea of a Congress[38] with greater powers than the mere monitoring of the subsidiarity principle, namely a consultative role on the issues of enlargement decisions and the election of high officials.

The Evolution: Limited Strengthening of National Parliaments without Concurrence to the EP

The role of NPs was considered by the working group on subsidiarity, chaired by Inigo Mendez de Vigo, chairman of the EP delegation and member of the Convention Presidium, and by the working group on national parliaments, chaired by the British parliamentarian Gisela Stuart. The latter group became "the battle ground between supporters of an additional parliamentary chamber and the members of the European Parliament who were determined – successfully as it turned out – to protect the legislative prerogatives of the European Parliament"[39] The group proposed[40] to give COSAC a greater role in monitoring EU policies, and furthermore suggested periodic meetings between NPs and the EP to debate important issues in a European Congress. The working group on subsidiarity was less enthusiastic about a far-reaching involvement of NPs in EU legislation. Their report[41] concluded that the subsidiarity principle is already controlled by the European Commission, although they suggested some improvements. Among these was the introduction of an early warning mechanism that gives NPs the right to comment on the Commission's draft laws, but without the power to block the legislation process.

In the plenary debates over the conclusions of the working groups on 3/4 and 28 October 2002, the institutional involvement of NPs was debated in the context of a Congress of national and European parliamentarians. However, the debate focused on the subsidiarity principle and the controversy between the supporters of a modest early warning system (yellow card) and those of a far-reaching warning system (red card),

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36 "Speech in Strasburg", 6 March 2002, http://www.chiracaveclafrance.net/PDFArticle/Strasbourg.pdf (Accessed on 19 August 2010).

37 Lionel Jospin, "Speech on the Future of an Enlarged Europe", Paris, 28 May 2001, *European Navigator*, http://www.cvce.eu/viewer/-/content/6b8c2d2e-2677-4ced-8e5c-a4ed65d78a80/642dc4c9-b224-4ea7-a77b-7e4d894b3077/en;jsessionid=910BC84DB09D5612BCD03D4B796EDEDD, (Accessed on 31 January 2012).

38 "Speech to the College of Bruges", 2 October 2002, quoted in Peter Norman, *The Accidental Constitution*, p.151.

39 Ibid., p.98.

40 CONV 353/02.

41 CONV 286/03.

which would give a certain number of national parliaments the right to halt the legislation process. In the yellow card version, the European Commission would take an autonomous decision on whether to maintain, alter or withdraw a proposal after a certain number of parliaments claimed a breach with the subsidiarity principle. In the more far-reaching version, national parliaments had the right to draw the red card and the right to bring ex-post subsidiarity-related proceedings to the Court of Justice.

On 27 February 2003, the Presidium published the first draft protocols on applying the principles of subsidiarity and proportionality.[42] In the protocols, the Presidium confirmed the moderate control of the subsidiarity principle. Furthermore, it did not follow the recommendation of Stuart's working group to give COSAC more competences. The following plenary debate on 18 March 2003 was characterized by the efforts of some Conventioneers to alter the Presidium proposal towards more rights for national parliaments – mainly through the tool of a more powerful early warning system.

Although Giscard's idea to establish a Congress was part of the Presidium's draft of 22 April 2003,[43] this idea was excluded from the revised text of part one on the institutions on 31 May 2003[44] and no modification to the subsidiarity protocol was made in the final version of 18 June 2003. In the subsequent intergovernmental conference, the UK government raised again the issue of a national parliamentary veto on all EU legislation, but without success. The subsidiarity protocol remained unchanged.

Assessing the Impact of Normative Reasoning

The results of the Convention seem at odds with the governmental discourses at the beginning of the new millennium. Neither a new chamber, nor a Congress was realized. Therefore, the NP-related results of the Convention do not "constitute a major departure from the present situation."[45]

In the analyzed plenary debates of 3/4 October, 18 March, 24 April and 15 May 2003 the supporters of a far reaching involvement of national parliaments tried to mobilize normative pressure with the salience-argument (bringing the Union closer to its citizens); in conjunction with nation-arguments (nation state as primary source of legitimacy). They were not able, however, to denounce the opponents of a Congress or a stronger COSAC as violators of common normative standards. The opponents of a strong involvement of NPs at the expense of the competences of the EP attacked the salience-argument of their counterparts. They argued that a far-reaching participation of NPs would not be able to resolve the problems of procedural legitimacy, because of the potential for governments to use their parliamentary majorities to ensure that those sent to the Congress would act as governments' delegates. Another possibility is that governments would exploit the early warning mechanism as a political tool, exploiting the subsidiarity principle as an additional resource to block European legislation. Furthermore, they used efficiency-

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42 CONV 579/03.

43 CONV 691/03.

44 CONV 770/03.

45 Taupio Raunio, "Much Ado about Nothing? National Legislatures in the EU Constitutional Treaty", *European Integration Online Papers*, Vol.9, No.9, 2005, p.1.

arguments (new institutional structures will create new complexities) and coherence-arguments (no mixture of national and European level). Therefore, the salience argument used for a far-reaching involvement of national parliaments could not display normative pressure, because supporters of the EP could counter these arguments by successfully demonstrating the limits of a strong involvement of national parliaments as a tool to enhance the democratic quality of EU governance.

Conclusion

Actors interested in expanding the powers of the EP were able to force more reticent actors to make constitutional concessions by using arguments based on the dominant norm of parliamentary democracy. Normative reasoning with salience arguments (in combination coherence-arguments) successfully directed the negotiations to more EP-friendly results: (1) The results of the Convention do not reflect the initial constellation of the governmental positions. Despite reluctance among the member states at the beginning of the Convention, the EP now has the right to elect the Commission President with a simple majority, and has full competences in the annual budget procedure. (2) The evolution of the draft articles took into account step by step the salience- and coherence-arguments of the supporters of a further strengthening of the EP. (3) Actors changed their position under normative pressure. (4) Actors against a further parliamentarization of the EU rarely opened a debate about the limits of this democratization strategy. They avoided a normative debate about possible alternative legitimating strategies and relied instead on rather abstract principles such as the institutional balance, or denied conflicts between their positions and well established normative standards.

Thus, these case studies show first the persistence of the parliamentarization strategy, despite the favorable context of European Convention to promote alternative and/or additional concepts of legitimate governance beyond the nation state. Second, the findings support the explaining power of approaches in international relations theory, which stress that the conceptualization of power should include the role of ideas, norms and discourse. The impact of normative reasoning confirms the relevance of spillover effects, which are underlined by neofunctionalist approaches to the European integration process. Spillover "refers to a situation in which a given action related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions[46] It can be argued by analogy that the pooling and delegation of power in the EU has also created a situation – namely the democratic deficit of EU governance – which requires further action. However, the new aspect is that in addition to the functional, political and cultivated spillover pressures,[47] shared norms can also trigger spillover processes. Normative pressure mobilized by coherence argument illustrates the path- dependence of the European integration process, a concept that has been underlined by historical institutionalism, summed up in the statement: "Once actors have ventured far down a particular path, they are likely to find it very difficult to reverse course."[48]

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46 Leon N. Lindberg, *The Political Dynamics of European Economic Integration,* 1963, London, p.10.

47 Ian Bache and Stephen George, *Politics in the European Union,* 2006, Oxford, p.10.

48 Theda Skocpol and Paul Pierson, "Historical Institutionalism in Contemporary Political Science", in Ira Katznelson and Helen V. Milner (eds.), *Political Science: State of the Discipline*, 2002, New York, p.693-721.

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