

### Making normative meaning accountable in international politics

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**DISCUSSION PAPER**

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## Making Normative Meaning Accountable in International Politics

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## Zusammenfassung

### **Making normative meanings accountable - Eine Studie zur empirischen Untersuchung normativer Bedeutungen in der internationalen Politik**

Wenn es zutrifft, dass kulturelle Praxen Erfahrung und Erwartungen prägen, dann müssen sie eindeutig bestimmt und für die empirische Forschung als aussagekräftig gewertet werden. Mit Bezug auf die Theorie der Internationalen Beziehungen (IB-Theorie), Internationales Öffentliches Recht und normative Demokratietheorie entwickelt dieser Artikel einen Ansatz, um die umstrittenen Bedeutungen von Normen in der internationalen Politik unter der Bedingung von Konstitutionalisierung jenseits des Staates zu erforschen. Ziel ist es, ein Forschungsdesign zur Untersuchung der unsichtbaren Konstitution von Politik, das heißt, zur Erforschung von individuell gehaltenen assoziativen Konnotationen, die zur umstrittenen Interpretation normativer Bedeutung führen, zu entwickeln. Diese Überlegungen werden in dem Papier in zwei Teilen vorgestellt. Teil I entwickelt Forschungsannahmen und Hypothesen aufgrund der relevanten Literatur im ersten Abschnitt. Er zeigt unterschiedliche Typen von Normen und Bedingungen von Normumstrittenheit auf (Abschnitt 1), definiert Forschungsannahmen und Hypothesen (Abschnitt 2), argumentiert für die Rückbesinnung auf die Dimension der Kultur im Konstitutionalismus (Abschnitt 3) und schließt mit der Leitfrage nach Konvergenz, Divergenz oder Diffusion normativer Bedeutungen (Abschnitt 4). Teil II richtet den Blick auf die Operationalisierung des Forschungsdesigns. Er stellt die Forschungslogik und Art der Untersuchung (Abschnitt 5), die Methode der Interviewauswertung (Abschnitt 6) und die Forschungsindikatoren nach sozialer Gruppe, Fundamentalnormen und politischen Arenen (Abschnitt 7) vor. Abschnitt 8 fasst das Forschungsdesign und -vorgehen zusammen.

## Abstract

### **Making Normative Meaning Accountable in International Politics**

If cultural practices shape experience and expectations, they need to be identified and made accountable based on empirical research. Drawing on international relations (IR) theory, international law and normative democratic theory this article develops a framework approach to studying the contested meaning of norms in international politics under conditions of constitutionalisation beyond the nation-state. The goal is to formulate observations and identify a design for empirical research, which is suitable to examining the “invisible constitution” of politics, that is, the individually held associative connotations which inform contested interpretation of normative meaning. To do so, the article is organised in two parts. *Part I* derives research assumptions and hypotheses from the literature. It turns to the distinction of types of norms and conditions of norm contestation in *section 1*, identifies research assumptions and hypotheses in *section 2*, argues to bring culture back into constitutionalism in *section 3*, and summarises the guiding question of convergence, divergence, or diffusion of normative meanings in *section 4*. *Part II* then focuses on research operationalisation. *Section 5* elaborates on the rationale of the research framework and type of enquiry. *Section 6* highlights the method of interview evaluation. *Section 7* identifies the research indicators including type of social group to be interviewed, fundamental norms that are likely to be contested, domestic political arenas in which the social groups operate, and issue areas linked with core constitutional norms. *Section 8* summarises the case study’s design and procedure.

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## Introduction

Empirical research goes far beyond the passive role of verifying and testing theory; it does more than confirm or refute hypotheses. Research plays an active role: it performs at least four major functions which help shape the development of theory. It *initiates*, it *reformulates*, it *deflects* and *clarifies* theory.

Robert K. Merton, 1948, *The Bearing of Empirical Research upon the Development of Social Theory*, p. 506, *American Sociological Review*, Vol. 13, No. 5, pp. 505-515.

This paper draws on international relations theory (IR), international law and normative democratic theory. The intention is to develop a framework approach to studying the contested meaning of norms in international politics under conditions of constitutionalisation beyond the nation-state. The goal is, however, not one of testing or verifying theories. Instead, observations are formulated to facilitate plausible assumptions and an appropriate research design for the empirical case study. Research assumptions and hypotheses are considered as tools to provide the rationale for the selection of case studies and the research focus. The purpose of the larger research project – the details of which cannot be reiterated here in full for reasons of spatial constraint – is to examine the “invisible constitution” of politics.<sup>1</sup> The potentially contested interpretation of meanings of norms provides the starting point for the enquiry. The project builds on the observation that the invisible cultural dimension of a community’s constitution has been largely omitted by the particular version of “modern constitutionalism” with its lack of appreciation for cultural practices (Tully 1995, Rosenfeld 1994). Despite the knowledge that, “the ‘rule’ lies essentially *in the practice*” (Taylor 1993: 58), the role and impact of day-to-day cultural practices have received less analytical attention than organisational practices in modern constitutionalism compared with ancient constitutionalism.

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1 For the full project see Wiener, Antje, *The Invisible Constitution of Politics*, Cambridge: Cambridge University Press (2008, forthcoming).

The paper contends that if cultural practices do shape experience and expectations, they need to be identified and made accountable based on empirical research. As Habermas notes, it is the

cultural patterns of interpretation, evaluation and expression [which] serve as *resources* for the efforts in understanding of those participating in the process of interaction and negotiate a shared definition of the situation and within this framework seek to reach a consensus on something in a world (Habermas 1981b: 203).

The political importance of these resources comes to the fore in moments of friction, i.e. in situations which reflect divergence in interpreting the meaning of norms. That is, “culture and language develop a peculiar resistance in those rare moments when they fail as *resources* which we experience in situations of disturbed communication” (Habermas 1988, *Vol. 2*: 204). As invisible elements, these resources are constitutive for politics. We know that they matter. Yet, in order to establish how they matter, they need to be made accountable (Garfinkel 1967).

The paper proceeds in two parts. *Part I* derives research assumptions and hypotheses from the literature. It turns to the distinction of types of norms and conditions of norm contestation in *section 1*. It then identifies research assumptions and hypotheses as the starting point for the operationalisation of the case study in *section 2*. *Section 3* summarises the point of bringing culture back into constitutionalism and *section 4* summarises the guiding question of convergence, divergence or diffusion of normative meanings for the case study. *Part II* takes this framework a step further towards research operationalisation. *Section 5* elaborates on the rationale of the research framework and type of enquiry. *Section 6* highlights the method of interview evaluation. *Section 7* identifies the research indicators including, first, the type of social group which is to be interviewed; second, the fundamental norms which are likely to be contested; third, the domestic political arenas in which the social groups operate; and fourth, the issue areas linked with the selected core constitutional norms. Finally, *section 8* summarises the case study’s design and procedure.



## Part I: Research Assumptions

### 1. Context and Contingency

It can be assumed that, with an increasing variety of contexts, divergence in the interpretation of norms will rise equally. In addition, work on the role of norms and how they have been enacted in world politics has indicated the relevance of the social dimension for norm implementation and recognition. Both constitutionalism and research on norms in IR have demonstrated that norms may achieve a degree of appropriateness reflected by *habitus* (March and Olsen 1989). However, absent social recognition, norms are likely to be contested. This also holds true for legal norms which require social institutions to enhance understanding and identify meaning, i.e. normative practice (Curtin and Dekker 1999). As Finnemore and Toope summarise,

... law is a broad social phenomenon *deeply embedded in the practices, beliefs, and traditions of societies, and shaped by interaction among societies*. Customary international law displays this richer understanding of law's operation as does the increasingly large body of what has been termed 'interstitial law', that is, *the implicit rules operating in and around explicit normative frameworks* (Finnemore and Toope 2001: 743; emphasis added).

That is, understanding about legally stipulated norms in treaties, constitutions or otherwise formally composed and publicly accessible documents (e.g. Tilly 1975) is generated by social interactions. It is not based on correspondence to an objective reality, "rather it is inherently constructed and sustained by social processes" (Colombo 2003: 1). Lawyers point out, for example, that legal institutions are not exclusively based on "black letter law" but are, in the first instance, "fiction" (Curtin and Dekker 1999: 88; cf. Ruiter 1993: 363). The reference to "language" indicates the legal definition of norm types according to the written legal text and their assumed legal validity without historical, cultural or societal constraints, that is, over time and across contexts. As social practices, discursive interventions are constitutive towards the invisible "spirit of the law" (Shaw and Wiener 1999). The interactive approach to law stresses the influential link between the ought-ness of legal texts, on the one hand, and societal conditions, on the other. This link facilitates understanding and subsequently creates the conditions for successful implementation of constitutional rules and norms. Therefore, in order to establish the degree of diver-

gence or convergence of norm interpretations empirically, it is necessary to study individually held connotations of meanings in addition to the legal validity and social facticity of norms.

### 1.1 Contestation of Norms

Norms and their meanings evolve through interaction in context. They are therefore contested by default. This is particularly important in beyond-the-state contexts where “no ‘categorical imperatives’ are in practice”, and where “the context, or situation, within which activities take place is extremely important” (Jackson 2003: 19-20). While norms may acquire stability over extended periods of time, they remain flexible by definition. We can therefore hypothesise that the contested meaning of norms is enhanced under three conditions. First, a situation of crisis raises stakes for understanding meanings based on social institutions: the social feedback factor is reduced. Second, the change of governance processes, i.e. the extension of governance practices beyond modern political and societal boundaries changes the social environment and hence the reference frame of social institutions: again, the social feedback factor is reduced. Third, the historical contingency of normative meaning indicates a change of constitutive social practices both culturally and organisationally, and hence a corresponding change in normative meaning over time (see box 1).

#### Box 1 ► Enhanced Contestation of Norms: Three Conditions

No.	Condition
1	The <i>historical contingency</i> of normative meaning indicates a change of constitutive social practices — both cultural and organisational — over time; normative meaning changes over time. Condition one is the most encompassing one.
2	A situation of <i>crisis</i> raises stakes for understanding meanings based on social institutions, the social feedback factor is reduced.
3	The change of <i>governance processes</i> , i.e. extension of governance practices beyond modern political and societal boundaries, changes the social environment and hence the reference frame of social institutions; the social feedback factor is reduced.

The case study focuses on the third condition in particular.<sup>2</sup> It seeks to explore the impact of changing governance processes beyond the limits of modern state boundaries. This condition indicates a transfer of normative meanings outside the familiar (domestic) community of interpretation. The recognition of norms is culturally based, insofar as it is sustained by the meaning ascribed to norms through discursive practices. As discursive interventions, these practices are related to societal institutions (appropriateness), on the one hand and associative connotations (recognition based on cultural practices), on the other. The transnationalisation of political processes and policies indicates a change of both the constitutional framework (legal validity) and the social environment (appropriateness; social facticity). I argue that, in the absence of these two factors, it is individually held associative connotations that make or break the successful work of norms.

## 1.2 Types of Norms

Research on norms therefore needs to address the conflicting normative substance of resources which emerge and are firmly rooted in specific political arenas of domestic politics or international organisations. We know equally little about the emergence of a common substance of resources which are generated in transnational arenas. Yet, diverging interpretations of meaning may induce a clash of normative resources and hence present a potential source of conflict for politics beyond the nation-state. The importance of this potential source of conflict increases as globalisation and transnationalisation expand. We can therefore hypothesise more generally that the more transnational a context of interaction, the more likely are encounters among bearers of different culturally and socially generated resources. Whether or not this conflict of meanings turns into international political conflict or whether it may be turned into an innovative contribution to enhance institutional legitimacy in transnationalised politics depends on a number of factors. While interest (consequentialism) and identity (appropriateness) are two of them, connotative meaning (contestedness) is a third, largely under-researched factor.

For analytical reasons, I propose to distinguish among three types of norms including fundamental norms, organising principles and standardised proce-

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2 For details, see Wiener (2008: chapters 5-7).

dures (see box 2).<sup>3</sup> These three different types of norms are distinguished according to their respective degree of generalisation and specification as well as with regard to their moral and ethical scope. Accordingly, the first type, fundamental norms, includes both “core constitutional norms” which are most commonly used with reference to nation-state constitutions (Rosenfeld 1994) as well as “basic procedural norms” which are most commonly applied in international relations theory (Jackson 2003).<sup>4</sup> Fundamental norms thus include, for example, citizenship, human rights, the rule of law, democracy as well as non-intervention, abstinence from torture and so forth. Second, organising principles evolve through policy or political processes. Such principles inform political procedures and guide policy practices and include inter alia legality, accountability, transparency, legitimacy and gender-mainstreaming. Third, standardised procedures such as rules and provisions are the least likely to be contested on moral or ethical grounds because they entail prescriptions for action that are non-contingent and as specific as possible or guidelines pertaining to electoral processes, e.g. qualified majority voting.

Fundamental norms keep a community together. They are generally linked to the polity level. With reference to modern nation-states, fundamental norms are known as “core constitutional norms” such as the rule of law, fundamental freedoms and human rights, democracy and equal citizenship; with reference to world politics, they are defined as “basic procedural norms” including sovereign equality, respect for human rights, and non-intervention in the affairs of others (Jackson 2003: 16-17). Organising principles structure the behaviour of individuals or groups. They evolve through the process of politics and policymaking and include such norms as accountability, transparency, gender-mainstreaming, peacekeeping or peace enforcement (Bovens 2007; Begg 2007; Jackson 2003). Finally, standardised procedures entail detailed and clearly articulated advice for specific activities (like assembly instructions accompanying a flat-packed set of shelves; see Kratochwil 1989). It follows logically that the most contested norms are the least specific, i.e. the fundamental norms, while the least contested are the most specific, i.e. the standardised procedures. Organising principles may be contested; they may

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3 Note a similar pattern of distinction by Dimitrova (2006) who distinguishes however, between levels, not types, of norms.

4 I thank Martin Binder who raised this issue during a discussion at the Social Science Research Center Berlin, 8 June 2006.

**Box 2 ▶ Types of Norms**

Types of Norms	Substance	Generalisation		Specification		Contestation on Ethical Grounds	
		More		Less		More	
<b>Fundamental norms</b>	<ul style="list-style-type: none"> <li>- Citizenship</li> <li>- Human rights</li> <li>- Fundamental freedoms</li> <li>- Democracy</li> <li>- Rule of law</li> <li>- Non-intervention</li> <li>- Sovereignty</li> </ul>	More		Less		More	
<b>Organising principles</b>	<ul style="list-style-type: none"> <li>- Proportionality</li> <li>- Accountability</li> <li>- Transparency</li> <li>- Flexibility</li> <li>- Gender mainstreaming</li> <li>- Mutual recognition</li> <li>- International election monitoring</li> </ul>	Medium	↑	Medium	↓	Medium	↓
<b>Standardised Procedures</b>	<ul style="list-style-type: none"> <li>- Qualified majority voting</li> <li>- Unanimous decisions</li> <li>- Proportional representation</li> </ul>	Less		More		Less	

also be “upgraded” to fundamental norms. For example, the principle of mutual recognition may be understood as an organising principle with reference to one particular policy process for one policy, yet it may well be a core constitutional norm in another policy process for a different policy.

Since “no rules in international law are absolute”, indeed “nothing in this normative sphere is absolute” (Jackson 2003: 19), the expectation among international lawyers is that the substance of law depends on input through legal discourse, i.e. deliberation, jurisprudence, learned opinion and other discursive interventions. The contested issue regarding the crucial input of discourse in international law lies in different legal traditions. These can generally be distinguished according to a stronger disposition to interpret the letter of the law among continental lawyers, on the one hand, and a disposition among Anglo-Saxon lawyers, on the other, towards a by-and-large flexible quality of international law, understood as evolving through the process of jurispru-

dence (Scott 2003). Nonetheless it can be argued that while considering the input of discourse at different stages, lawyers would attribute a strong and constitutive role to discursive interventions in the process of international law (Keohane 1997; Brunnée and Toope 2000). That emphasis on discourse as constitutive towards establishing substantive meaning of norms is not necessarily shared among political scientists who make conceptual distinctions between arguing (Risse 2000), contestation (Dahl 1971), deliberation (Cohen 1997; Joerges and Neyer 1997) and discursive interventions (Weldes and Saco 1996; Milliken 1999). In international relations theory the most distinctive input into the role of language as an intersubjective element in the process of the construction of norms was introduced by regime theory. In particular, Kratochwil and Ruggie's (1986) intervention in this debate singled out a constructive as opposed to a behavioural approach to discourse, as intervening in politics based on the generation of substantive meaning rather than merely studying behavioural reactions to the norms, rules and beliefs that emerged in the environment of supranational regimes.

## **2. Research Assumptions**

The following derives research assumptions and hypotheses from the literature on norms in contexts of governance beyond the nation-state. These hypotheses inform the selection of case components which are elaborated in more detail in Part II of the paper. The case study seeks to assess divergence, convergence and diffusion in the interpretation of the meaning of modern constitutional norms in the European Union.

The "liberal community hypothesis" (Schimmelfennig 2003: 89) is derived from the compliance literature. It is best summarised by Katzenstein's introductory chapter to the role of norms in international security politics where he writes that the concept of a norm is used "to describe collective expectations for the proper behaviour of actors with a given identity" (Katzenstein 1996: 5). Typically, compliance research builds on assumptions about state behaviour. These assumptions are based on the impact of, first, state interest in collaboration among states, which is, second, enhanced by processes of socialisation which provide the glue of international communities. In addition to socialisation, the input of advocacy group action such as shaming and blaming are considered as intervening variables. For example, the liberal community thesis underlying the behaviourist perspective would argue that social ties matter

### Box 3 ► The Liberal Community Hypothesis

*Members of a community with a given identity share norms, values and principles.*

- *Socialisation establishes appropriateness.*



- *Expectation: Membership in a supranational community enhances norm convergence.*

and shared identities enhance norm recognition (Katzenstein 1996; Jepperson et al. 1996; Slaughter 2003). Therefore, “socialisation” is assumed to be a key factor in explaining the compliant behaviour of designated norm followers. These are usually conceptualised as outsiders or newcomers to the liberal community (Schimmelfennig 2001; Johnston 2001).

The liberal community, the identity of its members and the norms which structure appropriate behaviour within the community are hence taken to be stable factors. Accordingly, social change is expected with the norm-following actor who aspires to become a good member in a community<sup>5</sup> and, conversely, to obtain membership in a community is likely to enhance norm convergence.



*The LIBERAL COMMUNITY HYPOTHESIS would expect convergence among elites from member states that hold memberships in a number of international communities including the UN, the EU, NATO, the WTO and others. Divergence in the interpretation of normative meaning would present a puzzle for this approach.*

5 Studies on European enlargement, especially considering the round of massive enlargement that was completed with the entry of ten new member states in May 2004, offer a typical view on such expectations towards norm followers. In these cases the conditions for new members provide the stick and the achievement of membership will offer the carrot (Fierke and Wiener 1999; Schimmelfennig and Sedelmeier 2005).

#### Box 4 ► The Layer-Cake Assumption

*High degree of cultural assimilation and participation follows social interaction.*

- **Intervening variable: Extended social communication among the top layers of society.**



- **Expectation: In transnational processes of integration harmonisation most likely occurs among elites.**

More than five decades ago Karl Deutsch (1953: 194-195) listed two research questions which address the analytical relation between social groups and cultural change in the process of European integration.

What are the cultural and social prospects of integration? Can there evolve a single people ...? How *compatible* are the cultures and the social and economic [as well as the legal] institutions of the participating peoples?

Are there *leaders, leading groups, and symbols* to give expression to the actually existing facts and trends?

Following the interplay of language and cultural assimilation, over the centuries, a recurring “layer-cake pattern” was observed (Deutsch 1953: 170). This pattern entailed

a high degree of cultural assimilation and participation in extended social communication among the top layers of society; a lesser degree on the intermediate levels; and little or no assimilation or participation among the mass of the population at the bottom.

According to Deutsch, this pattern was part of a cycle from “local isolation to ‘universal’ empire and back” (ibid.). While the layer-cake pattern displayed a “variation” in assimilation to common standards by the upper classes, the difference in influence on elites and masses was found to be distinct: the former were involved and developing various shades of assimilation,<sup>6</sup> while the

6 As Deutsch (1953: 71) notes, “From the point of view of nationality, all these were variations of the common layer-cake pattern. Assimilation to a common standard among the upper classes might be feeble, as during the ‘dark ages’ in western Europe; it might be somewhat more strongly developed, as among the European nobility at the time of the Crusades; or it might be almost complete, as in a universal state, as it had been in that of Imperial Rome.”



latter characteristically displayed “continued passivity and lack of direct participation in affairs of wider import” (ibid.: 171).

At the time, Deutsch found that “only when this relatively passive population was mobilised in the process of economic growth and political organization, did its cultural and social characteristic acquire ... a new and crucial importance in the process of nation-building” (ibid.: 172).<sup>7</sup> Subsequently, he stresses four aspects as outcomes of processes of interaction over time. They include first, the enhanced potential for effective communication; second, accumulation of economic resources and social mobilisation to allow for the social division of labour; third, social accumulation and integration of memories and symbols. Finally, a “social learning capacity is developed invisible in the minds of individuals; some of it can be observed in the habits and patterns of culture prevailing among them; some of it finally is embodied in tangible facilities and specific institutions” (ibid.: 190).

From these insights into the generation of shared – albeit often invisible – patterns of social learning, social mobility and access to participation, it follows that, in general, convergence of meanings is most likely to occur in relation to elite interaction. This expectation has largely been sustained by the more recent Europeanisation literature.<sup>8</sup> While it is now common – especially among constructivists of all convictions – to view the perception of and compliance with supranational norms as an interactive process, it still remains firmly situated within an international society of sovereign states. That is, the distinction between forms and degrees of stateness – e.g. considering one-state, modern state, or beyond-the-state contexts – leaves some margin for improvement. While the thrust of these studies point to an eventual diffusion of (in this case, “European”) norms that sooner or later leads to convergence (Checkel 2001), some have cautioned against generalising too quickly. As Klaus Eder has argued, for example, a more likely scenario might be one of “two faces of Europeanisation” (Eder 2004). This more sceptical view of the harmonising potential in Europe suggests that differentiated cultural representation plays a key role in processes of regional integration. The case study elaborates on that thought. To that end, the impact of cultural practices on the

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<sup>7</sup> Note that, when talking about nation-building here, Deutsch refers to the examples of the Czech and German populations in Bohemia, on the one hand, and the Malay and Chinese populations in Malaya, on the other.

<sup>8</sup> For summaries see Caporaso et al. (2001), Radaelli (2003) and Olsen (2005).

interpretation of constitutional norms in a selection of domestic and transnational political arenas is going to be examined.



*The LAYER-CAKE ASSUMPTION would expect cultural harmonisation among elites before any other social group. If we were to find cultural harmonisation, then a study of elite groups in different contexts and with regard to different topics should demonstrate it.*

### Box 5 ► National Identity Options

*Nationally derived identities hold the cue for decisions and interests in beyond the state contexts.*

■ Enduring national identity options.



■ Expectation: Interests diverge based on national identity patterns.

According to Marcussen et al. (1999: 616) elites have a “nation-state identity” in addition to a set of other identities. Various national identity options are available according to national decent. In Europe, for example, these involve first, “liberal nationalist identity” constructions where the term “we” is confined to references to one’s own nation-state; second, the perception of “Europe as a community of values”; third, the perception of “Europe as a ‘third force’”; fourth a “modern Europe as part of the Western community”; and finally the perception of a “Christian Europe” (ibid.: 618). Generally, the choice of national identity options is displayed nationwide by elites of one nation-state during a particular period of time. This approach assumes that “individuals cannot constantly adjust their cognitive schemes to the many complex and often contradictory signals from the social world around them,” and contends that “nation state identities therefore tend to be sticky rather than subject of frequent change” (Marcussen et al. 1999: 616; cf. Fiske and Taylor 1991: 150-151). The study which builds on the doctoral research by Engemann-Martin (2002), Roscher (2003) and Knopf (2003), finds for example that Europe is “Britain’s other”, while German elites considered Europe as “us” (Marcussen et al. 1999: 622-625).

Note that different from the cognitive abilities of individuals addressed by this research, studies on institutional adaptation and change found that the likelihood of “Europeanisation” was enhanced by difference rather than commonality among member states and EU institutional settings (Lenschow 1997; Börzel and Risse 2000; Knill and Lenschow 1998). For the purposes of the research project at hand, the assumptions about individual behaviour are of major relevance, since the research focus is interested in the impact of transnationalisation on individuals who move between domestic and transnational political arenas.

➤ *The national identity-options assumption would expect elites to behave differently according to their respective national origin, rather than context of interaction. Convergence among different nation-based elite groups would hence be a puzzle to this approach.*

#### **Box 6 ► The Rule-in-Practice Assumption**

*Normative meaning is constituted by social practice in context.*

■ **Interaction** establishes appropriateness and associative connotations.



■ **Expectation: Contestation** enhances legitimacy.

Different from a behaviourist approach a reflexive approach to norms cautions against a causal relation between norms and (state) behaviour. Instead, it stresses the dual – constructive and structuring – quality of norms (Giddens 1979, 1984; Bourdieu 1993; Guzzini 2000; Reus-Smit 1997; Scott 2005; Wiener 2007). That is, interpretations of a norm’s meaning are not only derived from social facticity (agreed reference to one particular norm) and legal validity (implementation of that norm in domestic legal systems), but such interpretations are also based on recognition grounded in day-to-day practices (associative connotations with a norm). It is therefore expected that, in the absence of a constitutionally sustained consensus which provides an institutional frame of reference for international negotiators, the contested meanings that norms develop in interaction with individuals is likely to undermine convergence. This would, for example, imply that acceptance and political success of the

constitutional process in the EU depend on a closer look at the variety of contested meanings that is to be expected, given the particular individuals involved in the negotiations. In the absence of this knowledge, a consensus outcome of international negotiations will be hard to achieve; the result will inadvertently be a mere compromise which might look like a full agreement on paper, yet, turn into a source of conflict when submitted to voters' scrutiny in domestic referenda.

The rule-in-practice assumption is based on the assumption that the rule lies in the practice (Taylor 1993) and practices are constitutive for the environment in which they occur, since "understanding comes, if it comes at all, only by engaging in the volley of practical dialogue" (Tully 1995: 133). This dialogue involves social practices beyond international negotiations. The focus of analysis which follows this approach seeks to understand variation in the meaning of norms based on three assumptions. First, norms entail a dual quality, as both constructed and structuring (Giddens 1979: 69). Second, the meaning of norms is embedded in a "structure of meaning-in-use" (Weldes and Saco 1996: 373; Milliken 1999: 231; Wiener 2004: 202).<sup>9</sup> Third, meaning evolves through interactions in context; it is embedded in social practice and therefore subject to change. All individuals carry specific "normative baggage" and all interpretations of meanings are expected to vary according to their context of emergence. As an interactive process intergovernmental negotiations over appropriate responses to foreign policy events bring the normative baggage of all individual participants to bear. They are an expression of the "normative context" (Katzenstein and Okawara 1993: 84) in which governance processes evolve, and facilitate input from and change in a particular structure of meaning-in-use. Here, behaviourist approaches are interested in studying variation in state behaviour in relation to norms as intervening variables. Reflexive approaches focus on the meaning of norms as the dependent variable.

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9 Note the distinction between this IR concept of "meaning-in-use" (the sense actually referred to here) as contextualised structures of meaning, which come to life only in interrelation with action, and the concept of "meaning as use", which "refers to speaker meaning and particularly the intention of the speaker or the desired communicative effect of the utterance" in semantics (Mwihaki 2004: 128).



*The RULE-IN-PRACTICE assumption expects interpretations of meaning to differ according to interaction in context. The more interaction in context, the more likely is convergence. Divergent interpretations of the meaning of norms within transnational contexts of high-frequency elite interaction would be puzzling for this approach.*

### **Summary**

According to the liberal community hypothesis actors who enjoy membership in a community and hence share a given identity are likely to consider the same rules, norms and principles as appropriate. According to the layer-cake assumption elites are most likely to produce a pattern of cultural harmonisation. The national identity-options assumption assumes that identities are sticky and therefore relatively stable. Finally, the rule-in-practice assumption expects meanings to change according to interaction in context. Based on these hypotheses the case study considers elites in two countries which share multiple memberships in various international communities. With regard to the European context this condition suggests a choice of two long-term member states as opposed to selecting new member states for study, which have not had prolonged periods of social interaction during the past three periods of European constitutionalisation spanning about five decades of European integration. If a pattern of stable diverging national positions and parallel evolving converging transnational positions can be sustained, a larger case study is likely to follow so as to establish generalisable data.

### **3. Bringing Culture Back In**

With a view to uncovering hidden meanings of norms, which have been produced through cultural practices in different contexts, I work with a “prospective” method of analysis. While Tully’s studies to recover hidden constitutional meanings in the context of the Canadian one-state employed a “retrospective” method, beginning with a particular historical condition (inequality prior to the constitution, according to cultural identity) and searching back for its causes (Tully 1995), prospective analysis works with a view to the European beyond-the-state context, beginning with a particular historical condition (conflicting interpretations of constitutional meanings) and searching forward to the alternative outcomes of that condition with a specification of the paths

leading to each particular result.<sup>10</sup> That is, in addition to the reconstruction of constitutional dialogues based on an empirical focus on two sets of practices (organisational and cultural) which have contributed to the construction of meaning of constitutional norms over time (ancient type of constitution), the beyond-the-state context requires the further dimension of comparing political arenas. The comparative dimension facilitates the tools to observe changes in patterns of interpretation. As John Bendix (1963: 535) notes, “comparative studies illuminate the meaning of sociological universals.” They allow us to question “usual connotations” which, for example, may be adopted into scholarly language from ordinary speech and seek to “make these connotations explicit” (ibid.).

The comparative research design which is proposed here takes account of contemporary constitutionalism with reference to *emerging* transnational political arenas, on the one hand, and *enduring* domestic arenas, on the other. The research assumption is based on the observation that once constitutional norms are dealt with outside their socio-cultural context of origin, a situation of potential conflict emerges. The conflict follows the de-linking the two sets of social practices which compose the organisational and the customary dimensions of a constitution. The potential for conflict caused by moving constitutional norms outside the domestic polity lies in the decoupling of the customary from the organisational. It is through this transfer between contexts, that the meaning of norms becomes contested as differently socialised actors – e.g. politicians, civil servants, parliamentarians or lawyers trained in different legal traditions – seek to interpret them.

In other words, while in international contexts actors might well agree on the importance of a particular norm – say for example that human rights matter – the agreement about the kind of norm is nevertheless not sufficient to allow us to draw conclusions about its meaning. As in different domestic contexts, that meaning is likely to differ according to experience with norm use; it is important to recover the crucial interrelation between the social practices that generate meaning, on the one hand, and public performance that interprets the norm for political and legal use, on the other (Kratochwil 1989; Dworkin 1978). Both aspects of the *nomos* – the organisational and the customary – contribute

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<sup>10</sup> For the distinction between retrospective and prospective methods of analysis see Tilly (1975: 14).

to the interpretation of meanings that are entailed in constitutional norms. To demonstrate the impact of the “invisible constitution” on the organisation of politics, the case study seeks to identify associative connotations and reconstruct the emergence of structures of meaning-in-use in different contexts. Once constitutional norms are used as reference frames in transnational negotiations, not only “that which was agreed to” but also the customary dimension of the *nomos* plays a significant role. This customary dimension entails the social practices that enable recognition of constitutional norms based on day-to-day practices. It needs to be acknowledged as part of the constitutional context in order to understand how constitutions work and explain why they fail under particular circumstances.

Constitutional lawyers may argue that constitutional norms will take precedence over the procedures and rules that are applied to control and regulate politics. As long as the core role of a constitution is respected, the meaning is always subordinate to the type of constitutional norm. In turn, from a political science perspective on the impact of rules and norms in world politics, we know that there is a strong social dimension to rule following. Socialisation into a community, it has been argued, enhances the diffusion of norms, values and rules of that community towards all members (Schimmelfennig 2000). However, as Tully (1995: 6) has pointed out, “a *constitution* can seek to impose one cultural practice, one way of rule following, or it can recognise a diversity of cultural ways of being a citizen, but *it cannot eliminate, overcome or transcend this cultural dimension of politics*” (emphasis added).

Culture is hence a dimension in constitutional politics that does have an impact on constitutional politics in one way or another. The challenge lies in the question of how to bring culture back into constitutionalism, that is, where to locate the cultural dimension analytically and how to study it empirically. It is crucial for constitutional analysis to identify indicators for diversity and commonality of meaning of constitutional norms at a level of desegregation that allows for the empirical assessment of meaning.<sup>11</sup> Approaches which focus on

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11 For a project which brings together comparative research on the question of diversity and commonality of meaning of democratic principles and procedures in Europe, see for example Team A in Research Group 2 of the CONNEX Network of Excellence <<http://www.connex-network.org/>> accessed 25 July 2007. For published details, see, *Comparative European Politics, Special Issue: Contested Meaning of Norms. The Challenge of Democratic Governance Beyond the State*, Volume 5, Number 1, 2007 <<http://www.palgrave-journals.com/cep/journal/v5/n1/index.html>>, accessed 25 July 2007.

different kinds of norms – i.e. human rights, minority rights or others – rather than on their respective meanings, cannot account for information regarding potential conflict and its resolution, nor can this offer an assessment of changes in the normative structure which guides politics at all times, be it within or beyond state boundaries.

#### 4. Convergence, Divergence or Diffusion?

The recognition of norms is likely to be contested in different domestic arenas despite both norm validation in supranational treaties and agreement about the appropriateness of norms within specific social contexts. The challenge arising from European integration is how to make “a democratic culture of synchronicity in a social space of increasing non-synchronicity among those moving in this space” (Eder 2004: 97). In addition to the non-synchronicity or, the divergence generated by individual cross-arena movements, additional divergence is created by the lack of movement, i.e. by the divergent models of institutional adaptation and national identity options which remain distinguishable according to domestic political arena. In order to identify the extent to which constitutional norms have achieved recognition in addition to their attested status as social facts, empirical research needs to capture *subject positions* embedded in “cultural representations which can be seen as elements of an emerging new culture of synchronicity” (ibid.). As Eder states, while legal and social integration present the first face of Europeanisation, “cultural representations of this space, such as the European house, the internally bounded space or the variable geometry” create the second face (Eder 2004: 90, 97). Conceptually, this observation leads to a shift from system or society level research towards the individual level of analysis.

Studying diverging, converging and diffused interpretations of normative meanings may appear a rather elusive exercise. However, when considering that individuals are prone to carrying normative baggage wherever they go, normative interpretations achieve a considerable radius of input and are therefore potentially influential under conditions of transnationalisation. Most importantly, elites who have been socialised as “national” elites in domestic political contexts will carry the respective domestically constituted normative baggage into international negotiation environments. It follows that in these environments conflict is more likely when decisions are taken by elites who have had little experience in sustained and continuous transnational interac-



tion and hence are unable to connect to a common frame of reference (Risse 2000; Habermas 1988). In the absence of a significant increase of transnationalised politics and policy processes, international politics remain just that: they are “international” in the literal meaning of the word. In this context, it is important to note how, where and why convergence or diffusion<sup>12</sup> of the national identity option occurs and how it may be furthered.

European legal scholarship has addressed the issue of norm convergence or divergence for example with reference to the human rights norm in relation to European Convention of Human Rights (ECHR) norms and the jurisprudence at the Strasbourg Court, on the one hand, and with reference to national laws and practices, on the other. The goal of such studies is to establish

the degree of conformity with those norms, but also the extent to which such implementation, transposition or absorption of norms might be occurring in ways which are quite distinctive and specific to the various national legal systems (De Burca 2002: 131).

In contrast to the research focus on legal systems, this inquiry is interested in the additional dimension of the social construction of norms and therefore examines the interpretation of normative meaning. I argue that in search for answers to the question of norm convergence and/or divergence we need to know more about norm construction and meanings in different socio-cultural contexts and at different times. While norms may achieve a considerable degree of legitimacy or validity in supranational contexts, their local meaning remains subject to specific and varying interpretation. And the more extended the period of time an individual spends in a domestic context, the more likely is the influence of national identity options on her or his international activities.

Following the distinction between visible factors of a treaty or convention (principles, articles, and provisions), on the one hand, and invisible factors (individual interpretations of the rules and norms expressed by a constitution), on the other, the examination of hidden meanings turns to the latter. While constitutive for political outcomes, interpretations of norms remain largely invisible. They are most likely to entail the hidden meanings which

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12 The finding of “diffused” patterns of meaning as opposed to converging meanings should not be underestimated as it is able to form a platform of flexibility for international negotiations. It is elaborated in some more detail in Wiener (2008: chapter 9).

need to be made accountable to offer empirical reference points for a comparative assessment of divergence, convergence or diffusion of the meanings of constitutional norms. Thinking about the constitution mobilises a variety of individual perceptions. It adds an intangible dimension to constitutionalism. While Searle (1995: 4, emphasis added) points out that “one reason we can bear the burden [of the day-to-day metaphysics which govern human activities] is that the complex structure of social reality is, so to speak, weightless and *invisible*”; the point I wish to make here is rather the opposite. That is, the presence of the “invisible” constitution of politics and the noted absence of knowledge about this feature might be much less blissful than the above quotation suggests. While remaining hidden and unregulated, it can spark debate at best and major political conflict at worst. The better we get at identifying conflicting interpretations, the more likely we are to succeed in designing a pattern for conflict resolution.

The first part of this paper sought to assess the concept of norms on a more general level and working with the “consistent constructivist” (Fierke 2006) assumption that, as social constructs, norms are contested by default. Their contestation is aggravated under three conditions. These include, first, situations of crisis in which the process of interpretation based on social institutions is radically cut short. Second, contestation is exacerbated under the condition of expanding governance processes beyond the boundaries of a particular community of interpretation. And third, contestation is heightened by the very condition of historical contingency of normative interpretation as such. The political role of constitutional norms and the interpretation of their meaning thus depend heavily on the social environment in which they are interpreted. For example, it has been demonstrated that while political ideas are spread across boundaries, they are interpreted anew and often quite differently depending on their new social environment of implementation (Hall 1989; Jenson 2005). The following second part of the paper addresses the details of that case study. It develops a research design which will then be applied to make normative meaning accountable.

## Part II: Research Design

*Meanings produced through a discourse “pre-exist their use in any one discursive practice”, or ... by any one individual. Discursive practices, in turn, are social acts, enabled by a discourse, through which some relevant aspect of the world is actively defined and constituted.*

Jutta Weldes and Diana Saco, 1996, Making State Action Possible: The United States and the Discursive Construction of “The Cuban Problem”, 1960-1994, in *Millennium*, Vol. 25, No. 2, pp. 361-395 (emphasis in quotation added).<sup>13</sup>

The purpose of the case study is to unveil individually held interpretations of normative meaning, following the argument that these are invisible, yet constitutive for the constitution of politics. By making them visible, they become “accountable” (Garfinkel 1967) for politics in their diverse, specific and contesting ways. To scrutinise assumptions about domestically established meanings that are often mistakenly labelled “national” and their potential for being shared in other domestic or transnational contexts, the case study disaggregates the category of the “national”. The difference in expectations towards meanings and the potential consequences for politics are well expressed, for example, by this German working in Brussels who stated as follows:

This is, by the way, a general experience which I have made again and again in Europe – with the Commission but also in Parliament or in the Committee of the Regions – that our considerably specific German thinking about norms – about norms not available in politics, is very difficult to relate to. That is, our German lawyers’ orientation based on fundamental rights, subsidiarity and proportionality is almost incomprehensible.<sup>14</sup>

For the case study at hand it is therefore crucial to identify the normative baggage individuals bring to international interaction either by moving from domestic political arenas towards international negotiation contexts or by moving from transnational political arenas to these same contexts.

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<sup>13</sup> See also Fiske (1987: 14).

<sup>14</sup> Interviewee Brux/Ger H, 23 May 2001; this and all following interviews are on file with author; unless stated otherwise, emphases, where they occur, have been added by the author.

By analysing social practices in context it is possible to identify individual interpretations without falling into two *caveats*. The first caveat is the bracketing of interaction following the modernist constructivist approach which works with the assumption of stable norms which structure behaviour. As a consequence, the very process of meaning construction is excluded from the analysis. The second caveat is the assumption of stable identities on which the liberal community hypothesis depends. While as a precondition stable identities are important indicators for the analysis of national identity options, they prevent acknowledgement of moving individuals and changing individually held associative connotations as a result.

## 5. Type of Inquiry

The case study draws on interpretative sociology and insights gained from ethno-methodology (Garfinkel 1967: 37), which hold that the meaning of a word differs according to practice in context.<sup>15</sup> It sets out to investigate the “constitutive phenomenology of the world of everyday” meanings in order to identify their impact on politics as “background expectancies” which are individually held (*ibid.*; cf. Schutz 1932). While Garfinkel’s studies focused on enhancing “sociological inquiries” by making “commonplace scenes visible” (Garfinkel 1967: 37, *emphases added*), I seek to broaden political science theories by making commonplace meanings visible. That is, it is assumed that even if we know the words and speak the same language, a word in and by itself provides insufficient information about its meaning. To catch the meaning of a word or a phrase we need to examine “the cultural and social day-to-day context in which it has been used” and “marked by indexicality” (Hauck 1984: 155; Garfinkel 1967; Schutz 1932). To that end, the strategy of a single case study to set up a working hypothesis for follow-up studies is applied.<sup>16</sup> In distinction from long-term group constellations and individual input into transnational politics, the empirical focus is on interventions uttered by individuals who operate in “settings of interaction” which are identified as “locales” of day-to-day practice (Giddens 1984: xxv). Such locales involve mainly the offices of civil servants, advocacy group members, journalists, academics,

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15 The purpose is to reveal “the essential relevance ... of a concern for common sense activities as a topic of inquiry in its own right and, by reporting a series of studies, to urge its ‘rediscovery’” (Garfinkel 1967: 36).

16 This type of case study focuses on exploration as opposed to description or the investigation of explanatory theories (for the distinction see Titscher et al. 2005: 44).

politicians and consultants. Following the contingency condition of norms (see box 1 above) actors operate within a context that is structured by the interplay between structures of meaning-in-use and individuals. The latter hold associative connotations<sup>17</sup> which become recognisable through interaction, that is, when identified as discursive interventions. The question is whether such discursive interventions are reduced to revealing diverging, converging or diffused patterns of meanings or whether the frequency and place of interaction changes meanings. Following the rule-in-practice assumption the latter is expected. This assumption remains to be sustained by empirical research, however.

Associative connotations allow for an assessment of the degree to which the meanings of modern constitutional norms converge (Kieser 1999). This assessment provides information about individual dispositions towards these norms.<sup>18</sup> Since decision makers will not accept unmediated information but interpret it against the background of their individual experience and hence develop individually held expectations accordingly (Weldes and Saco 1996: 369; Shapiro and Bonham 1973: 165), this is a key insight for policy analysis in international contexts. The intention is to facilitate information based on a new database which entails a collection of individually held associative connotations on the interpretation of modern constitutional norms in different political arenas. While the research on conflicting interpretations of norms discussed is not interested in “positioning” as such, Bourdieu’s assumption about a meaningful system which evolves through permanent contradiction is a central element. As he notes:

When we speak of a *field* of position-takings, we are insisting that what can be constituted as a *system* for the sake of analysis is not the product of a coherence-seeking intention or an objective consensus (even if it presupposes unconscious

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17 Note that these associative factors differ from Max Weber’s concept of “affectional action” (Gerth and Mills 1946: 56) as they are not based purely on sentiment, but characterise rule following on the basis of perceived social norms (Finnemore and Sikkink 1998).

18 I distinguish between legal approaches to “valuation” or the “interpretation of values”, on the one hand, and a sociological approach to demonstrating individually held associative connotations which are of direct relevance for political strategising and decision making in international contexts, on the other. The difference in approaches is the legal interpretation following categories of constitutional types or traditions, on the one hand, and a sociological interpretation of meaning based on social practices, on the other. For the legal interpretation of values in the European constitutional literature see, for example, Aziz et al. (2005) and Bellamy (2005).

agreement on common principles) but the product and prize of a permanent conflict; or, to put it another way, that the generative, unifying principle of this “system” is the struggle, with all the contradictions it engenders (Bourdieu 1993: 34).

It is important to note Bourdieu’s emphasis on the dialectics of “struggle” as a unifying element and an ongoing process of contestation.

The case study considers new policy fields which function as shared pools of reference about day-to-day issues. While this perspective does draw on Bourdieu’s reflexive sociology (Bourdieu 1993; Leander 2006), what matters most for this case study is the incorporation of contestation and its role in the construction and use of meaning (see also Tully 2004). That is, Bourdieu’s focus on the formation of these fields or the respective speaker’s evolving and changing power position while crucial for the overall picture of democratic constitutionalism is left to aside for the purposes of this particular empirical case study. It is, however, important to note that the process of creating the fields and the main norms that govern them, on the one hand, and the process of working with these norms and reacting to them, on the other, do not necessarily overlap. Subsequently, we need to work with the assumption that norms “function” out-of-context. In the absence of contextual information about substance, the meaning associated with norms by individual users therefore differs according to the individually carried normative baggage. Normative meaning is therefore always individualised. To access this meaning and make it accountable, it needs to be brought to the fore through processes of interaction such as contestation or more generally any sort of discursive intervention. Discursive interventions are therefore considered as the core factor to assess the meaning of norms empirically.<sup>19</sup> The following elaborates on the details of making meanings accountable based on such empirical research that applies discourse analysis.

## **6. Interview Evaluation**

I draw on reflexive approaches which hold that to assess the meaning of a rule implies going back to the practices that contributed to its creation. Empirical research focuses on discursive interventions – for example in official docu-

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<sup>19</sup> See also Florini for turning norms rather than behaviour into the dependent variable; note however that here the explanans is the “meaning of norms” whereas Florini seeks to explain the change of norm type (Florini 1996: 363).

ments, policy documents, political debates and media contributions – that contribute to establishing a particular configuration of “structure of meaning-in-use” where discourse is both a social practice and “the location of meaning.”<sup>20</sup> This works as a cognitive map which facilitates the interpretation of constitutional norms according to specific experiences in relation to context and time. Norms are then not defined as mere social facts that exert structural impact on behaviour.<sup>21</sup> Instead they are understood as embedded in a socio-cultural context that entails information about putting the norm to “work” (Kratowil 1984), i.e. how to interpret a norm’s meaning in context. In order to “get at” that meaning we need to turn to approaches generated outside the disciplinary boundaries of political science and law. Historical semantics and relational sociology offer crucial insights for tackling the flexible embeddedness of norms. Given that governance processes beyond the state have led to constitutionalisation of supranational arenas, that meaning and its underestimated potential for conflict in international politics require further elaboration.

Discourse indicates the reference to social practice that is constitutive for producing normative meaning. It is “a social practice through which thoughts and beliefs are themselves constituted” (Weldes and Saco 1996: 371). As a reflexive process discourse entails meanings which are constituted prior to a particular discursive intervention. The language used in discursive interventions not only functions to describe facts, it also constitutes new meaning.<sup>22</sup> Analysing discourse therefore offers access to the space in which collective perceptions are present (Schneider 2001: 32). It is a central analytical tool for a project that seeks to reconstruct how norms work. At the meta-theoretical level discourse analysis assumes that “the meaning of an utterance rests in its usage in a specific situation” (Titscher et al. 2005: 146; cf. Wittgenstein 1984: paragraph 7). It follows that individually held associative connotations about meaning are derived from and contribute to the structure of meaning-in-use.

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20 See Weldes and Saco (1996: 373), Milliken (1999: 231), Hüllsse (2003: 39), Schneider (2001) and Titscher (2005). Weldes and Saco define discourse as “a structure of meaning-in-use that is both intersubjective and, in part, linguistic” (1996: 373).

21 For a critical view, see Kratochwil (1984), Kratochwil and Ruggie (1986) and Ratner (2000: 651).

22 See e.g. Wittgenstein’s work on the meaning of speech-acts. As an alternative to the positivist “set of labels which can be compared to the world, Wittgenstein demonstrates that language is constitutive for the world” (Fierke 1998: 3).

The method applied to identify and compare interpretations of the meaning of constitutional norms is based on “structured, focused comparison” (King et al. 1994: 45). That is, I systematically collect information about the same unit of analysis. Since social practices and, more specifically, cultural practices have been identified as the key factor in this comparative study; the data are collected based on techniques generated by “critical discourse analysis” (Wodak 1996). This type of analysis

sees discourse – language use in speech and writing – as a form of “social practice”. ... [This] implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) which frame it: the discursive event is shaped them, but also shapes them. That is, discourse is socially constituted, as well as socially conditioned. ... It is constitutive both in the sense that it helps sustain and reproduce the social status quo, and in the sense that it contributes to transforming it (Titscher et al. 2005: 26; cf. Wodak 1996: 15).

The following two sections distinguish between the type of data that is to be collected and the approach to evaluating that data, respectively.

## 6.1 The Data

To reconstruct and locate the emergence of meaning the case study draws on “contemporarily produced texts.”<sup>23</sup> While these do include a range of data sources such as parliamentary debates, the media or interview transcriptions, the case study focuses first and foremost on interview transcriptions as the primary data source. The structured interviews sought to generate indirect references to constitutional norms based on “gut” reactions evoked by “expressive” language only. This type of analysis works with discursive interventions as the main database. The interventions take place within a particular context which is conditioned by the time and space in which specific individuals utter connotative meanings. The utterances are detailed according to a selection of keywords with reference to the fundamental norm under investigation. The keywords then allow for a distinction of “associative connotations”.<sup>24</sup> This case study focuses exclusively on interview transcriptions as the

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23 See for example Bublitz et al. (1998), Schneider (2001), Huffschnid (2004) and Weldes and Saco (1996: 373).

24 Note that the term “associative connotation” is to be distinguished as defining an emotionally “affective” notion rather than the legal notion of “affectedness”. The latter defines the



main data source seeking to reconfigure the structure of meaning-in-use in different contexts in Europe. The text is composed of 53 interview transcriptions of interviews that lasted about three quarters of an hour each.<sup>25</sup>

The interviews were conducted anonymously so as to create an environment conducive to spontaneous answers that reveal personal reactions or “gut” feelings.<sup>26</sup> This emphasis follows the distinction between “informative”, “expressive” and “directive” uses of language, whereby this case study sought to avoid the informative or directive uses. Instead, it stressed the “expressive” uses of language to generate emotional responses. That is, technical or other types of rationalised “expert” opinions likely to reproduce standardised rules and general guidelines rather than revealing “emotive” personal views were not encouraged.<sup>27</sup> Such views would simply restate the legal validity of norms and, as such, they would not be useful for the task of making individually held associative connotations accountable.

Many of the most common words and phrases of any language have both a literal or descriptive meaning that refers to the way things are and an emotive meaning that expresses some (positive or negative) feeling about them. Thus, the choice of which word to use in making a statement can be used in hopes of evoking a particular *emotional* response (Kemmerling 2002, emphasis added).<sup>28</sup>

In addition, “attitude questions” were asked in order to conduct a value ranking exercise, so as to provide a cross-check for the interview database (Holbrook, Krosnick, Carson and Mitchell 2000).<sup>29</sup> In sum, the empirical focus on discursive interventions is expected to reveal the intersubjective engagement *with* rather than the discourse *about* a particular issue. The collection of spon-

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accessibility of the court to individual citizens. For details on the legal notion of “affectedness” see for example Beljin (2006: 19).

25 It encompasses about 1.000 pages and is on file with the author.

26 All interviewees remain anonymous. The full references are on file with the author; they have been conducted by the author and research assistants (to be named in the ‘preface’ of the final version of this manuscript). The interviews have been evaluated on a strict anonymity basis.

27 ‘Emotive meaning’ indicates attitudes and feelings associated with the use of a word, phrase, or sentence, in contrast with its literal significance. See for example the definition in Brandt: “To say a word has ‘blind emotive meaning’ is to say it has a dispositional capacity to arouse emotive effects of substantial order, in certain circumstances, independently of any alteration the hearing of it introduces into the cognitive field (except for the sensory presence of the word itself)” (Brandt 1950, 535).

28 See <<http://www.philosophypages.com/lg/e04.htm>>, accessed 27 June 2006.

29 For the evaluation of this cross-check see Wiener (2008: chapter 8).

taneous remarks contributes to the database. The database also takes the interviewees' socio-cultural context into consideration based on the questions of where they have lived and worked during the past ten years.<sup>30</sup>

## 6.2 The Case Study

The case study moves from the discursive event at a macro-level as the level of high complexity (world politics) towards the discursive event at micro-level to reduce this complexity (individually held associative connotations) (Titscher et al. 2005: 27). Interaction in context provides the empirical access point with a view to identifying shared understandings and then, in the subsequent analytical step, deriving the meaning thereby constructed. In this case, the discursive event at macro-level which added complexity to international relations studies, was the transfer of policy sectors which were originally designed for modern nation-states into the supranational realm and hence beyond the boundaries of modern nation-states. The emerging "finality" debate and the resulting constitutional push in European integration discourse are taken as the trigger of complexity in this situation.

What is of interest here, is how to reduce the complexity created by that situation by way of theoretical assumptions, and what choice of empirical study to undertake to that end. The case study seeks to generate a working hypothesis for a follow-up project targeting a larger more representative sample. During the individual interview situation the discursive event takes place at the micro-level in the context of the interview situation. Following the basic assumptions of a critical discourse analysis approach (see box 7) qualitative expert interviews were conducted according to a structured questionnaire. The interviews took place in the time period from mid-2001 to mid-2003.<sup>31</sup>

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30 For example, the questionnaire asked, "How many times a month do you generally engage in international interaction, i.e. in spoken language?" (on file with the author).

31 Note that with few exceptions all interviews were conducted in the aftermath of the 9/11 atrocities in 2001.

**Box 7 ► Research Assumptions**

No.	Level	Assumption
1	Critical discourse analysis	Discourse must be viewed as social practice. <sup>32</sup>
2	Normative structure	Structures of meaning-in-use are created discursively based on social practices in context. <sup>33</sup>
3	Discursive intervention	Discursive practice is the link between text and social practice. <sup>34</sup>
4	Context	Interpretation of meaning differs according to context.

The case study was conducted and evaluated by applying the method of triangulation, combining qualitative and quantitative research methods (Kelle and Erzberger 1999). The evaluation spans over the following five empirical phases.<sup>35</sup> In the first phase interviews are conducted; during the second phase interviews are transcribed and a general text *corpus* is compiled; the third phase involves text analysis, using the techniques of excerption, keyword selection and deriving oppositions. In the fourth phase the normative structure of meaning-in-use is reconstructed with reference to the relevant political arena, elite group and modern constitutional norm. Finally, in phase five a quantitative evaluation of types of divergence, convergence or diffusion of meanings is carried out, based on the set of associative connotations generated by the interviews to indicate a direction for a larger quantitative study as a follow-up.

Following the interviews and the transcriptions, phase three involves the following three evaluative steps. First, the text *corpus* is organised according to policy fields, each of which provide a framework with significant relevance for one of the three constitutional norms that lie at the centre of this case study. Second, the interview utterances are sorted according to elite group and key-

32 See Wodak, Titscher et al. (2005: 156).

33 See Weldes and Saco (1996) and Milliken (1999).

34 See Fairclough, Titscher et al. (2005: 150).

35 See also Schneider (2001) for this approach.

word families so as to garner patterns of associative connotations for comparison. All of these data are presented in one table, "Interview Evaluation," a document which provides direct links between keywords and individual utterances.<sup>36</sup> The up to ten choices of associative connotations presented in keyword groups with reference to one of the three meta-constitutional norms are easily recognisable in the three major tables which are organised according to policy field, core constitutional norm, associative connotations, political arena and elite groups. The table entries are identified by numbers (from 0 to 9) referring to the respective associative connotation uttered in the micro-context of the interview. While the numbers allow easy allocation with reference to the distinctive associative connotations, they also provide direct links to the specific discursive interventions uttered by each of the 53 interviewees. The text *corpus* is thus linked directly with the associative connotations and the norms presented in each table.

Third, these associative connotations are recalled and identified as sets of oppositions derived from the text *corpus* of interview transcriptions. The oppositions are rendered by single documents which are identified as "the language practice of predication – the verbs, adverbs and adjectives that attach to nouns" (Milliken 1999: 232). I apply the method of deriving oppositions from one text *corpus* to which discursive interventions of a number of individuals have generated passages, i.e. the interview situations which are identified as "micro-events". The text *corpus* is divided into three parts according to the three distinctive sections of the questionnaire. In detail, each part refers to a different policy issue including the "Schengen Agreement", "European Enlargement" and "Constitutional Politics". The discursive interventions uttered during the interview situations constitute the primary data source of about 1000 transcribed pages.<sup>37</sup>

Returning to the specific utterances, the next step is to "abstract from two particular oppositions to a core opposition underlying both" (Milliken 1999: 234). Of interest here is whether core oppositions can be identified in each of the three policy fields and whether these core oppositions do prevail in the transnationalised context of the Brussels arena. The point of the research based on interviews is thus less one of demonstrating how one particular constitu-

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36 The "Interview Evaluation" is a 67,922-word document of 196 pages, on file with the author.

37 See "Text Corpus 2006" on file with the author.

tional norm is interpreted, than identifying the structure of meaning-in-use that will guide its interpretation and hence turn into the opportunity or constraint when interpreting supranational norms in a situation of crisis. The following section identifies the indicators of the case study. Following the grounded text analysis method of deriving oppositions, oppositions between domestic elites are derived. These are then compared against the connotations displayed by the Brusselites. The question is whether or not the Brusselites' respective utterances demonstrate a divergence from their respective national domestic pattern. Three types of variation are considered as indicators of divergence: (1) domestic versus transnational, (2) domestic versus domestic and (3) transnational versus transnational. The case study is designed to assess divergence, convergence or diffusion of meanings. A finding of divergence rather than convergence would indicate an absence of cultural harmonisation among elites. In turn, if convergence were to dominate, the layer-cake assumption would be sustained. Finally, if both diverging and converging interpretations of meaning occur; the variation will be distinguished according to type of divergence.

## **7. Choice of Indicators**

### **7.1 Elites**

The decision to interview elites is grounded on the twofold empirical and normative approach of this case study. First and following the empirical argument, the layer-cake assumption expects that of all social strata elites are most likely to generate cultural harmonisation as a result of regional integration.<sup>38</sup> Research therefore focuses on expert interviews with elites to scrutinise this assumption of cultural harmonisation (Liebold and Trinczek 2003). Second, according to the normative argument elites are the most likely social group with access to full membership in a political community in the Marshallian sense, i.e. enjoying rights, having access to the political apparatus and belonging to the political scenery in the public sphere.<sup>39</sup> It has been demonstrated for example that "discourse elites" have "influence for important decisions with regard to the entire society ... based on particular positions within

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38 See Deutsch (1953).

39 For Marshall's concept of full membership see Marshall (1950).

public discourse.”<sup>40</sup> Based on these two considerations, then, the selection of interviewees included EU citizens who enjoy full membership in the European political community and who operate either within the Brussels transnational arena or in domestic political arenas.

Crucial for the selection of interviewees was the consideration that they must enjoy active access to the respective public sphere in their home communities (Habermas 1988). That is, they must – in principle – be able to both make use of and shape the resources of the public sphere. This would involve, for example, the production of policy documents, draft legislation, newspaper articles, academic writing, official documents and so forth, in addition to having access to information and making use of resources. In sum, the interviewed elite samples involved a group of highly flexible, well-informed, boundary-crossing citizens who were able to both influence and access public discourse (B. Peters 2005). These individual elites carry normative baggage which determines their respective expectations towards the meaning of norms. Unless contested by others, or within an otherwise non-agreeable context, the baggage will prevail, notwithstanding the crossing of societal or political boundaries. This baggage is conceptualised as associative connotations. The case study details its quality, quantity and durability.

## 7.2 Fundamental Norms

To assess the range of interpretations attached to meanings of modern constitutional norms used by elites from Germany and the United Kingdom both within and beyond the limits of modern constitutionalism<sup>41</sup> the case study examines the interpretation of the modern constitutional norms which have found their way into international treaties. They include the fundamental norms of citizenship, the rule of law and democracy, and human rights and fundamental freedoms. This choice follows the liberal community hypothesis as all norms form part of the shared normative structure that binds civilised nations in world politics. For example the Treaty of European Union states in article 6 that “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law,

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40 See for example Schneider (2001: 49). Cf. Hoffmann-Lange (1990: 11), Fairclough (1992: 212) and Gerhards (1992: 307).

41 For the distinction of ancient, modern and contemporary constitutionalism see Tully (1995).

*principles which are common to the member states*" (emphasis added). Furthermore, the Treaty Establishing the European Community stipulates Union citizenship in articles 17 through 22. Both treaties were signed by the EU member states' government representatives, among them the President of the Federal Republic of Germany and Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland.

### 7.3 Issue Areas

Three new policy fields were selected as *foci* for discursive interventions during the interview process. The choice of policy field allows a focus for conversations that seek to reveal interpretations of the meaning of core constitutional norms. Therefore, each selected field is considered as being of particular yet not exclusive relevance for a specific set of modern constitutional norms. For example, utterances regarding the Schengen Agreement/policy field will be explored with a specific relevance for citizenship indicators; European Enlargement will be explored with particular relevance for democracy and rule-of-law indicators; and finally, the Constitutional Politics field will be scrutinised for human-rights and fundamental-freedoms indicators. The selection of these particular pairings is based on the assessment of which keywords are most likely to be uttered in structured qualitative interviews that focus on these three respective fields. Note that this choice was made primarily to provide a structure for the interview and keyword organisation. It does not presume to present an exclusive relationship between a particular policy area and a particular norm. After all, following constructivist analyses in international relations theory, like ideas, norms are all pervasive (Finnemore and Sikkink 1998; Risse 2000).

The point is rather to demonstrate that, despite their all-pervasiveness, norms do retain different meanings to individuals. These come to the fore through interaction of individuals in different contexts (Hall 1989; Jenson 2005). All new policy fields have been either sufficiently and repeatedly addressed by the media or they have been experienced by the elites themselves, for example, through personal travel. The selection is in line with the *rule-in-practice* assumption which stresses the individual input in the formation of normative structures, i.e. elites will only refer to structures of meaning-in-use that are accessible to them. The three policy fields are considered as reference frames which allow for a structured approach to individual expert interviews. They

all achieved a particular relevance in the post-Cold-War era; this applies especially to the massive enlargement process which began with the Copenhagen Agreements in 1993 and ended with the accession of ten new member states from Central and Eastern Europe and Malta in 2004.

#### 7.4 Political Arenas

The case study examines elite interpretations of the meaning of norms in London, Berlin and Brussels as the political arenas in which elites operate. The choice was to select long-standing EU member states which enjoy several memberships in supranationally formed communities. This is in accordance with the liberal community hypothesis which assumes that the more community memberships any two countries enjoy, the higher the shared recognition and appropriateness of fundamental norms is likely to be. Both Germany and the UK hold membership in various international organisations including the North Atlantic Treaty Organisation (NATO), the United Nations, and the European Union and the respective supranational communities which have been forged in their wake. This set of strong community memberships has been considered as generating a normative pull based on a shared identity as “civilised” nations in the larger realm of world politics (Katzenstein 1996; Risse 2000; Zürn 2000; Akehurst 1993).<sup>42</sup>

Of importance for the case study is furthermore that both the German and the British constitutions are based on a power-limiting rather than a power-creating rationale. Despite their obvious difference in appearance as written or unwritten frameworks,<sup>43</sup> they were both intended to support the “legalisation of politics” by securing the limitation of monarchic or feudal powers. Both countries thus share a structural sense of appropriateness with regard to the constitutional rationale (Moellers 2003: 9). While the point that Germany and the United Kingdom follow similar, i.e. power-limiting constitutional tradi-

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42 Note that there is a curious – albeit still little discussed – overlap on the role of identity in normative Kantian approaches, on the one hand, and organisational sociology, on the other. What is of interest here is not the differences in the original theories but the similarity assigned to the derivatives of both theories which have found entry into IR scholarship on norms, i.e. this scholarship assigns a strong causal relation between community and norm following behaviour.

43 Note, however, that the “unwritten” status of the British constitution is not uncontested. Sartori (1962: 862) argues, for instance, that “it remains questionable whether it is really true that the British constitution is unwritten. (I would be tempted to say that it is ‘written differently’.)”



tions, it could also be argued that if interaction in context facilitates convergence and the lack of it divergent associative connotations with meanings, then the two different legal traditions in the UK and Germany would expect connotations to differ according to experience with common law and continental law, respectively.<sup>44</sup>

## 8. Conclusion

To summarise, the research project encompasses a comparative study of elite perceptions of fundamental norms in three different political arenas (London, Berlin and Brussels) of two different types (domestic and transnational). The four interviewed elite groups include Londoners, Berliners and Brusselites with the latter being divided into German and British elites. The database is evaluated with a view to establishing diverging, converging or diffused interpretations of meanings of modern constitutional norms (citizenship, human and fundamental rights, democracy and the rule of law). Each norm is considered as being predominantly addressed with reference to one of three new policy fields. For example, the discursive interventions generated through conversations about the Schengen Agreement are linked with indicators on the meaning of citizenship; European Enlargement is linked with democracy and the rule of law; and Constitutional Politics is linked with fundamental and human rights. Based on these data the case study aims at identifying individually held associative connotations. Once identified, these are coded according to keywords and families of meaning indicating their relation with modern constitutional norms.

It must be noted, however, that given the small scale on which the empirical research was carried out (only 53 interviews), the case study can be no more (but also no less) than an indicator of variation. It is hypothesised that with increasing divergence conflicting meanings in actual international negotiation settings become more likely. The scope of the case study is thus one of a *pilot project*. The intention is to generate a working hypothesis which will be applied as the starting point for a larger and potentially more representative investigation. While social practices can be distinguished as organisational and cultural, this study focuses on the latter. Discursive practices develop in context and establish normative patterns according to how which individuals

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<sup>44</sup> And this is, indeed, the underlying expectation for the case study which identifies derived oppositions (Wiener 2008).

are positioned where (Lasswell 1946). Based on the choice of two more rather than less divergent legal traditions among EU member states for this case study the following assumptions can be made. First, if harmonisation between all four elite groups in the three arenas emerges, the layer-cake assumption and the liberal community hypothesis trump. Second, if divergence among two national sample groups in London and Berlin can be established and, in addition, if this divergence is maintained among the two national groups of German Brusselites and British Brusselites in the Brussels arena, then national identity options carry the day. Third, if a new divergence between the London sample and the British Brusselites, on the one hand, and between the Berlin sample and the German Brusselites, on the other, is identified, then it is demonstrated that interaction in context has a decisive input on the interpretation of meanings of constitutional norms.

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