Civil Society and EU Constitution-Making

Towards a European Social Constituency?

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RECONSTITUTING DEMOCRACY IN EUROPE

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Abstract

The EU constitutional process has ascribed a new role to civil society not only as a partner in governance but also as a constituent of the emerging EU polity. Civil society appears in this process primarily as the structure of *voice* that is articulated in relation to EU governance and that claims to *represent* European citizens. The article proposes an analytical framework and a methodology of how to analyze civil society as 'social constituency'. The research agenda is linked to the intermediary and the representative function of organised civil society as a transmission belt of legitimatory discourse on the EU. In order to reconstruct how interests, identities and normative ideas relating to the legitimacy of an EU constitutional order are contested within national politics, our research draws on a survey of German civil society organisations in three sectors: a) consumer interest organisations, b) churches and religious organisations, and c) gender equality groups.

Keywords

Locating European civil society:
From participation to representation

Recent reform agendas have emphasized the role of civil society participation as a means of enhancing the legitimacy of the European Union (European Commission 2006; Wallström 2005). The Lisbon Treaty (art. 11.3) establishes that European institutions shall seek dialogue with the citizens and stipulate consultations with civil society associations. With regard to the enforcement of this principle, the European Commission's role as a gatekeeper of civil society participation and dialogue is reconfirmed (Saurugger 2008; Kohler-Koch 2009). This would give a technocratic understanding of civil society as a tool of 'good governance.' New modes of participation in decision-making should enhance the output and the input legitimacy of the EU, i.e. to feed European decision-makers with knowledge and expertise and to include plural interests and considerations. The underlying notion of civil society as a partner in EU governance has also fed the research agenda. Analysts have mainly addressed the participatory dimensions of European civil society in Brussels in terms of organisational structures, strategies and resources of European networks and umbrellas as well as their performance in formal consultations with the EU (Ruzza 2004; Smismans 2007; Kröger 2008).

The constitutional process that was opened with the Laeken agenda of 2001 has ascribed a different role to civil society not only as a partner in governance but also as a constituent of the emerging EU polity (Fossum and Trenz 2006). This process can be understood as an attempt to renegotiate the legitimacy of this new kind of social and political order. Civil society appears in this process primarily as the structure of voice that articulates polity preferences and that claims to represent European citizens in debates about the institutional and constitutional reform of the EU. Civil society as 'social constituency' refers to all kinds of concerns, claims-making and collective actions that address the basic legitimacy of the EU and its modes of allocating legal and political authority. Such a shift from civil society as a partner within governance to civil society as social constituent of governance has three implications for redefining our research agenda.

First, civil society as 'social constituency' implies the need to reintroduce the classical intermediary function of civil society as the sphere of searching and articulating the collective will of the citizens. Research should address therefore not only the participatory performance of civil society organisations (CSOs) as partners in formulating and implementing EU policies but rather their representative performance as generators of legitimatory ideas, meaning and discourse.

Second, the research focus on civil society as 'social constituency' implies the need to turn to national politics as the principal arena of intermediation of EU legitimatory discourse. It needs to be analysed to what extent the principal national civil society organisations become involved in EU polity building and how they give expression to all kinds of public expectations, opinions and attitudes that are shaped in their daily experiences with European governance. The question of the performance of national civil society in EU constitution-making is crucial because it is here that the potential is revealed to go beyond the elitist design and to intermediate constitutional options and choices to the citizens.

Third, analysing civil society as 'social constituency' has to include a broad range of societal concerns and expectations that are expressed in relation to EU constitution-making. Our research design examines a possible constitutional settlement of the EU in terms of a) an instrumental design of the contents and procedures of government, b) an expression of shared values, traditions and symbols; and c) an enforcement of fundamental norms and rights (Weiler 2003). In order to represent how potential interest conflicts, identitarian conflicts and normative conflicts in negotiating the European constitution find expression within national politics, our research covers three respective sectors: a) consumer interest organisations, b) churches and religious organisations, and c) gender equality groups.

The relevance of this research agenda on the intermediary and the representative function of organised civil society as a transmission belt of legitimatory discourse on the EU is heightened by the present impasse of EU constitutionalisation and the widespread feeling of a deep crisis of European integration. Our research agenda addresses the question of how relevant social actors perceive the 'crisis' and attribute particular responsibilities. Of crucial impact here is the widely held perception of EU constitution-making as an elite project, which has not been properly mediated to the citizens. Our proposal is to analyse the perceived crisis as a motor of new socialising and democratising processes (Eder 2006: 258). In times of crisis and uncertainty, hegemonic meaning structures are broken up. It can thus be expected that the crisis of the EU becomes a 'window of opportunity' for pushing through new discourses and meaning. In this sense, the constitutional failure indicates new politicized dynamics of European integration (Zürn 2006). Political processes can no longer be justified as efficient or functional but are negotiated in a competitive field. To the extent that European citizens become aware of the EU's impact and begin to question its legitimacy, EU policy-making is turned into contentious politics.

By raising the issue of political representation of civil society, we are not so much interested in the organisational features of interest representation in Europe and in the concrete strategies applied by civil society organisations to take influence in the EU.[1] Rather, we are interested in the self-perceptions and evaluations of the EU's democratic deficit by national civil society representatives in reference to the constitutionalisation process of the EU. We want to reconstruct how the EU is perceived as a polity and how national civil society organisations position themselves as part of the EU's potential social constituency. The focus is thus put on the representative performance of organised civil society actors as constituents who express particular attitudes, preferences and expectations how the EU should be constitutionalised. To fully understand this representative performance of organised civil society as a constituent of the EU polity, we need to go beyond the traditional research focus on 'organised civil society' in terms of actors' strategies and organisational features. We rather need to address civil society as a discursive formation that expresses particular ideas and expectations in negotiating the legitimacy of the newly emerging political order.

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[1] This is already well documented by Ruzza (2004) and Trenz (2007).

Civil society as constituent of EU polity-building

This article is informed by a theoretical notion of 'civil society' as a discursive field for contesting legitimacy and for imagining identity, interests and solidarity of the citizens in their role as constituents of a particular polity (Calhoun 2003; Fossum and Trenz 2006). It is important to emphasize that as a discursive formation, European civil society is viewed as a contested space of discourse that is reproduced through claims for sovereignty, unity and boundedness of an imagined European entity. In this sense, our research focuses on the claims of civil society representatives to build a constitutive relationship to the emerging EU polity. For this purpose, we propose to observe the performance of civil society in its double role as an activist and as a representative of particular constituencies in EU polity making. The role of civil society as EU social constituency is thus approached through the structure of public demands and expectations that are placed upon the EU, and in terms of the collective representations and social imaginations, that are produced as reflexive outcomes in debating the democratic legitimacy of the EU.

By shifting from civil society as a participatory arrangement to civil society as 'social constituency', we further rely on a notion of political representation that highlights collective representations as an outcome of the public performance of appointed or self-proclaimed civil society *representatives* as intermediaries that provide justifications, engender trust and creatively perform in front of a larger audience. The discursive formation of European civil society can then be defined as a justificatory arrangement that unfolds through 'representative claims-making' (Saward 2006).

Our general research question is related to the self-understanding of organised civil society as a constituent of EU polity-building. From this perspective, the constitutional moment as it was set off with the Laeken process was not only linked to interest coordination or to normative agreements. It was actually also understood as a signal for a potential European social constituency *to reflexively constitute itself*. The EU's legitimacy game is then seen as a specific way to produce collective representations of the social constituency that is underlying the European polity in its process of constitutionalisation. The question therefore is: how does national civil society relate to this simultaneous process of polity building and constituency building in the EU, i.e. how does it perform in its double role as an activist and as a representative in relation to EU constitution-making?

In approaching European civil society as a discursive formation, we will proceed in two steps. First, we will reconstruct the logics of contention, in which civil society organisations enter when moving within the competitive field of EU politics. For that purpose, we have addressed national civil society representatives in their role as activists that defend particular positions and choices with regard to the negotiation of a European constitutional order. This brings in three justificatory modes that guide collective action and contention: instrumental reasons, contextualised values and universal rights. Second, we observe CSOs entering the logics of representation when confronting the question of the legitimacy of the EU polity and the possibilities of its democratisation. For that purpose, we have addressed civil society representatives in their role as constituents who create particular images and construct an identity with reference to the unity of that particular European political order. This brings in three representative modes in constructing social bonds, identifying basic social referents and thus allocating popular sovereignty and democracy: an audit model of

interrelated national democratic orders, a federal model of a European democratic order and a cosmopolitan model of an international democratic order (Eriksen and Fossum 2007; Lord 2008).

By addressing national respondents primarily as contenders and representatives of a European political order, our sample is biased towards those particular actors, who 'perform' in interest mediation between the national, European and global level in the three sectors analysed. The scope of this survey is not comparative. The cases selected cannot account for all specifica of German civil society and they are certainly not representative for the whole of Europe. The scope of the survey is also not evaluative. It is not our intention to assess the representativeness of civil society groups or to ground the validity of their representative statements. The primary objective of this single country study is rather to explore different notions of EU legitimacy through the lens of national civil society intermediaries. By relying exclusively on oral statements, we can analyze the interview itself as a representative performance, which does not indicate the official position of the group but the respondents' ad-hoc modes of making sense of Europe. The following classificatory scheme can be used for positioning relevant social actors in relation to EU polity building:

Table 1: Civil society as a discursive formation of EU democracy

Modes of representation / Modes of contention	National constituents of a European audit democracy	European constituents of a federal European democracy	Sectoral constituents of a cosmopolitan democracy
Instrumental	National interests and lowest common denominator European interests	Agreement on European common interest and collective will	Identification of a common good for all
Contextual	Diversity of units, Cultural diversity	Unity in diversity, European identity and civilisation	Cultural pluralism, fluidity and hybridity
Universal	Equal rights attached to national citizenship	Equal rights attached to European citizenship	Universal rights detached from citizenship

Modes of contention

In a first step, national civil society's role as a competitor that applies particular justificatory logics to defend political choices and strategies in the contested field of EU constitutionalisation will be analysed. Table 1 distinguishes between three conceptions of rationality through which civil society actors can justify their choices and preferences in the contested field of EU constitutionalisation (Eriksen and Fossum 2004): instrumental reasons, contextualised values and universal rights. The instrumental justificatory logic gives relevance to considerations about efficiency, functionality, costs and benefits, or issues of political power. The contextual justificatory logic evokes common values, a certain way of life or public goods and bads that only apply in a particular context or with regard to a particular group. The context that is evoked can refer to the activists' particular self understanding as a we-group or to regional, national or European belonging. Universal justificatory politics are displayed in references to universal normative principles, such as human rights, the rule of law, democracy and universal goods and bads.

At this point of the analysis, we investigate the prevalent modes of justifications that civil society organisations use in contesting EU constitutional choices. The questions therefore are:

a) Do national CSOs contest EU constitutional choices mainly as part of efficiency arrangements or games of power and thus reflect the instrumental logic of EU constitution-making? In this case, the emphasis would be on modes of collective problem-solving.

b) Do national CSOs mainly argue through contextualised values and identities and thus reflect the new relevance of identity politics in face of European integration? In this second case, the emphasis would be on value particularism and protection with the risk of a spread of Euroscepticism or, alternatively, on the expression of internal value consensus with the risk of spreading Eurocentrism.

c) Do national CSOs refer mainly to questions of justice, rights and the common good for all? In this third case, the justificatory logics would also imply an explicit reference to democracy by subduing European integration to common standards and the rule of law and by acknowledging equal rights of the citizens.

Modes of representation

The politics of justification through which constitutional choices are contested are further grounded in basic understandings about legitimacy and the allocation of political authority. Civil society organizations in the fields of consumer protection, religion and secularism, and gender equality can claim to represent different local, national, sectoral, European or global constituencies. These representations express a notion of the political community to which democracy shall be applied. In order to analyse this representative dimension of civil society claims-making we need to link justificatory politics to arguments favouring a certain polity development. Table 1 specifies three options for reconstituting democracy in Europe:[2]

a) Do national CSOs become mainly committed to national interest representation, support subsidiarity and the re-allocation of competences at the national level? In this case, we assume that national CSOs would rectify the national constituent as the basic referent of democracy (the audit model of co-operating national orders).

b) Do national CSOs promote further democratisation through the deepening of European integration and a shift to supranational decision-making? Do they further identify a shared interest of the Europeans or a specific European way of 'doing things together'? In this case, we assume that national CSOs underlie a European constituent that interacts with a European political authority (the federal model of a European political order).

c) Do national CSOs prefer a flexible arrangement of governance that is organised by cosmopolitan principles enshrined in international law? Do they further base their justificatory logics on the identification of a common good for all which needs to be defended by interlinked political institutions in defence of universal justice? In this case, we assume that national CSOs underlie flexible notions of functional constituencies that follow the inclusive requirements of global society (the cosmopolitan model of interlinked political orders).

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[2] For details on these polity models for the democratic reconstitution of Europe see Eriksen and Fossum 2007.

Methodology

In the previous section, we have argued that the EU constitutional process has broadened the traditional understanding of civil society as a partner in governance to the role of civil society as a constituent of EU polity-building. A methodological problem that arises is how to select respondents who assume such a representative role in relation to EU constitution-making. For the purpose of our research, we have mainly made use of a top-down sampling strategy asking how European institutions and governments demarcate the civil society field of activism, i.e. which social actors are identified and addressed as potential partners of governance.[3] The national field of activism was approached by identifying the European umbrellas and their German member organizations, i.e. the 'big players' and EU-experts, who were most experienced in European networking and lobbyism. Our ideal respondent was placed in an intermediary position holding different mandates in national and European networks. He or she was accountable to different local, national, European and sectoral constituencies. In practice, this sampling strategy favoured professional activists and office holders of powerful organizations, like, for instance, a trade unionist who also acts as an active member of a European network, or as a delegate of a European umbrella organization.

A total of twenty-eight interviews with experts on EU affairs and high-ranking NGO-leaders from the most relevant organisations in the respective policy fields were conducted between February and September 2007. From the field of consumer protection, we interviewed the German members of the European umbrella BEUC, one of them being the national umbrella of consumer agencies and consumer oriented NGOs. Several experts from members of the national umbrella, as well as two independent NGOs were consulted. Our interviews with religious and secular organisations cover the two Christian churches, as well as smaller Muslim, Jewish, Humanist and atheist organisations. Gender equality groups are represented in our sample with the national umbrella organisation, which is the only German member of the European Women's Lobby, and several of its national members.[4]

Avoiding some of the pitfalls of conventional methods of measuring legitimatory beliefs by scaling and aggregating individual preferences through questionnaires[5] our research applies an innovative design of content analysis of semi structured expert interviews to take into account the argumentative strategies and interpretations of actors who are engaged in European governance arrangements. Instead of confronting respondents only with pre-defined categories, we are thus able to observe

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[3] The official definition of civil society is given in the White book of Governance (2001): 'trade unions and employers' organisations ("social partners"); non- governmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities' (European Commission 2001: 14).

[4] The interviews followed a semi-structured interview guideline, lasted on average 90 minutes and were recorded. To identify and analyse justificatory statements and polity references, a software for qualitative data analysis (atlas.ti) was used. The codebook is available on request.

[5] Such questionnaires are typically constructed as a wish list of proposals to enhance the democratic legitimacy of the EU provoking socially desirable answers and reflecting a general consensus on how a political order should look like in democratic terms, but missing the contentious issues that were raised in the constitutional debate. Closed questions may be also problematic because the given categories may derive rather from the scientist's than from the interviewees' world, even if the respondent is an expert concerning the research question (Kromney 1995). Furthermore closed questions are criticised for possibly enforcing opinions on the respondent even if the latter has none.

discourses and framings of the relevant actors involved in the process of negotiating the democratic legitimacy of the EU. The expert interviews are structured in a way to give our respondents the opportunity to comment freely on the issues raised by EU constitution-making and to develop and expand their views on the legitimacy of the EU. For that purpose, each interview covers particular thematic blocs related to organisational features, strategies and activism, European networking and contention, preferences for institutional/constitutional reform and general perceptions of legitimacy. Answers are not prompted through interrogation but have to be deduced from the respondents' individual way of making sense of Europe.

Our content analysis is based on the assumption that civil society representatives make use of the interview situation to contend policy choices, select particular justifications, and develop and test out ideas about the legitimacy of the EU. The units of analysis are the statements that mark an individual position in constitutional debates or that challenge the position of others. Argumentative strategies and justificatory practices were identified in statements, in which respondents contested EU constitution-making in terms of particular interests, contextualised values or universal rights (research question 1). These justificatory statements in political contention were distinguished from legitimatory statements, in which respondents underlie certain images and ideas about the desirability of particular polity designs and the allocation of democracy (research question 2). In contrast to classical discourse analysis which inductively searches for hegemonic frames (Ferree et al. 2002), our interviews were used as a deductive testing of legitimacy beliefs related to three model assumptions about the allocation of political authority and popular sovereignty of a European constitutional order. References to polity models were singled out in the respondent's use of metaphors, images, key words and lines of arguments (Gamson and Modigliani 1989). The content of these references was thus recorded inductively.

The contentiousness of EU constitution-making

The contentiousness of EU constitution-making by German civil society representatives is pre-structured by the sectoral logics of our case selection. CSOs in the field of consumer protection are expected to enter interest conflicts and to rely on instrumental justifications to defend their cases. Religious organisations will most likely contend particular values and traditions and make use of contextualised justifications. Finally, gender organisations fight for justice and rights and will emphasize universal justifications in relating to the EU and its constitutional project.

Activists from the field of consumer protection had – as predicted – the highest affinity to the instrumental logic of contention in expressing public demands and opinions on the EU (46 per cent of all justificatory statements coded; see Table 2), while this contentious logic was less prevalent in the interviews with activists from religious and secular groups (23 per cent) and gender equality groups (31 per cent). The share of value justifications was highest among activists from religious and secular groups (33 per cent) followed by gender equality groups (11 per cent) and rather marginal references by representatives of consumer protection (4 per cent). References to universal normative principles accounted for half of all codes and ranked highest in all three policy fields. As anticipated, this logic of contention frequently occurred in relation to claims for gender equality (58 per cent). However,

contrary to our expectation, justificatory statements relating to this argumentative mode were also most often used in the other two sectors (49 per cent in the field of consumer protection and 45 per cent by religious and secular groups, see Table 2).

Table 2 Distribution of Justificatory logics according to policy fields

	Consumer protection	Religion and Secularism	Gender Equality	Total
Instrumental justificatory logic	46%	23%	31%	32%
Contextual justificatory logic	4%	33%	11%	18%
Universal rights based justificatory logic	49%	45%	58%	50%
	100% (n=179)	100% (n=243)	100% (n=172)	100% (n=594)
Number of interviews included in frame analysis	7	11	8	26

The justificatory logics applied by civil society representatives allow us further to conclude on the evaluative – critical or affirmative – dimension of constitutional contention. Instrumental and contextual justificatory statements are brought forward primarily in an affirmative way. The constitutional development of the EU is positively evaluated in more than 70 per cent of all statements. References to universal rights and democracy, in turn, are more frequently used to express dissatisfaction with the political reality of Europe. Such insufficiencies of the EU in terms of democracy and universal rights were expressed, in particular, by consumer organizations and religious organizations. The former supported the supranational re-allocation of political authority and control, while the latter defended an international regime of human rights against the closure of EU border and exclusionary policies. Respondents from gender equality groups rather chose to make positive reference to EU regulation (often in relation with gender-mainstreaming and antidiscrimination directives) as a way to contend the insufficiencies of national legislation in the field.

How can we explain this cross-sectoral prevalence of universal justifications in civil society contentions of EU constitutional choices? In its essence, this justificatory logic displays a tension between universal self-description and contextualised civic practice. In facing the EU constitutional experience, German civil society enters a new representative relationship as constituents of an emerging EU polity. This new role description as members of the polis and their conventional self-understanding as representatives of the cosmopolis needs to be reconciled. EU constitutionalisation is then taken up as an opportunity to consolidate universalism in time and space. Following this logic, national CSOs contest EU constitutional choices with an instrumental rationality that focuses on pragmatic modes of collective problem-solving within a particular polity (32 per cent) or to a much lesser degree, argue through a contextual rationality in defence of particular values and in delimitation to the outside world (18 per cent). As heralds of a cosmopolitan utopia, national CSOs see themselves as citizens of the world, who contest solidarity, democratic participation and political legitimacy beyond the particular polity.

When referring to a transnational community of interest, as in the case of consumer protection, national civil society representatives reflect the particularity of the respective problem-solving setting in relation to possible global solutions. When referring to a transnational community of values, as in the case of religion or European secularism, they call for global solidarity and shared humanity. When referring to a transnational community of rights, as in the case of gender justice, they

defend the unconditional rights of citizens as humans, which have no necessary allegiance to the particular polity in question. What this means is that civil society activists, even if predominantly committed to problem-solving or to the defence of values, express a kind of 'cosmopolitan ethos' that is translated into a unifying style of discourse and justifications that are supportive of universalistic ideals. Contention within the European space about shared problems and values must therefore be seen as continuous with the world and not as closing off democratic practice within a particular institutional setting. Civil society's cosmopolitan self-understanding overtakes the sectoral logics of contention as well as the particular polity, in which it is put into practice.

In observing the logics of contention, we can thus conclude that national, European and global civil society are continuous. Civil society activists do not see themselves as representing membership, they also avoid giving priority to the national community even though their organizations are nationally based and have a national membership structure. The representative claims rather denounce the liberal account of civil society as the site of particular interest representation and rely on the demand of solidarity from all to the realisation of the common good. As a herald of cosmopolitanism, the activists can contest 'ethnocentric (nonuniversalist) nationalism and "exploitative" (inegalitarian) capitalism' (Boli and Thomas 1997: 182). This cosmopolitan self-understanding has an integrative force distinguishing civil society from the representatives of regional, national or private interests. Accordingly, gender equality organisations refer to their constituency as 'women', religious groups frame their constituencies broadly as 'believers' but more broadly can also claim to represent the interests of all human beings, with special concern for the underprivileged and marginalized. Secular organizations calculate the number of non-baptized as their potential constituency or all those with a basic understanding of humanism. Consumer organizations emphasize that literally everybody can be considered as a consumer and CSOs can thus claim to speak for the public interest, or as one activist put it: 'We are the advocate of the environment and the consumer' (Greenpeace).

We can thus say that through their justificatory practices, our respondents 'stage' civil society in a particular way. Their references to civil society as the enactment of cosmopolitan solidarity and justice are part of a performance in which criteria of appropriateness are different from those that hold for state actors, organised interest actors or simply self-interested citizens (Eder 2009). At the same time, this enactment of the 'civil society script of appropriateness' through 'civil society performance' needs to be contextualised in time and space. It unfolds as 'civic practice' that needs to relate to particular addressees: political institutions as well as localised audiences. Our interviews suggest that references to Europe are seen as a promising solution to this necessary accommodation of civil society's cosmopolitan vocation with contextualised civic practice. In this sense, our survey gives evidence of an innovative way of 'staging' civil society by opening a transnational field of contention in which the normative validity of an old script can be confirmed and re-established.

This dominant mode of cosmopolitan self-description of civil society representatives has consequences for the ways European civil society can be built from above. European civil society building is not necessarily linked to EU polity-building and does not necessarily strengthen the allegiances to the emerging EU constitutional order. In constituting European civil society, the architects of the EU polity rather

provide the citizens with good arguments to perceive themselves as citizens of the world (Delanty and Rumford 2005: 182). A potential source of conflict is opened by two opposing notions of civil society. The official approach to European civil society is relying on a liberal understanding of civil society as a space of contested interests to be channelled and aggregated at the European level (Kohler-Koch 2007). Civil society representatives, however, tend to dissociate themselves from this ascribed role description. They do not want to be put in a functional relation to the decision-making bodies of the EU, but rather display their independence and their cosmopolitan attitude in defence of justice, solidarity and shared humanity. There is thus not only, as Kohler-Koch and Quittkat (2009) note, a contrast between the Commission's liberal stakeholder approach to civil society and the mainstream scholarly understanding about what constitutes civil society. There is, above all, a contrast between the official Commission approach and national civil society representatives' self-understanding who do not see themselves as stakeholder and interest representatives but rather as forerunners of cosmopolitanism.

Last but not least, this cosmopolitan attitude of German civil society representatives might also account for the low level of contentiousness of EU constitution-making in the national setting. The European civil society becomes visible through claims that call for solidarity and discursively create a common good. Claims for a European civil society within a constitutionalised European polity are part of a consensus seeking strategy that unites national civil society representatives with European institutional actors of various kinds (Caporaso and Tarrow 2008). The European civil society is thus linked to a joint performance of institutional and civil society actors in staging EU democracy. In the following section, we explore how this need of accommodating the cosmopolitan vocation with a contextualised 'civic practice' gives rise to particular perceptions of legitimacy of the EU polity.

Perceptions of legitimacy

The preceding analysis of the logic of contention revealed that civil society organisations in all three policy fields primarily refer to what could be called a 'civil' or universal mode of justification in which democracy, justice, rights and the common good for all are the basic referents. In our interviews, we now find ourselves facing the following question: how is the universal social bond as a specific attribute of civil society activism and contention empowered within a particular legal and institutional setting? If civil society representatives are to be found as one of the main promoters for the reconstitution of democracy, the question is what kind of political order is seen as valid and legitimate for the EU.

The nation state has provided the classical solution for accommodating the solidarity of all and allocating political authority and control. Our respondents can ideally opt for the continuation of this contextualised 'civic practice' at the nation state level (a), for its expansion at the supra-national level (b), or for its re-invention through flexible governance arrangements between the national, European, and global level (c). We assume that the national, supra-national and post-national solutions for the contextualisation of civic practice are used as reference points by civil society representatives to mark their positions in EU constitutional debates and evaluate the polity options. In the case of a) national civil society would claim for autonomy in expressing the popular will of a national constituency. As such, it would empower and control national government in delegating competences to the EU in restricted policy areas

and would be a chain in the auditing of the efficiency and functionality of EU governance designs. In the case of b) civil society would be detached from its nation state base and would claim allegiance to a European popular will and identity. As such, it would contribute to the making and legal enforcement of EU law and would be a chain in the direct legitimation of a European federal polity. In the case of c) civil society would detach itself from the demos and recur instead to universal principles of a larger cosmopolitan order. As such, it would give preference to open and flexible governance networks in which NGOs, IOs and democratic governments take part as equal partners in international or European law making processes.

Legitimatory beliefs expressed by German civil society activist with regard to the desirability of a European political order are of course not coherently expressed along these templates. Practical legitimatory discourse is rather marked by the co-existence and pragmatic re-arrangement of national, supranational and postnational solutions. In the EU multi-level system this implies that preferences for the allocation of political authority do not necessarily correlate with preferences for the allocation of popular sovereignty. Civil society representatives often defend a strong supranational state-like entity but tend to disregard the popular elements of democracy (like the question of common identification and belonging or the parliamentarisation of the EU). Alternatively, they are frequently found to emphasize global rights and justice but nonetheless opt for political centralisation and exclusive decision-making compe-tences. In the following, we will refer to this dominant attitude expressed by German civil society as 'selective federalism'. It points to a strong alliance between civil society and national as well as supranational authorities in participatory designs of gover-nance, while downplaying the popular and representative channels of democracy and disregarding its identitarian prerequisites.

More specifically, our respondents across the sectors expressed a clear preference for the federal model of allocating political authority at the European level (71 per cent of all statements that expressed polity preferences) and only to a minor degree felt it necessary to defend national democracy against the EU (14 per cent), or to promote a cosmopolitan order (15 per cent). The notion of a supranational polity is thus a dominant feature of German civil society legitimatory discourse on the EU in the three sectors analysed. The European Union is regarded as a state-like entity to which on the one hand, the nation states should delegate more and more competences, while on the other hand, the EU also needs to generate democratic legitimacy through the guarantee of rights and social benefits.

> It is in the nature of things that more competences are transferred to Brussels. […] Until now the EU is not a federal state, I would say, but steps are taken in this direction. And it must be this way - otherwise what should it be? Otherwise, we would merely have an economic community
>
> (ProChrist)

The preference for a federal Union is clearly expressed in the evaluations of polity options, where respondents embrace the supranational and cosmopolitan project in a very affirmative way, while mainly rejecting the idea of a national contextualisation of democracy. The dismissal of the dominant intergovernmental solution promoted by the governments is understandable in light of civil society's self-understanding as the other side of the state and the market. The Audit Model is not seen as a viable alternative but rather as a regressive variant and a threat to civil society involvement.

Especially the religious and secular groups as the most 'cosmopolitan' among our respondents emphasize the disadvantages of intergovernmentalism and the confinement of civic and democratic practice within the nation state (53 per cent of negative evaluations). These concerns are partly shared by consumer protection organisations (37 per cent of negative references), while gender equality organisations take a more neutral stance.

Table 3 Evaluation and Distribution of the Polity Models within civil society discourse

| Policy sector | Evaluation and overall distribution | Polity Model | | | |
		Audit	Federal	Cosmopolitan	N total
Consumer protection	Negative evaluation	37%	1%	0%	
	Positive evaluation	16%	73%	60%	
	No/ambivalent evaluation	47%	26%	40%	
	Total N	19	85	10	114
	Total %	17%	75%	9%	
Gender equality	Negative evaluation	16%	0%	0%	
	Positive evaluation	5%	89%	71%	
	No/ambivalent evaluation	79%	11%	29%	
	Total N	19	83	17	119
	Total %	16%	70%	14%	
Religion/ Secularism	Negative evaluation	53%	4%	0%	
	Positive evaluation	12%	75%	84%	
	No/ambivalent evaluation	35%	22%	16%	
	Total N	17	110	31	158
	Total %	11%	70%	20%	
Total	Negative evaluation	35%	2%	0%	
	Positive evaluation	11%	78%	76%	
	No/ambivalent evaluation	55%	20%	24%	
	Total N	55	278	58	391
	Total %	14%	71%	15%	

The riddle that needs to be solved here is not so much the anti-nationalist orientation of civil society in allocating democracy, but rather why preference is given to the federal European order over the cosmopolitan order. To what extent can the expression of preference for a federal polity design for the EU be said to be inconsistent with the universalistic justificatory practice that became manifest in civil society contention of the relevant policy issues? Does this finding reflect a fundamental ambiguity of German civil society discourse in recurring to universalistic justifications while at the same time confining political order and democracy to the European space? Why does German civil society, instead of proclaiming a global political order, step forward as a strong supporter of the constitutionalisation of a federal Europe?

To explain civil society's unexpected support of European federalism, we need to analyze more closely the components of federal order emphasized in the interviews (Table 4).

Table 4 Components of a desired federal Europe emphasized by German civil society

Components	Consumer protection	Gender equality	Religion/ Secularism	N total	Total
Allocation of competence at the EU level	27%	38%	28%	147	32%
European citizenship and rights	24%	29%	26%	125	27%
Involvment of civil society in EU political process	21%	15%	15%	79	17%
European Identity	3%	3%	16%	35	8%
European Constitution as legal basis	6%	5%	7%	28	6%
Empowering the European parliament	8%	4%	4%	25	5%
Elections and referenda at national and European level	8%	4%	3%	22	5%
European Public Sphere	1%	1%	1%	5	1%
N Total	131	175	160	466	
	100%	100%	100%		100%

Civil society organisations across all three sectors prefer the allocation of decision-making authority at the European level over de-centralisation and subsidiarity: they demand a growing European authority, a better opportunity for European institutions to enforce policy decisions and to sanction deficient implementation at the national level. Finally, they support an extension of competencies even in delicate policy domains beyond the common market. The defenders of consumer rights and environmentalists expressed the strongest preference for market regulation and control through European authorities. Organisations in the field of equal opportunity plead for a stronger EU commitment in the area of social policy and labour market policy. Religious and secular organisations stress the importance to expand EU competencies in social policy and in the Common Foreign and Security Policy.

Civil society representatives did not only argue in a functional way acknowledging the superior capacity of problem-solving by shifting competence to the supranational level. The federal Union is also defended by explicit reference to a shared destiny and solidarity among the Europeans. This includes a notion of membership to a political and social community. Foreign nationals (consumers, Christians or women in other member states) are addressed as co-citizens whose political, civil and social rights should be granted at the European level (27 per cent of all positive references to the federal model). The strengthening of European citizenship is thus seen as a necessary complement to the re-allocation of authority at the European level and the Constitutional Treaty is strongly criticized for not complying with these standards (only 35 per cent approval of the status quo). Special emphasis is given to the promotion of social rights, which is accentuated as the truly innovative part of the European Charter of Fundamental Rights[6], implying a will to go beyond universal rights and 'to foster a 'thicker' sense of Europeanness.

In our case, CSOs perceive the guarantee of social and political rights at the European level as a necessory step to confront the general cut back of welfare state services at

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[6] The Charter's chapter 4 (Solidarity) includes rights concerning aspects of the working life, the prohibition of child work, protection of the Family- and professional life, right of access to welfare services, health protection, consumer protection and environmental protection.

the national level. A protectionist European social model is favoured as an antidote to global capitalism and the liberalisation of markets, while at the same time it is recognized that a growing national interdependence is securing the welfare of the citizens. The call for an expansion of social and political rights as elements of a federal European political order can be interpreted as an adjustment of principled cosmopolitanism to a contextualised citizens' practice. The civil society script claims universal validity but civil society performance needs to be institutionally re-embedded. The Protestant Church in Germany (EKD) gets to the point when stating: 'one can achieve more at the European level than at the global one. When you try to launch a topic internationally, where could you start? It will be much more promising to use the European level.' For German civil society representatives, the advocacy for a federal Europe is therefore not seen as inconsistent with their cosmopolitan vocation. The European Union makes it possible for them to insist on the validity of cosmopolitan principles while turning to more pragmatic solutions of policy involvement and participation. The European constitutional moment provides precisely this opportunity for the institutional re-embedding of civil society practice and performance from the discredited national context to a new European federal order.

While German civil society activists appear to agree widely on the promotion of a federal European state order with central decision-making competences to be allocated at the EU level, they remain more ambivalent with regard to the question of democratic scrutiny and control. The federalist agenda is picked up rather selectively, when it comes to the strengthening of parliamentary representation in the EU. Civil society's concerns are understandably more about their own empowerment within the emerging constitutional order of the EU and the strengthening of participatory elements against the traditional components of a representative order. Partly, this disregard of parliamentary representation also reflects a preference of technocratic governance arrangement against popular democracy.

A similar attitude of 'selective federalism' is also displayed in the references to a shared identity of the Europeans, which, on the one hand needs to be recognized as a necessary ingredient of a supranational federal order but, on the other hand, is rather downplayed in its practical relevance. While civil society representatives in the field of consumer protection and gender equality hardly make any reference to a common European identity, the promotion of a European identity is mainly taken up by religious and secular groups. Both are not campaigning, however, for a distinctive Europeanness, that needs to be set off against the rest of the world but rather defend the European community of value in light of its potential to overcome nationalism. A European identity is thus evoked in strictly inclusive terms to define commonness and internal cohesion of Europe against the immanent threat of re-nationalisation (the audit model) and not exclusively to demarcate Europe against the rest of the world. Our respondents apply here a minimum notion of collective identity, a European community of values that embraces principally the elements of social justice and civicness:

> I suppose, it is a question of Europe as a community of values. […] The social dimension is one important question. Europe should become more social, this is our desire. [...]: fairness, social justice, liberty and beyond, I would say, not an indifferent crowd which is not able to agree on ethical questions at all.
>
> (DBK)

Instead of demarcating a particular historical or cultural space, CSOs discuss the emergence of a European community based on an open political culture and democratic procedures. The defenders of a European value community (interestingly both churches and secular groups) are thus united by these references to constitutional patriotism: According to the Humanist Association Germany, the political 'Leitkultur', the hegemonic culture in Europe, consists of 'certain ideas or certain democratic procedures to interact respectfully.'

The federal Union that is envisaged by German civil society is in this sense different from the template of the federal nation state that materialized in some parts of Europe in the process of nineteenth century nation building (Rokkan 2000). Civil society's perceptions of legitimacy of the EU bring in a notion of stateness without nationness. They embrace the legal and institutional infrastructure of the nation state but not its cultural heritage. A European tradition or history is notably not taken up as the basis of the political union. Unlike the Federal Republic of Germany, the European Union should be enabled to unload the burden of history. It would be based on a reconciliatory force to unite the diversity of national traditions. The EU setting would thus be post-national and the persisting plural identities would be significantly constrained by the necessity to respect diversity and cosmopolitan values. In this sense, civil society supports the European mode of counterbalancing the particularity of collective identities by reflexivity, which is displayed in the discursive references to the 'unity in diversity' of the shared political space of Europe (Delanty and Rumford 2005).

Conclusion

Against the mainstream of European civil society research and its focus on participation, partnership and good governance, this article has introduced a different notion of civil society as 'social constituency' in relation to the negotiation of the legitimacy of an EU constitutional order. Instead of analyzing the projection of 'good civil society' by the EU, we therefore turn the attention to the projection of 'good and legitimate governance' of the EU by civil society representatives in the Member States. This includes the self-perception of civil society actors as active members in the making of the legitimacy of a European order. We were thus able to address the question of how civil society is modelled as a constituency that a) raises its voice within the contentious field of EU constitutionalisation and justifies its claims for participation and membership and b) proclaims a particular notion of political order as relevant and legitimate for the EU.

The contention of EU constitution-making

Civil society representatives are not the carrier of an increased contentiousness of the EU. Our respondents were mainly supportive of the EU constitutional development. The current political structures of the EU and the constitutional process were rarely contested. In this sense, our research does not back the rethinking of the dynamics of European integration in terms of a post-functionalist theory, in which social forces come to the fore and a new politicized logic of European integration applies (Hooghe and Marks 2008). National civil society representatives rather tend to support functional integration in terms of the creeping Europeanisation of sectoral policy fields. By applying universalistic justifications, they preferred to keep the salience of

European politics. A possible contestation of EU constitution-making within the national arena along ideological or identitarian lines was not supported by civil society. National civil society organisations are, above all, not the backbone of a new counter-movement against European integration. Instead of being a catalyst of societal discontent and protest, becoming engaged in a politicized logic of communicating European constitutional choices, or expressing an anti-elitist, alternative agenda, national civil society representatives tend to support functional and technocratic solutions. Critically, they could be said to apply the same logic of no-alternative towards the deepening and widening of European integration that gave rise to popular scepticism with regard to the EU constitutional project (Brunkhorst 2007).

The representation of legitimate order

German CSOs express a clear preference for the federal model of allocating political authority at the European level and enforcing political equality and participation through citizenship and social rights. They consider the components of a federal democratic order to be applicable and desirable for the institutional-constitutional design of the EU. Central demands converge across sectors around three components of such a federal democratic order:[7] First, the respondents support the continuing shift of competences and the allocation of decision-making authority to the European level; in short, they endorse the role of a strong supranational government. Second, civil society representatives demand social and political rights at the EU level and criticise the current lack of it; in short, they call for a strong European citizenship. Finally, civil society representatives emphasize their own role as interest mediators and legitimate partners of the new supranational authorities; in short, they promote the idea of a plural stakeholder-associational democracy that should become applicable to the EU. The importance that is given to social rights in civil society legitimatory discourse indicates the willingness to foster a 'thicker' sense of Europeanness beyond human rights universalism and to ascertain the solidarity of the European citizens in the establishment of a European welfare state. The federal Europe is thus seen as the best possible and most legitimate solution to accommodate their cosmopolitan vocation with a contextualised 'civic practice' in a defined polity.

By expressing this clear preference for a European federation, German civil society activists are at the same time a strong opponent of a contextualised version of national democracy and of the 'regressive' variant of intergovernmental cooperation between fully sovereign national democracies. In representing not the particular demos but the common good, they believe that the nation and democracy can and should be decoupled. On the other hand, German civil society activists are found to be rather indecisive with regard to the promotion of the 'progressive' variant of human rights universalism empowered through multilateral and flexible cooperation between state and non state actors in international legal and institutional settings. This can be interpreted as a trade-off between principled universalism and the practical accommodation of civil society claims within the institutional setting of the EU. From the civil society perspective, the effectiveness of EU partnership governance depends on the strong regulative capacities of supranational institutions and the possibilities of legal enforcement. These features encompass a certain community of values, democratic procedures and a common political culture.

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[7] These three components account for 75 per cent of all indicators within the positive framed federal model.

Locating German civil society within the representative field opened by EU constitution-making (see Table 1) we can thus conclude that in spite of sectoral divisions and the lack of common strategies, there appears to be a shared role understanding of representing the constituency of a new kind of democratic polity. By emphasising the ideal model of a European federation, civil society activists ultimately support the idea of a political community against the preservation of the mixed character of the EU as a union of peoples and states. The European citizenship narrative is consciously taken up to encompass the mutual recognition among European people, and not just the affirmation of individual rights. The continuous reference to political and social rights in the interviews shows the importance of embedding the universal rights justificatory logic in a particular polity. Institutional and constitutional anchorage is needed to unfold a new citizenship practice and to expand the civic, social and political rights of the European citizens. At the same time, the federalist agenda remains incomplete and undetermined with regard to the allocation of popular sovereignty, the possibilities for the development of a European public sphere and a shared belonging of the European citizens (see Table 4). We can further assume that this indeterminacy of 'selective federalism' opens ways towards substantial powers of discretion in strategically playing with the open legitimacy question of the EU.

In developing further this research agenda, the same classificatory scheme can be applied for measuring differences in perceptions of EU legitimacy across countries. A survey of constitutional preferences expressed by British civil society organisations operating in the same sectors indicates similar preferences for the increase of input legitimacy of the EU and the allocation of decision-making competences at the supranational level. However, British respondents are found to be biased with regard to expressing support for the European constitution and prefer a more pragmatic approach towards the EU putting less emphasis on the relevance of democratic legitimacy (Firmstone 2008). There is thus sufficient evidence for assuming that sectoral interests converge among European civil society groups in promoting efficient legislation at the EU level and supporting strong institutional designs of participatory governance. Yet, there is also substantial scope for variation and country specific differences in expressing preferences for EU constitutional designs. The strong support for a federal constitutional order of the EU expressed by German civil society groups is rather perpetuating the specific German elite-consensus on European integration (Jachtenfuchs 1997; Diéz Medrano 2003). From the perspective of German civil society, the federal model might be seen as a compromise with regard to unaccomplished cosmopolitanism. It offers multiple opportunities to participate in the decision making process. It is more open and transparent than the exclusive intergovernmental model and more formalised than a horizontal poliarchy of governance. The irony of the more recent history of the failure of the constitutional project is that by making these concessions with regard to the validity of the utopian vision of cosmopolis, German civil society has turned to become even more utopian, when it decides to insist on European federalism.

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