

Towards an EU Constitution: Cooperation of Different Political Cultures

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In this panel we will be dealing with structural problems and structural solutions. I will present the point of view of Europe, taking a closer look at the constitutional debate within the European Union. Is there really such a close connection between the constitution and the structures? This is my central question: Do constitutions influence the structural architecture of government actions or vice versa? Do the government members, orientated towards efficiency and success, develop their own structures autonomously?

I shall present my thesis to you in three short steps. First, I will explain the political importance of a constitution in general. Secondly I will give a short outline of the governmental structure of the European Union at the moment. And last but not least I shall point out the chances of a reorientation of these structures by a constitution.

Constitutions always contain two aspects: an instrumental one and a symbolic one. On the one hand they are designed to be efficient and to have a practical balance of powers. In that aspect they are rather instrumental. They guide and organize the competencies and structures of actions concerning political decisions in an almost mechanical way. Constitutions designate who makes these decisions, they outline the proceedings, they control the politicians and they impose sanctions on irregular political actions. This shows the rather pragmatic, instrumental and also partly mechanical character of constitutions. The instrumental character of a constitution assures citizens against uncertainties; it regulates the responsiveness of politicians and it ensures the attribution of success or failure. In other words it secures the accountability which – in theory – is so important for democracy. All this defines the instrumental, formally codified and practical character of constitutions.

On the other hand constitutions do not only have the power to make regulations, they have also a symbolic character. This is how the intentional programme of constitutionalism presents itself. Every society and every form of government holds very specific intentions and programmes which reveal themselves in the constitution. These intentions are “symbolically” represented in the constitution, which means that they are not necessarily stated explicitly. They are often implied and therefore only visible if one reads between the lines of a constitution. Nonetheless these implications are very important and functional. Only in this symbolism do citizens see themselves and thereby recognize the constitution intuitively as their own. And only if this happens do citizens accept constitutional politics as

a legitimate policy of their government. So, traditionally this symbolic aspect of a constitution represents the political culture of the people who are subject to it. If this symbolic or intuitive aspect of a constitution is missing, its instrumental aspect – its practical structure – may still be highly efficient and its decisions very functional. Without the symbolic aspect, however, a constitution will not be able to bring forth any legitimate decision or any kind of political integration. The difference between constitutional structures and structural arrangements, as in any sort of statute or international treaty, is exactly this integration of the citizens.

The focus of the current discussion about a constitution for the European Union concentrates on this aspect of political symbolism. The instrumental regulation of political cooperation amongst the European nations is already set down in the treaties of Maastricht, Amsterdam and Nice. However these three treaties are mere continuations and reformulations of the muddling-through of years before. They have not gotten rid of the symbolic character of the early European Union yet. Actually the exact opposite is the case: In these early treaties the symbolic content and the political culture of earlier European politics lives on. So this leads us to question as to what the symbolic policy of the early European Union and its predecessors was like.

Political regimes, or more specifically those political agents which found new regimes or new policies, always refer to previously made experiences. This is not only easier, it is also practical and very plausible. European politics have always been organized as crisis-intervention regimes from their beginnings until the late 1980s. National governments handed some of their national politics over to the European offices, who in return acted on their behalf. European administration partly took over national sovereignty and relatively autonomously determined national policies in Europe. This political structure, this polity, was what all nations wanted: It effectively coordinated transnational agreements, developed new political strategies and, at the same time, discharged the national governments of their responsiveness and accountability concerning these policies. The structural model on which this policy is based, and from which it has been step-by-step developed, was known under different names in different nations. In the United Kingdom it was called “Government by Reports”, in France it was called “Regime des decretes”, and in Germany it was called “kommissarische Regierung” (“government by commissaires”). In the tradition of the respective nations these regimes had always been authoritative and modernising regimes, either in colonies, such as British colonies in India or French colonies in Algeria, or in quasi-colonial politics inside their own nation as in the German tradition. These regimes worked without official legal control, but instead they worked on the basis of an administrative policy based on executive orders from the national governments. These regimes were highly effective. But where did their symbolism lie?

They were symbolically the regimes of occupying forces rather than ones of an elected government, foreign rule rather than democracy. They could be legitimate for a while, as the success of modernizations and the advantages of a new structural policy showed, but on a long-term basis they were not able to guarantee the integration of the citizens. Political structures like this were well suited to legiti-