3

constructivism and sociological institutionalism

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introduction

This chapter demonstrates the close interdisciplinary relationship between constructivist political science and organizational sociology. What is now commonly called the 'constructivist turn' in International Relations theory and, subsequently, in studies of European integration, builds on an interest in 'the social' among political scientists. This interest follows from the observation that many analyses of institutions tend to be 'undersocialised in the sense that they pay insufficient attention to the ways in which actors in world politics are socially constructed' (Wendt, 1999, 3–4). This has produced a new focus on the input of social facts (Ruggie, 1998) and the influence of social practices (Wendt, 1987; Koslowski and Kratochwil, 1994), and has facilitated an enhanced understanding of the social construction of European integration (Christiansen *et al.*, 2001). As I argue in this chapter, this focus on the social represents a conceptual innovation of paradigmatic reach in political science, and offers an important tool for analysis of European integration.

The chapter summarizes the theoretical background from which constructivist and sociological institutionalist approaches have emerged and points to some important examples of empirical research on the EU where they have proven particularly insightful. It begins by addressing the importance of institution-building beyond the state, a core research object for those who study the EU. It then goes on to identify key elements of constructivist and sociological institutionalist approaches. The final section illustrates the application of these approaches in empirical research on EU enlargement and European constitutionalism.

institutions as object of analysis in european integration research

Institutions can be defined as formal and informal procedures, routines, norms and conventions, embedded in the organizational structure of the polity or political economy (Hall and Taylor, 1996, 938). It is noteworthy that constructivists and sociological institutionalists tend to focus on soft institutions, such as ideas, social and cultural norms, rules and routinized practices. Institutions have become important objects of investigation for analysts of European integration, in part due to theoretical spillover from International Relations theory and sociology. Many working within these disciplines share an interest in understanding the expanding processes of governance beyond the nation-state (Jupille *et al.*, 2003). Another important explanation for the importance of institutions in this field follows from the fact that the Europolity's design fundamentally depends on supranationally-constructed and transnationally-evolving institutions. European integration challenges the realist assumption of an international society of independent states governed by the principle of anarchy (Bull, 1977). It raises questions about states' interest in formal institution-building and cooperation, and about the influence exerted by these new institutions on state behaviour (for an overview see Cram, 1996 or Cini, 2003).

It is possible to observe some other general trends in how those who do research on European integration have approached the study of institutions. At first sight, institution-building in the integration process appears to rely decisively on the founding treaties and their periodic revision at intergovernmental conferences. Yet, while the acts of treatymaking and revision are always submitted to a final decision within the institutional framework of the Council (which grants voice and vote to the signatories of the treaties), the actual substance of treaty revisions is usually discussed, conceptualized and prepared by other European political organs. Since the Maastricht treaty negotiations, groups and bodies, including the Commission (as guardian of the treaties), the Committee of Permanent Representatives and, increasingly, the European Parliament, lobby groups and interinstitutional groups,[1] have gained considerable influence over this process. As such, it has not only become important to produce factual accounts of institutional change relating to the four central organs of the EU – the Council, the Commission, the Court of Justice and the Parliament. It has also become important to explain which actors' interests were most decisive in the process; what motivated changes; what ends participating actors pursued; and what consequences institutional change entailed for power relations. In other words, analysis of the role of actors, processes and organizational structures has been an important theme in the field, particularly with a view to understanding processes of interest aggregation, identity-formation and the transfer of action potential.

approaches to institutional analysis

It is helpful to distinguish three main types of institutional analysis: agency-oriented rational actor models; structure-oriented approaches; and interactive approaches. The first of these was discussed fully in Chapter 2 of this volume and will, therefore only be briefly addressed here. I will elaborate on constructivism and sociological institutionalism in more detail. It is worth noting at this point that sociological institutionalism, or modern constructivism, is a structural approach, while what might be called reflexive constructivism, strives to address interactivity and hence belongs to the third type of institutional analysis. The importance of distinguishing between these approaches lies in the choice of dependent variable. Modern constructivists, drawing on organizational sociology, are interested in studying state behaviour that is guided by norms, with these norms as intervening variables. In contrast, reflexive constructivists are interested in understanding the *meaning* of norms. Thus, institutions are assigned different roles according to different underlying theoretical assumptions about political behaviour. They may be viewed as enabling, in that they entail an extension of behavioural options, such as providing standardized rules (March and Olsen, 1998; Checkel, 2001b). However, institutions may also be considered flexible and changing in relation to context and practice, a conception which stresses interactive reasoning instead of behaviourist rule-following. In sum, differing basic assumptions tend to produce differing analytical frameworks, research questions and research designs.

agency-oriented approaches: institutions as strategic context

Agency-oriented approaches work with the assumption that rational interests inform strategic behaviour, on the basis of exogenous preference formation, independent of societal or cultural factors (Thelen and Steinmo, 1992, 9). Those who share this view assume that an individual's interest in increasing, stabilizing or, at the very least, maintaining power, motivates behaviour. This is based on the law that actor 'A' is motivated by her interest in wielding power over actor 'B'. The central research question posed by this approach is therefore directed towards identifying the condition 'X' under which that interest can be most effectively pursued.

Actor-oriented approaches (see, for example, Scharpf, 1999) rest on the 'individualism assumption' which 'treats individuals as the basic (elemental) units of social analysis. Both individual and collective actions and outcomes are explicable in terms of unit-level (individual) properties' (Jupille *et al.*, 2003, 12). Accordingly, it is assumed that institutions, such as international organizations, conventions, cooperation agreements, treaties or committees, are established in order to provide manageable information for political actors in decisionmaking processes. In other words, institutions are understood as providing a monitoring role. This view is based on the assumption that

institution-building is initiated as a consequence of actors' interests, and that it is, therefore, potentially reversible (Alt and Shepsle, 1990; Garrett, 1992; Garrett and Weingast, 1993). Examples of this approach in political science, and, to some extent, in economics, include game theory and negotiation theory (see, for example, Axelrod, 1984; Zürn, 1999; and Scharpf, 1988).

The actor-oriented approach has been challenged by work identifying the 'path dependent' impact of institutions on behaviour. Scholars have shown that the strategic pursuit of interests at one particular point in time may be constrained at another time through 'lock-in' effects. These effects are produced by institutions that were originally created to pursue the strategic interests of actors, whose interests were informed by material resources at time n (Pierson, 1996). A key problem emerges when the routinization of institutions beyond the time period in which they were considered appropriate and desirable ends up having a constraining impact on behaviour at time $n+1$ (North, 1990; Pierson, 1996). In other words, the reversibility of institution-building cannot be assumed. Research on European integration has documented instances of path dependence and lock-in effects, particularly during what I have described as the second and third phase of European integration (for further discussion see below; see also Wiener, 2003b; and Diez and Wiener, 2003, chapter 1).

structure-oriented approaches: institutions as guidelines for social behaviour

In contrast to agency-oriented rational actor models, structural approaches contend that actors are influenced by additional – structural – context conditions, which are created by social, institutional and/or cultural environments and/or mechanisms. Structures exert additional constitutive and/or regulative impacts on behaviour. Thus, while actors may behave in a power-oriented and rational way, it is also necessary to consider the influence of structure on interest and preference formation. These approaches seek to identify the structures that are relevant for action, recognizing both their stability and the critical junctures that may induce change. Rather than according primacy to the agency of individual and collective actors, they analyse the guiding and/or prescriptive impact of institutions on behaviour. From this point of view, 'institutions constrain and shape politics through the construction and elaboration of meaning' (March and Olsen, 1989, 39). Structure-oriented approaches are based on macro and organizational sociology (Powell and DiMaggio, 1991), which conceive of institutions as either aggregated 'rules' or as 'single standards of behaviour' (Finnemore and Sikkink, 1998, 89).

For these approaches, sociocultural factors matter for behaviour, even in the absence of legal or formal political organs. It is assumed that social norms guide behaviour, with social norms defined as 'collective expectations for the proper behaviour of actors with a given identity' (Katzenstein, 1996, 5; Finnemore and Sikkink, 1998; March and Olsen, 1998). Two types of institutions and their respective impact are often identified. On the one hand, international

institutions, such as the EU, are assigned the role of creating interactive spaces for elites who then take an active role in diffusing norms, ideas and values through interactions back in their respective domestic contexts. On the other hand, norms, such as human rights norms, may also be assigned regulative and constitutive influence (Risse *et al.*, 1999; Williamson, 2000; Mueller, 2004; Schimmelfennig, 2001; Wiener, 2004).

For scholars who study institutional change in the context of European integration, questions about the role of supranational institutions in diffusing and stabilizing the emergence of norms and routinized practices are of particular interest. For example, studies on the 'Europeanization' of citizenship norms or environmental standards, have demonstrated that norms entailing prescriptive rules emerge through processes of learning and diffusion in supranational institutions. Moreover, these norms are often diffused with the additional pressure of advocacy groups (Checkel, 2001b; Keck and Sikkink 1998; Sikkink, 1993). In other words, norms exert policy-changing pressure in the domestic contexts of the EU member states (Cowles *et al.*, 2001; see also Chapter 4 in this volume).

interactive approaches

A key feature of interactive approaches is the assumption that the interrelation between structure and agency is key. These approaches emphasize the role of social interaction, caution against the valuation of structure over agency or vice versa, and focus on the concept of intersubjectivity. Additional considerations are changing identities and their influence on preference formation (see Chapter 8 in this volume) and the analytical challenge of conceptualizing the mutual constitution of institutions and actor identities through interaction.

intersubjective approaches: institutions constituted through practice

Intersubjective approaches to institution-building have been of particular interest to the constructivist turn. In contrast to the rational actor approach, which perceives institutions as exogenous factors mobilized to further actors' interests in decisionmaking, intersubjective approaches question the analytical separation of institutions, interests and identities. In other words, these approaches start with the assumption that political action, identities and institutions are mutually constitutive. Institutions are not only assigned a regulative role in relation to behaviour, they may also constitute actors' identities.

Institutions, interests and identities relate to each other through 'communicative action'. This concept is drawn, albeit selectively, from Habermas (1981), and particularly from his ideas about communication as strategic action. From this perspective, communication produces an impact on soft institutions, such as norms. It is assumed that negotiators are ready to be persuaded by the better argument, brought to the fore through controversial

debate, that shared references are constructed by the process of arguing and bargaining in negotiating situations. Agreement on types of norms at the supranational level, then, follows the logic of arguing (Risse, 2000). However, according to this view, shared references are cut off from debate and from contestation about compliance conditions, standardized rules or general norms and principles that occur during processes of implementation. Insofar as these debates become crucial for successful norm compliance, this approach suffers from an 'analytical' gap, which separates analysis of interaction at the supranational level from the expectation of rule-following triggered by norm diffusion at the domestic level.

While this approach offers a helpful research platform for analysing supranational debates such as those on the Constitutional Treaty, it does tend to circumvent questions about the sociocultural origins of, or the generation of norms. The meaning of norms therefore remains undertheorized. It becomes disconnected from the very practices which, according to constructivists of all sorts, significantly influence norm construction and change. In other words, the social embeddedness of arguing about the level, validity and social facticity of norms is underanalysed. Yet, it is precisely this analytical appreciation of societal embeddedness – such as information about the 'customary' dimension of constitutional law – that brings crucial insights on the meaning of norms.

reflexive approaches: contested meanings of institutions

Reflexive constructivism borrows from the sociological argument about the dual quality of structures (Giddens, 1979). It adopts the idea developed by authors like Anthony Giddens, Pierre Bourdieu and Charles Taylor that structures are constituted by, and changed through, social practices. According to Taylor, for instance, 'the practice not only fulfils the rule, but also gives it concrete shape in particular situations. Practice is [...] a continual "interpretation" and reinterpretation of what the rule really means' (Taylor 1993: 57). From this perspective, it therefore becomes necessary for analysis to go back to practices that contributed to the creation of a rule if its meaning is to be fully understood. These practices also involve contestation by way of discursive intervention and imply an ongoing process of (re)construction.

International Relations scholars, in particular, have addressed the empirical problems posed by this type of research by focusing on discourse as the 'structure of meaning-in-use', and by conceptualizing discourse as 'the location of meaning' (Milliken, 1999, 231; Huelsse, 2003). Empirically, this focus involves studying social practices as discursive interventions, such as those in official/policy documents, political debates, and media contributions. Discursive interventions help establish a particular structure of meaning-in-use, which works as a cognitive roadmap and facilitates the interpretation of norms. This structure exerts pressure for institutional adaptation on all the actors involved. At the same time, discursive interventions referring to this

structure affect its robustness. It is important to note that this assessment of norms leads beyond a neo-Durkheimian perception of norms as social facts exerting structural impact on behaviour. It requires analysis of norms conceived as embedded in sociocultural contexts that provide information about how to interpret a norm's meaning in context.

In sum, reflexive constructivism assumes that norms possess a dual quality: they are both constructed and structuring (Wiener 2003c, 2004). Hypothetically, the meaning of norms evolves through discursive interventions that establish a structure of meaning-in-use. Successful rule-following therefore depends on the overlap of norm setters and norm followers' structures of references. It follows that studying social practices in context allows analytical access to the interpretation of meaning, which produces sustained compliance with norms. Understanding contestation also sheds light on the different meanings of a norm, which may eventually increase the probability of a shared understanding of that norm emerging.

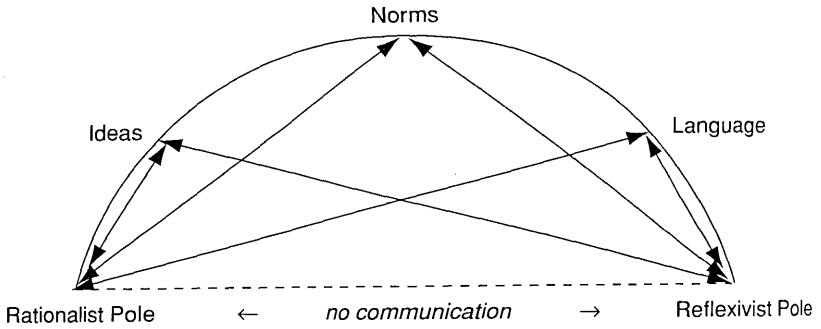## classifying constructivism and sociological institutionalism

In this section, I argue that constructivism is a theoretical position characterized, in metatheoretical terms, by a shared claim to theorizing the 'middle ground'. As Figure 3.1 shows, constructivist approaches mark a point above the baseline of a triangle connecting theoretically incommensurable 'rationalist' and 'reflexivist' standpoints.
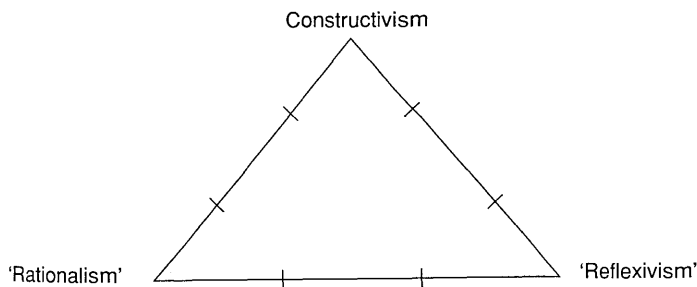
Source: Christiansen et al., 1999: 532.

Figure 3.1   Core theoretical positions

The 'constructivism' point of the triangle bundles approaches that are explicitly distinguished from the two corner baseline positions. As this section demonstrates, constructivists are, at least in principle, interested and able to communicate with either rationalists or reflexivists.

Figure 3.2   Establishing the middle ground

Constructivist approaches are distinguished from each of the two pole positions; establishing variation among constructivist stations. The semi-circle thus evolves according to the four following criteria: (1) Preference for ontology over epistemology; (2) Ontological preferences such as, for example, ideas, norms, language; (3) Distinction from pole positions; (4) Variation of methodological preferences.

One of the key features of the 'constructivist turn' is the development of research questions that seek to identify a communicative bridge between the two non-communicating rationalist and reflexivist poles. Different attempts to achieve this goal can be presented as 'stations on a bridge', as depicted in Figure 3.3. The stations represent the respective ontological *foci* of the various constructivist approaches: differing preferences for ontology over epistemology; degrees of differentiation from rationalist and reflexivist
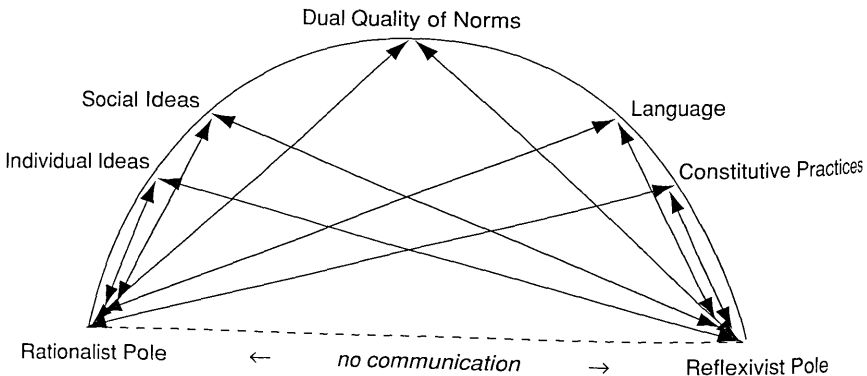

Figure 3.3   Stations on the bridge

positions; and variation in methodological preferences. (For more details on the 'station model' see Wiener, 2003c.) Nevertheless, all are characterized by a shared research interest in the influence and role of soft institutions, such as ideas, norms and rules, on the one hand, and/or sociocultural factors, such as identity, discourse, and language, on the other. These objects of study form the five stations represented in Figure 3.3, namely individual ideas, social ideas, constitutive practices, language, and (the dual quality of) norms. They are now discussed in turn.

individual ideas

The first cautious step away from the rationalist pole was taken by neoliberal institutionalists who defined ideas that were held to explain 'political outcomes' as 'beliefs held by individuals' (Goldstein and Keohane, 1993, 3). This approach, which has become important in foreign policy analysis (Goldstein and Keohane, 1993, 3), is based on the assumption that individual ideas or 'principled or causal beliefs' work as 'road maps'. While still working with the positivist assumption that interest formation is exogenous and based on material resources, reference to ideas is distinct from the research practice of the rationalist pole. According to Goldstein and Keohane (1993, 6), it is

> a challenge to both rationalist and reflectivist approaches. Although we concede that the rationalist approach is often a valuable starting point for analysis, we challenge its explanatory power by suggesting the existence of empirical anomalies that can be resolved only when ideas are taken into account. We demonstrate this need to go beyond pure rationalist analysis by using its own premise to generate our null hypothesis: that variation in policy across countries, or over time, is entirely accounted for by changes in factors *other than* ideas. Like reflectivists, we explore the impact of ideas, or beliefs, on policy.

The concept of intersubjectivity, and especially its implications for change in supranational and transnational norms, remains underexplored in this approach, largely because researchers have mainly analysed formal institutional change (for example, Katzenstein, 1993, 268; Sikkink, 1993, 166). Ideas are theorized as individually appropriated, rather than being understood as socially constructed reference points which, in turn, have social impact.

social ideas

Research represented by the second, social ideas, station in Figure 3.3 appreciates the role of ideas, norms and rules forged within a social environment and thus takes a more definitive step towards the constructivist turn. Ideas are understood as socially embedded. They represent shared reference points

that not only send the same message to different actors but which also cause the same behaviour among these actors. March and Olsen (1989, 26) have characterized this shared reaction to norms as the logic of appropriateness. That is, ideas are not exclusively situated in, or generated by, the brains of individual actors; they also involve a social structuring element. Thus, it becomes possible, for example, for researchers to analyse how different actors behave in different contexts (Thomas *et al.*, 1987; Boli and Thomas, 1999; Wobbe, 2000). This emphasis on ideas within a social environment brought with it a new emphasis on the constitutive and regulative dimensions of ideas, rules and norms. However, analysis represented by this station does not lose sight of the relationship between actors and social structures. As Thomas Risse notes, 'this means ... one can continue to study "beliefs" in terms of what is inside people's minds and simultaneously insist that these beliefs are representations and enactments of social and intersubjective culture' (Risse, 2000, 5).

This approach sees norms and social knowledge as constitutive for actors' identities. Yet while the principle of mutual constitution has had an impact on the perception of identities, interests and ideas at this station, the methodological and empirical focus is less on the emergence, than on the constitutive and regulative impact, of norms. Furthermore, the assumption that social norms are stable also tends to underlie this approach.

In line with these views, a growing research programme on the behaviour of actors in world politics has emerged which focuses on areas such as human rights, equal rights policy, education and the diffusion of administrative culture (Finnemore, 1996; Klotz, 2001). In addition, the new research focus on arguing and bargaining discussed above has had a considerable impact in consolidating a shift of analytical perspective. Above all, the logic of arguing focuses on the impact of agreement on the role of particular norms in international negotiating situations. It demonstrates that the contested validity of norms in negotiating situations and the implementation of norms in social contexts require mediating processes of socialization, learning and/or shaming by advocacy groups.

constitutive practices

Constructivist perspectives, located near the reflexivist pole in Figure 3.3, engage with reflexive sociology rather than organizational sociology and are thus more distant from the rationalist pole (Powell and DiMaggio, 1991). The core theoretical basis of this perspective is provided by Giddens' structurationist approach (Giddens, 1979). This approach has challenged traditional formulations of core concepts such as sovereignty, through a combination of de- and reconstructive analyses. Biersteker and Weber (1996), for instance, define sovereignty as a 'set of constitutive practices', and in so doing allow examination of the concept (and others like it) within the particular context where they emerged. As the authors explain, 'the modern

state system is not based on some timeless principle of sovereignty, but on the production of a normative recognition in a unique way and in a particular place (the state)' (Biersteker and Weber, 1996, 3).

Research on the social world relates to the ontologies of identity and social practices. It thus offers the bases for systematic assessment of variation in the process of state-building and identity-formation. Adopting the intersubjectivity premise, the constitutive practices station places the ontology of interaction above that of both agency and structure. Assigning such a central weight to interaction emphasizes the possibility of change, in contrast to the social ideas station's conceptualization of social facts, which draws on organizational sociology.

language

The next, or the language, station shares a focus on speech acts with the social ideas station. However, while the former is, in principle, interested in persuasion by way of arguing, the latter refers to language as not only descriptive, but also as social action (Kratochwil, 1989; Fierke, 1998; Diez, 1999a). For example, Kratochwil notes:

> our conventional understanding of social action and of the norms governing them is defective because of a fundamental misunderstanding of the function of language in social interaction, and because of a positivist epistemology that treats norms as 'causes'. Communication is therefore reduced to issues of describing 'facts' properly, i.e. to the 'match' of concepts and objects, and to the ascertainment of nomological regularities. Important aspects of *social* action such as advising, demanding, apologizing, promising etc., cannot be adequately understood thereby. Although the philosophy of ordinary language has abandoned the 'mirror' image of language since the later Wittgenstein, the research programs developed within the confines of logical positivism are, nevertheless, still indebted to the old conception. (Kratochwil, 1989, 5–6)

While acknowledging the guiding role of norms, this station emphasizes the constitutive impact of interaction. It is thus almost diametrically opposed to that of the social ideas station, which assumes that ideas are constitutive for identities. In turn, the language station argues that speech acts or discourses are constitutive for rules and norms in particular contexts (Fierke, 1998; Diez, 1999a and 1999b; Doty, 1997; Milliken, 1999). The securitization literature presents a good example of the constitutive role of speech acts as it assumes that security problems are constructed on the basis of speech acts (Huysmans, 1998, 527; Buzan *et al.*, 1998).

This concept of language as social action – and thereby constitutive for the emergence of soft institutions such as rules and norms – helps to draw a clearer

picture of the contradiction between the perceptions of the regulative role of ideas on the one hand, and constitutive role of ideas on the other.

dual quality of norms

The previous station moves on from the social ideas station, which represents scholarship more interested in norm stability and its impact on behaviour than on understanding the impact of norm flexibility. The final station on the bridge, the dual quality of norms station entails theoretical assumptions that have received comparatively less attention than those discussed in relation to the individual ideas, social ideas, constitutive practices and language stations.

Appreciating the dual quality of norms – that is their regulative and constitutive construction – continues to represent a conceptual challenge for scholars. In other words, full exploration of Ruggie's triad of the origin, role and function of norms (Ruggie, 1998) is still limited to the latter two aspects of role and function. In addition, the argumentative dimension of norm research demonstrates that apart from the problematic and complex issues of theorizing and applying the concept of intersubjectivity, the issue of contextual variation – that is, the multiple sociocultural contexts of norm emergence and implementation – also presents a conceptual challenge for work on norm resonance. This involves questions about the validity of norms across the boundaries of political arenas and about the role and assessment of life-worlds (Mueller, 2004) in the legitimation and contestation of norms.

Characterization of norm emergence as a *process* has contributed to the absence of analytical insights into the constructed quality of norms, such as the possibility that the meaning of norms changes and to conflicts that may result from different interpretations of norms in varying sociocultural environments. Empirically, this oversight affects research on long-term norm resonance in compliance processes, an area of particular importance for work on the EU given the salience of discussions about constitutionalization in transnational politics (Weiler, 1999b; Weiler and Wind, 2003) and the legalization of international politics.

The assumption of norm stability is problematic for research on norm resonance since norm change requires an understanding of the mutual constitution of practice and norms. In addition, it is necessary to mediate between international and/or transnational contexts on the one hand, and domestic contexts on the other. While current research on norm validity focuses on argumentation and bargaining during international negotiation processes, analysis of the arguing process is not pursued further into contested domestic contexts. It follows that norms entailing few prescriptive standards – such as so-called thin norms – will cause a broad range of possible norm interpretations. This enhanced range of norm interpretations may produce a large range of identifications with the norm, which in turn may create conflicts between norm expectation and norm substance.

Norm research, therefore, also needs to address the validity assumption of norms. In a given political context, the potential for norm legitimacy rises in proportion to the possibility for norm addressees to contest the meaning of norms. In other words, for a robust assessment of politics beyond the state, the stability assumption of norms as social facts, which entails standardized rules for behaviour cuts too short. After all, norms possess stable and flexible qualities; that is, they are constructed through social interaction on the one hand, and have a constitutive impact on behaviour, on the other. This dual quality of norms is documented in interdisciplinary work bringing together political science, law, sociology and cultural studies. In the next section, I offer two examples of how this approach may apply to analyses of the EU in the area of EU enlargement and European constitutionalism.

constructivist and sociological institutionalist perspectives on eu enlargement and eu constitutionalism

Before examining the insights of constructivist and sociological institutionalist approaches to these two crucial areas of EU development, it is necessary to identify different phases of European integration, phases which are distinguished by types of institution-building (Table 3.1), and to address associated research questions and theoretical approaches (Table 3.2).

Table 3.1   Three phases of institution-building

Phase	Type	Place	Dynamic	Institutions
I	*Integration* (more/less)	Supranational level	*Bottom-up*	Hard
II	*Europeanization* (more/less)	Domestic, regional level in member and candidate countries	*Top-down*	Hard/soft
III	*Politicization* (more/less)	Europolity; transnational spaces	*Trickle-across, bottom-up, top-down*	Hard/soft

Source: Adopted from Wiener (2003).

As Table 3.1 shows, it is possible to identify three types of institution-building in the process of European integration. The first type of institution-building is integration through supranational institution-building. The second involves Europeanization, or domestic institutional adaptation to European integration. The third type is associated with politicization, which involves a more complex process of sociocultural and legal institutional adaptation in vertical and horizontal dimensions.

As Table 3.2 shows, these types of institution-building roughly correspond to different chronological phases in the development of the EU and to the predominance of different research questions and theoretical approaches

Table 3.2   Leading research questions

Phases	Questions	Theoretical Approaches
I: *Integration*	**Why** institutions on supranational level?	liberal intergovernmentalism; neofunctionalism
II: *Europeanization*	**How** to adapt to institutions domestically?	multilevel governance; neoinstitutionalism
III: *Politicization*	**What** type of polity?	democratic theory; constructivism; critical approaches

(for more detail see Diez and Wiener, 2003, chapter 1). In the first phase, between the 1960s and mid-1980s political scientists, and in particular International Relations scholars, debated whether intergovernmentalist or neofunctionalist paradigms presented the best explanation of supranational institution-building. The second phase, between the mid-1980s and early 1990s, brought in scholars with a background in Comparative Politics, Public Administration and Public Policy. This research analysed divergence and convergence in policy implementation, as well as the diffusion of European regulations and standards. The third and current phase, beginning with negotiation of the Maastricht Treaty in the early 1990s, introduces a shift in institutional analysis. In particular, it has brought the normative question of legitimate integration once raised in the wake of the Treaty of Rome (see Haas, 1958) back onto the agenda.

Following the landmark treaty changes in the Maastricht, Amsterdam and Nice Treaties, and the nature of the post-Cold War and post-September 11 international environments, the central questions facing European integration scholars are:

- Which polity or which model of a political system to build?
- How far to go with enlargement, or where do the boundaries of Europe and its values lie?
- What type of constitutional framework is needed to regulate politics and in which particular arenas? Or, in other words, how to establish institutions with an input into subnational, transnational and global politics?

As the recent constitutional process testifies, many of those directly involved in EU politics are asking similar questions. According to one member of the European Parliament, for instance:

despite being agreed as international treaties, the treaties are something akin to the Constitution of the European Union. Therefore they accomplish

the role of a constitution. For me the question is not, whether Europe has a constitution, but *whether Europe has the constitution it needs*. That is precisely the question. That's what this is all about. And ... the answer is clear: the European Union does not have the constitution it needs.[2]

Addressing these issues will depend on how the three questions identified above – questions about the type of polity, the boundaries of Europe, and the relevance for particular political arenas – are answered. Various attempts to do this, such as those offered by the European Commission's 2001 White Paper on Governance,[3] and numerous proposals regarding the reorganization of European political organs, demonstrate the scarcity of conceptually-convincing and politically-feasible approaches to constitutional change. To lawyers, projects that aim to achieve the constitutionalization of the treaties, come as a surprise after years of integration through law. After all, constitutionalization has been an ongoing process for decades.

After the shift in analytic focus from the *politics* of integration, to *policies* of institutional adaptation (such as Europeanization) (illustrated in Table 3.2), students of European integration have been pushed to face the *polity* dimension. Questions of identity, democracy and security, amongst others, have been brought to the fore with developments such as the introduction of EU citizenship and the 'communitarization' of the Schengen Agreement abolishing internal border controls. Foreign policy challenges such as the Kosovo crisis, the 2001 terrorist attack on the World Trade Center and political crisis in the Middle East, have increased the challenges confronting the EU on the world stage. In addition, there have also been new questions to explore regarding the process of enlargement, with the new accession criteria settled in Copenhagen in 1993, and with increased pressure for institutional adaptation in candidate countries, European political organs and in existing member states.

The current phase of late politicization presents a context of complex institutional change, characterized by multiple processes of institutional adaptation. In addition to the bottom-up and top-down perspectives on institutional change indicated in Table 3.1, future-oriented debate over fundamental issues of political responsibility and constitutional design have taken precedence over day-to-day policy issues. As a consequence, the EU is now increasingly analysed as a political system. Furthermore, underlying security and financial interests informing the choice and definition of the Copenhagen accession criteria in areas such as minority policy, agricultural policy, visa policy, and fundamental freedoms also raised questions about the political constitution, leading principles and the value system of the EU as a polity. In this phase, legal work on European integration has gained in increasing importance for political science approaches and *vice versa*. The largely hidden link between 'integration through law' as an approach that offered explanatory guidance for lawyers during the first phase of integration,

on the one hand, and 'integration through policy', present in political science research during the second Europeanization phase on the other, should now be scrutinized with a new focus on 'integration through politics'.

I now turn to a discussion of democratic theory dimensions of the EU's transnational constitutional setting. Following James Tully's work (2002), the principle of contestedness is conceptualized as a normative perspective on constitutionally regulated institutions. This principle also follows the constructivist assumption of the dual quality of norms discussed in the previous section. It can be illustrated through two examples of evolving norms and their respective contested meanings in Europe: namely, European citizenship and the constitutional debate. I discuss both of these more fully in the rest of the section.

However, before I do so it is important to point out that both the discussions on European citizenship and constitutional debates elucidate the evolving meaning of soft institutions, based on discussions about norms, and thereby provide new ways of assessing the evolution of a democratic and legitimate process of governance beyond the state. It begins with an institutionally established safeguard mechanism for ongoing deliberation about the meaning of norms and rules. In so doing, it establishes an institutional framework that allows for a flexible and equal assessment of the facticity–validity tension, based on public participation. In other words, it offers a constitutionally-entrenched link between 'institutionalized deliberation and public debate' which 'must, indeed, interact' (Joerges, 2002, 146). Indeed, it is here that the Europolity's best and worst outcome may well be decided. In this context, the key problem in academic assessments of the constitutional debate follow from analytical bracketing, essentially omitting analysis of interactive social practices as constitutive for normative meaning. The result is a lack of information on the role of – controversial – associative connotations about the meaning of constitutional substance. In the process, the influence of intangible factors such as cultural resources, for instance, which are essential for generating norm resonance, remains blurred. While academic debate focuses on the discussion of different constitutional models and their substantive aspects (which model is considered legitimate?), shared constitutional norms inevitably acquire varying interpretations through associative connotations that are developed within different sociocultural contexts (which meanings of a norm and which expectations?). It is ultimately the associative connotations within these contexts that constitute unintended consequences of institution-building.

citizenship

Formal institutionalization of EU citizenship in the Maastricht Treaty presents a classic example of institution-building with unintended consequences. This is due to the fact that as a legal norm, EU citizenship has little prescriptive force. If it has such a prescriptive force, EU citizenship might allow for

the identification of guiding capabilities and behavioural performance, as constructivist proposals about the logic of appropriateness in compliance research lead one to expect (Checkel, 2001b, 200). What is puzzling about the latter is that EU citizenship has provoked political reaction, despite the absence of standardized rules of behaviour. Political actors, such as lobby groups, associations and interest groups, have made explicit reference to EU citizenship, even going so far as demanding treaty revisions.[4] This mobilization in reaction to a newly established institution was less puzzling for authors who analysed EU citizenship as *practice* – that is, those who analysed it as the politics institutionalizing the terms, and forging the meanings, of citizenship – than for those who analysed EU citizenship as a new legal norm. Practice-oriented work was able to demonstrate that the institution of EU citizenship – as in Maastricht Treaty – represented just *one* aspect of the multiple and fragmented meanings of European citizenship. The larger and more encompassing understanding of the meanings of citizenship has evolved in relation to European citizenship practice, to involve sociocultural spaces, or transnational, national or international interactions that remain theoretically (and therefore also empirically) hidden to structure-oriented behaviourist approaches.

It is in this way that more than 25 years of European citizenship practice have transformed national citizenship. While modern nationally-defined citizenship refers to identity and regulates rights and access based on membership within a centrally organized constitutional state (for an overview see Wiener, 2003a), the EU has forged a fragmented type of citizenship which is neither centrally-defined, nor centrally-practised.[5] Indeed, EU citizenship is unthinkable without reference to national citizenship, as the Amsterdam Treaty revision spelt out in Article 17 (1) EC. This fragmentation of citizenship rights within the Europolity has created a new meaning of citizenship, that is deduced from the universal norm of citizenship, and that challenges modern concepts of citizenship. However, this transformation of meaning is not readily visible in the citizenship articles (Arts 17–22) of the EC Treaty as a prescriptive force which guides behaviour. Instead, meaning must be empirically explained and *mediated* to facilitate understanding. Without successful mediation of meaning and an understanding of where to locate them, political reactions to EU citizenship must remain a puzzle for actor-oriented and structure-oriented approaches of institution-building. After all, in the absence of prescriptive force, behavioural change is not expected. However, if one accepts the premise of the dual quality of norms as structuring and constructed, it is possible to shed light on this puzzle. Once the principle of contestedness is taken as the starting point, norm implementation is always related to deliberation about the meaning of these norms. It is this perspective which eventually allows for an analytical approach which can get to grips with the fragmented meaning of diverse norms of citizenship.

constitutionalism and enlargement

The principle of contestedness has two implications for the constitutional process. The first refers to the evolving norms of constitutionalism generated by social practices in the enlargement process. While the constitutional debate which has been largely carried out in the old, western member states provides a framework for open and constructive thought, the enlargement process has, for more than a decade, been dictated by rule-following behaviour, which allowed for 'socialision into' the community. Constitutional debate in the old, western member states has been future-oriented in both style and dynamics, and, with respect to procedure and substance, can be evaluated according to democratic criteria. Following Habermas and Tully, the yardstick for legitimacy in a political community is the principle of equal access to participation in debate over the validity of norms by all those potentially influenced by the outcome of the process. Here the logic of arguing and the principle of contestedness are central to actors' behaviour.

The enlargement process, however, is largely guided by the expectation of rule-following consistent with behaviouralist assumptions about compliance behaviour (Chayes and Chayes, 1995; Schimmelfennig, 2003a; see, critically, Wiener and Schwellnus, 2004). Indeed, academic work on enlargement predominantly applies the assumption of strict rule-following and the implementation of the compliance criteria (Schimmelfennig and Sedelmeier, 2002). The behaviour of the candidate countries is determined by the guiding impact of the accession criteria, identified in 1993 in Copenhagen and the substance of these criteria is not renegotiable. Nonetheless, it was expected that the constitutional settlement agreed in 2004 would be acceptable to all signatories of the Constitutional Treaty, including both old and new member states. The accommodation of diversity, based on day-to-day experience in *all* social contexts, is therefore vital. Academic research on the Constitutional Treaty thus requires a critical understanding of the interrelation between both the constitutional debate about political finality of the EU on the one hand, and the political process of enlargement on the other (Wiener, 2003b). The link between the two offers an understanding of both processes as not only potentially conflictive, but also as producing additional hurdles for the acceptance of a revised common constitution in an enlarged EU.

The constitutional debate, and preparation for the massive enlargement in 2004, demonstrated the dual challenge of accommodating diversity in a modern constitution beyond the state. Beyond the analytical linking of the two processes, the challenge consists of establishing a constitutionally entrenched institutional body, offering the possibility for ongoing transnational democratic deliberation, recognition and constitutional revision in the long run. Even though there are grounds for some doubt, it may still be worthwhile assessing the potential of the Convention model and ability to provide fair and equal participatory conditions for both current and future member states.

After all, candidate countries are expected to act according to the compliance rationale and practise rule-following in line with the policy of conditionality governing enlargement. Yet, at the same time, they were called to participate constructively in the Convention and in wider public debate on the future of Europe. For example, the German Minister of Foreign Affairs, Joschka Fischer 'encouraged Poland and the other east and central European countries applying for membership of the European Union, to *participate in the debate over EU finality*' (*Frankfurter Allgemeine Zeitung*, 26 January 2002, 4 [emphasis added]). The then candidate countries were thus forced into a process of identity formation following the process of 'othering', which has been constitutive not only for fragmented identity formation, but also for considerable cleavages in the assessments of old and new members of the community. This raises four central questions. First, does restricted participation and opposing identity formation favour a successful outcome for constitutional processes?; second, what was the Convention's contribution to the resolution of this dilemma?; third, how might the situation be improved?; and fourth, what are the long-term consequences for establishing democratic legitimacy in the process of European integration?

With reference to the different logics of action, it is possible to conclude that, in principle, the following conditions are necessary for democratic governance: First, according to Habermas's ideal speech situation, all participants of a debate must be able to debate under equal conditions, including those of information, voice and vote, in order to generate, identify and accept shared norms. That is, all participants must, in principle, be ready to be persuaded by the better argument, and to revise their previously held position accordingly. The starting point for finality/compliance situations in the EU differs from this basic scenario, however. For example, the Copenhagen accession criteria have not been defined by the EU with sufficient precision to allow for uncontested implementation (for example, in the area of administration); nor have EU member states been scrutinized on the question of whether they meet the criteria themselves (for example, in the area of minority rights). In addition, the so-called transition rules, in the area of freedom of movement for workers, for instance, will create unequal conditions among future EU citizens. While perfectly legitimate from a political and legal position, these are examples of areas where the public perception of equality may not conform to agreements at the governmental level, and may therefore prompt political mobilization as an unintended consequence of institution-building. Furthermore, the then candidate countries worked with a considerable information deficit in all areas, including the Convention, a body in which they had the right to voice, but not to veto. They thus entered the EU with a clear structural disadvantage (Landfried, 2004).

In conclusion, establishing spaces for transnational deliberation remains a core issue on the agenda for constitutional revision. Indeed, given past experiences of constitutional change, the main issue appears to be less one

of agreeing on a new constitutional model. More important is the issue of establishing transnational *fora* for deliberation in selected policy areas, fora in which elected representatives from political levels of governance and public associations would be entitled to participate as equals in ongoing debates as European citizens.

conclusion

The conceptual starting point for constructivist and sociological institutionalist approaches to European integration is the assumption of a link between the social construction of institutions and the successful implementation of rules, norms and legal principles. This sociological concept of constitutionalization is based on the cultural embeddedness of constitutional dynamics. It aims to recover the customary aspect of constitutional law, based on a reflexive approach to soft institutions, while favouring the thick concept of the *nomos* rather more closely than the lean concept of modern constitutional law (Craig, 2001). While the gradual and long-lasting process of constitutionalization in the EU entails both types, a sociological conception of constitutionalization understands the concept as involving two types of institutions. First, constitutions offer an institutional context for the political community as a whole; second, they themselves consist of an aggregation of institutions. The proposal to extend modern constitutionalism towards the customary, offers a shift of focus away from analysing the expanding formal *acquis communautaire*, towards understanding the *acquis* as a 'socially embedded' set of both hard and soft institutions (Wiener, 1998; Merlingen *et al.*, 2000), created through social practices. The substance of these institutions is thus culturally and historically contingent and depends on social interaction. Without that interaction, rules and norms do not exist. Legal and social institutions are interrelated insofar as the former require the latter if they are to be meaningfully implemented, or for that matter, in order to resonate with their respective context of implementation. This approach allows for the analytical inclusion of multiple sociocultural trajectories, which produce and transform the meaning of 'European' in analyses of constitutional issues, based on the Aristotelian understanding of a constitution as an 'institution of institutions' (Onuf, 1989, 222). Crucially, it allows a focus on constitutional norms as evolving through social practices, even before a constitutional text is identified as a constitution and labelled accordingly.

The late politicization phase and its focus on the finality debate follows a long period of constitutional politics carried on without any particularly defined political goal for the Europolity. As one of the many unintended consequences of institution-building in the process of European constitutionalization, the finality debate encapsulates the breathless constitutional process which is likely to generate even further unintended consequences. In the process, normative concerns are raised about a European Constitution that would

lead beyond the simple reorganization of the treaties (Weiler, 1999b). In this context, understanding institution-building and its often path-dependent impact is crucial. In other words, the meaning of institutions and their constitutive and regulative influence on behaviour changes once it is transferred across the sociocultural boundaries which forge the meaning of core constitutional norms. That is, the facticity and validity of norms produce conflicting interpretations across national boundaries in the territory within which a European Constitution would apply. Historical institutional analyses have pointed out the significance of identifying institutional impacts over long time periods, with reference to changed resource constellations (such as, power constellations, market resources and interests). This so-called problem of 'snap-shot', as opposed to 'moving picture', analyses also applies to the impact of sociocultural resources that produce unintended consequences under the conditions of time and context change. 'Associative resources', such as expectations, interpretations, and meanings, are also subject to change, misinterpretation and contestation (Wiener, 2001). The example of EU citizenship substantiates this particular effect and the constitutional process is likely to repeat that experience.

notes

1. For example, the Reflection Group involved in preparation of the 1996 intergovernmental conference.
2. Interview with a member of the European Parliament, Brussels, 29 August 2001; on file with the author; emphasis added.
3. For further discussion on the Commission's 2001 White Paper on Governance see Joerges *et al.*, 2001; Scharpf, 2001, 1.
4. Compare Articles 8a–e EC of the Maastricht Treaty and amended to become Articles 17–22 EC in the Amsterdam Treaty.
5. See the current constitutional stipulation of citizens' rights in Articles 17–22 EC, as well as in a number of EU Treaty Articles, for example Articles 13, 119 EU etc.