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Studying Contemporary Constitutionalism: Memory, Myth and Horizon

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Abstract

This article proposes to apply a praxeological approach to study contemporary constitutionalism. The approach is conceptualized following critical constructivist research on constitutionalism that focuses on experience and expectation when studying the contested meaning of norms in international relations. It argues that the concept of memory offers an important view on the language-based concept of experience which extends beyond the confines of behavioural approaches that study habitual change with regard to norms. The article offers a conceptual discussion of approaches to constitutionalism, emphasizing the distinction between modern and contemporary constitutionalism and their respective foci on regulatory versus cultural practices, introduces a praxeological dimension of horizons and elaborates on political memory and myth as concepts of functional memory.

Introduction

In the aftermath of the failed referendums on the constitutional treaty Margot Wallström, the Vice-President of the European Commission, declared that the task at hand was to build a 'European Narrative' (Wallström, 2004). This narrative was to facilitate overcoming an obstacle to the process of integration by bringing the institutions of the European Union (EU) and the Union's citizens closer together. In short, it meant to help overcome what was widely perceived as an evident legitimacy gap in the relation between polity and

citizens. If contemporary global issues require solutions based on enhanced co-operation beyond the boundaries of nation-states, attempts to bridge the legitimacy gap matter to politicians and citizens alike. Social science research on the emergence of the terms and institutions of citizenship in context has defined this relation between the individual and an emerging polity as constituted by citizenship practice (Wiener, 1998; Jenson, 2007; Tilly, 1975). Interaction in context is therefore considered as providing key information about the substance of the institutional architecture of a specific polity (Tully, 2008). We argue that constitutionalism offers a take on improving this gap which deserves more detailed examination and claim that it can be assessed by analysing the quality of contemporary constitutionalism in Europe. This analysis will enable policy-makers and academics alike to improve the institutional design of the European polity based on new venues of contestation (Tully, 2002). Following the Marshallian approach to citizenship, this innovation would seek to establish access to contestation by replacing *ex post* contestation of the *acquis communautaire* with the establishment of equal access to *ex ante* sites of contestation.

The following will elaborate on this suggestion based on the generic concept of contemporary constitutionalism that allows for the inclusion of a praxeological dimension of memory (Gadamer, 1993; Assmann, 2006) as constitutive for recognition, appropriateness or, in turn, contestation. We argue that it is particularly the quality of memory and how it plays out with respect to the cultural practices of constitutionalism which matters for an assessment of contemporary constitutionalism in Europe, and which is neglected by modern constitutionalism's emphasis on regulatory practices. It demonstrates that the *acquis communautaire* including its normative content, depending on the context in which they are implemented may not entail straightforward guidelines for appropriate behaviour (Katzenstein, 1996; Risse, 2002). That is, in situations of crisis which lack the time and space for deliberation to establish shared reference frames, social recognition fails to offer guidance for appropriate behaviour. Therefore, when it comes to instantiation in practice, norms are likely to be contested according to individual experience and expectation. Subsequently, it has been noted that the quality of norms depends on what actors make of it (Wiener and Puetter, 2009), and culture as a receptacle of 'background information' or 'normative baggage' plays a key role in these practices (Adler, 2008; Wiener, 2008). Based on these insights, this article contends that when studying processes of interaction which are endowed with an identitarian dimension, insights obtained from the interpretive and performative turn in the social sciences, respectively, are particularly useful because of their hermeneutic methodology.

We propose to apply a praxeological approach to study contemporary constitutionalism. The approach is conceptualized following critical constructivist research on constitutionalism that focuses on experience and expectation when studying the contested meaning of norms in international relations. The concept of memory offers an important view on the language-based concept of experience which extends beyond the confines of behavioural approaches that study habitual change with regard to norms. To sustain this argument, we first show that accounts of modern constitutionalism do not operate with a concept of cultural validation that is equipped to assess its role in interaction processes beyond the confines of the modern state. Yet, it plays a crucial role in the inherent tension between legal validity of agreements and their social facticity (Habermas, 1996). This insight lies at the heart of assessing issues of legitimacy in international encounters: while the formal validity of treaties, conventions or constitutions is tied to their respective social recognition, processes of learning, individual expertise and background knowledge matter when actors have to make sense of formally valid documents (Wiener, 2008). We thus argue that it is precisely this impact of 'normative baggage' within contemporary European constitutionalism that requires further elaboration.

We turn to the hermeneutic approach of memory research, moving beyond the confines of the debate of modern constitutionalism. The work of Hans-Georg Gadamer provides a convenient foundation for assessing the quality of contemporary European constitutionalism through its emphasis on language and historicity, embodied in the concept of 'horizon' (Gadamer, 1993; Jung, 2001; Arnswald, 2002; Michel, 2008; Simons, 2009). While a horizon marks the subject position of a single actor, interaction processes – described as a dialogic fusion of horizon – forge collective memories. Research distinguishing collective and individual memories thus helps us exceed the comparatively essentialist notions of the modernist debate. Among the different collective memories, political memory is a special variant of cultural memory. It contains myths which would ultimately help bridge the legitimacy gap that marked the initial problem of our investigation. As contemporary constitutionalism *inter alia* continues to comprise modernist myths, its ultimate *Gestalt* is not completely independent from the myths contained in the respective actors' horizons. Taking the coexistence of horizons and their dialogic interaction seriously, in our view, promises to be a more fruitful endeavour with the issue of legitimacy in contemporary European constitutionalism than denying its potential *ab initio*. As we will argue, legitimacy in this respect consists of a vertical dimension which could be explored by further research.

The remainder of the article is organized as follows. Section I offers a brief discussion of different approaches to constitutionalism. Section II builds on Gadamer's concept of 'horizon' as the reservoir of aggregated symbolic resources with which actors understand the world and each other. It also draws on Aleida Assmann's research on collective memory which has picked up this notion of the submerged Ego and, accordingly, the embeddedness of (inter-)action. Section III elaborates on political memory and myth as concepts of functional memory. In sum and with a view to overcoming the legitimacy gap based on democratic constitutionalism in Europe (Tully, 2006), we argue that this approach is better suited to address the problem of vertical legitimacy in light of increasing interconnectedness of actors with diverse cultural background knowledge. The article concludes that institutional design which grants access to possibilities of contestation is a key policy strategy with a view to establish co-operative interaction in the long term.

I. Types of Constitutionalism and Contested Legitimacy

The literature on constitutionalism distinguishes between ancient, modern and contemporary constitutionalism as three distinctive types (Tully, 1995). While ancient and modern constitutionalisms are contingent approaches that are distinguishable according to their respective emphasis on regulatory and cultural social practices, contemporary constitutionalism has been conceptualized as a generic type. When analysing constitutionalism with reference to the type of social practice that is studied as dominant in the emergence of constitutional norms, principles and institutions, the former approaches can be identified as stressing specific time-space dependent concepts of social practices with a focus on the organization of the modern state as the key organizational concept, on the one hand, and the reference to custom, on the other. In turn, the generic concept of contemporary constitutionalism includes the reference to both types of social practice, organizational and cultural, and their respective input on constituting the terms and institutions of constitutionalism in a particular context. Constitutionalism, then, can be understood as an 'academic artefact' (Weiler, 1999, p. 223) which evolves through social practices over time. As an analytical construct, constitutionalism provides distinct perspectives on things constitutional, including descriptive approaches to the process of constitutionalization and meta-theoretical debates about the constitution (Harlow, 2002). The former assesses questions of legitimacy and possible reasons for the authoritative quality of a constitution and how it should be interpreted. The latter approach focuses

predominantly on descriptive accounts of whether particular features of a constitution are in place as well as the assessment of constitutionalization as a process which leads to the establishment of constitutional features. Arguably, focusing exclusively on the latter would omit central tenets of contemporary constitutionalism in Europe and forgo the possibility to assess its specific quality *vis-à-vis* conceptions of modern constitutionalism that have also been constitutive for the meaning of contemporary constitutionalism in Europe.

In sum, the concept of contemporary constitutionalism holds that a constitution is more than a formal text defining key principles, norms and procedures that are agreed as having formal validity for a selected and limited group of addressees, i.e. citizens of a community or members of an organization (Snyder, 1990). While a constitution is meant to keep politics at bay (Elster, 1993), it also reflects a way of being in the world (Kahn, 1999; Haltern, 2006). Therefore, the quality of a constitution, or treaty, is contingent upon the two types of social practice – organizational and cultural – which are constitutive for its emergence, recognition and interpretation. At the heart of this conceptualization lies the premise that norms are inherently contested, albeit to a different degree pending on the distinct type of norm as fundamental norms, organizing principles or standardized procedures (Wiener, 2008, p. 66).

Modern Constitutionalism and Legitimacy

Modern constitutionalism is generally taken as the benchmark for assessing the constitutional quality of a polity. It is important to note, however, that although modern constitutions remain politically relevant in the 21st century, they were constituted through social practices over time. They reflect a type of constitutionalism that has to be taken in its contextualized trajectory. From the early modern age when it began to replace (initially in Europe) ancient constitutionalism (Tully, 1995), to the present day, where constitutionalism has begun to extend beyond the limits of nation-states, constitutionalism includes the study of 'limited government, adherence to the rule of law, protection of fundamental interests and compliance with the demands of abstract equality' (Rosenfeld, 1994, p. 14). Specifically, modern constitutionalism has generated various approaches for studying political legitimacy, which can be distinguished as output and input legitimacy. Both approaches work on the premise of a Westphalian constellation with external and internal sovereignty of the state, a unified territory and a homogeneous people (Böckenförde, 1992; Bauböck, 1994; Di Fabio, 2001) and have attempted to extrapolate approaches to the issue of legitimacy towards the contemporary

realm. Rational institutionalist approaches argue that 'output legitimacy' (Majone, 2006; Scharpf, 2007) can open a path to a more affirmative relation between people and polity and the latter's institutions. Institutional design, in this view, is to match citizens' expectations regarding institutional performance.

This approach has been criticized for its abbreviated and skewed understanding of democracy that emphasizes efficient outcomes over processes and makes a distinction between a politicized national realm and a technocratic European realm (Friese and Wagner, 2002). Further doubts emerge from the conceptualization of European institutions as a possible object of wilful design. Arguably, institutions are endowed with a degree of path dependence and their working follows a logic of appropriateness and not one of consequentialism (March and Olsen, 1989). This insight points to two conclusions. On the one hand, institutions cannot possibly be 'designed' to operate as intended. On the other, they comprise a dimension of Being that warrants further investigation.

The other reference to (modern) regulatory practices emphasizes the importance of input-oriented legitimacy (Scharpf, 1995; Grande, 1996; Moravcsik, 2002; Hilson, 2007). This approach appears intuitively plausible as an ideal-type solution to the problem of contested norms, since it is based on elections and identity. However, in this constellation the authors revert to variants of essentialism which are often coupled and comprise identitarian as well as structural-formalistic aspects. Approaches that put forward a range of measurements against which the development of democratic procedures in the EU appears to be assessable (Zweifel, 2002) overlook the importance of the discursive dimension of democracy as an organizing principle that has gone through a number of alterations in the course of the last centuries (Dunn, 2005). Similarly, other approaches revert to identitarian essentialism – a version of the dictum 'government by the people' – that reifies the aforementioned identitarian features of citizenship of Westphalian nation-states or its alleged structural preconditions, such as a thin cosmopolitanism enabled by the existence of a public sphere (Schlesinger, 1991; Grimm, 1995; Habermas, 1996; Greven, 2000; Kielmannsegg, 2003; Schlesinger, 2007; for a critique see Van de Steeg, 2006). We thus hold that accounts of input-oriented legitimacy do not sufficiently problematize the contestation of norms as they presuppose agreement over procedures as well as agreement over who constitutes 'the people'. They are problematic because as Tully (2008) argues against Habermas, the constellation of an exchange of arguments until the best one prevails is not convincing as it ignores the problem of how one recognizes a good argument in the first instance.

A Critique of Modern Constitutionalism

Generally, these accounts remain locked in modernist, statist conceptualizations which is, for instance, observable from the vocabulary used. In this vein, Kielmannsegg (2003, pp. 58–9) states that a genuinely unified European polity is not foreseeable as it lacks not only a common communication sphere but also a shared notion of belonging which is expressed as a common memory. In this understanding of common memory, it is already pre-existing and permanent, providing the glue that holds a community together. Interaction processes continuously contest the alleged stability of such common memory – and it is very much the practical instantiation one has to look at in order to assess its quality and its potential to provide the glue of community.

Yet modern constitutionalism has never entailed the stability of territory or homogeneity of a people that is often linked with a Hegelian notion of statehood. Throughout its development statehood has been subjected to contestation particularly from below (Reinhard, 1999) which explains, for instance, different phases of development (Lipset and Rokkan, 1967). Doubts about the possibility of an unfolding European constitutionalism are thus raised through a retrospective homogenization of the constituent parts of the modern state. To put it bluntly and maybe oversimplified: without the institutional setting typical of the modern state such as parties, parliaments, a public sphere and so on, the argument runs, complex political communities like the EU are not viable.

As such, these arguments remain a powerful input to the debate – and hence the meaning – of contemporary constitutionalism in Europe but they do not set the parameters of what could be possible. As contemporary constitutionalism would hold, modernist accounts cannot claim exclusive input to that process, its constituent parts or indeed into the course European constitutionalism will take in the future. Next to the academics mentioned, a multitude of actors are contributing to the constitution of the terms of contemporary constitutionalism in Europe. They include, for example, discursive interventions by EU officials, policy-makers, politicians, advocate groups, intellectuals and so on, who have access to the public sphere as users and contributors to the discourse on constitutionalism. This diversity of contributors raises the issue of the historicity of political agents. That is, it is important to reflect conceptually that these agents are neither situated in an analytical vacuum devoid of history, nor can they be conceptualized as a discrete entity. Instead, we argue, they must be understood as engaged in a continuous dialogue. Table 1 provides an overview of the main contrasting points between the modernist and the contemporary approach.

Table 1: Modernist and Contemporary Approaches to the Study of Constitutionalism

	Modernist approach	*Contemporary approach*
Constitutionalism (in general)	a) Thick identity (cultural nation) b) Structural requirements (public sphere) (constitutional patriotism)	Coexistence of historically situated agents
Premise of analysis	Retrospective homogenization of community/state	Dialogue and contestation
State of Being	Fixed, or tied to interaction structures	Evolving through fusion of horizon
Emergence of European constitutionalism?	Not possible	Assess quality of memory as a part of meaning-in-use

Source: Authors' own data.

The following sections introduce the corresponding analytical tools of 'horizon' as the cultural background from which agents act and 'dialogue' which emphasizes their relational state of Being.

II. Ontological Situatedness

The concepts of dialogue and horizon can both be retrieved from the phenomenological variant of Gadamer's hermeneutic, which in turn builds on Heidegger's concept of Being (2006). The concept emphasizes the 'thrownness' (*Geworfenheit*) of human existence into the world, meaning that it cannot be separated and analysed independently as a Cartesian dualism would suggest. It has been argued (Habermas, 1988 [1967]) that this concept is more closely related to that of the Romantic tradition. As such, it is said to be unsuitable for political analysis. Gadamer, however, has countered this accusation and argued that hermeneutics as a method provides an analysis of the way meaning is conveyed in language, facilitating a reflection on access to knowledge as well as 'ideology' (Gadamer, 1993, pp. 174–5). In his account, the historical situatedness, expressed as 'horizon', has to be taken seriously and contributes to overcoming the oft-cited dichotomy of subjectivism versus objectivism that cannot be maintained in such a practice-oriented approach (Lakoff and Johnson, 1980). The notions of collective memory which are introduced in this section build precisely on this insight.

Horizon and Memory

Gadamer develops the concept of horizon, originally coined by Nietzsche. Accordingly, horizon determines the subject position of the actor by comprising 'all that can be realized or thought about by a person at a given time in history and in a particular culture' (Michel, 2008, p. 182; König, 2008, p. 34). This notion of horizon is key to understanding the quality of actorness as it firmly roots the actor. It is not the autonomous Ego that interacts (Assmann, 2006, p. 61); action rather takes place within the confines of one's own horizon. A horizon spans the sum total of experience and resources of understanding out of which the past becomes part of the present. In practical research terms this reconfigures the oft-debated issue of the mutual constitution of structure and agency in terms of an inseparable link (Michel, 2008, p. 137; Doty, 1993, 1997; Slingerland *et al.*, 2007). While this conceptualization is helpful to address the problem of understanding the present in terms of a horizon that is endowed with past experience, it is notable that Gadamer's hermeneutic also offers an inroad to assess interaction. Thus, he retrieves the concept of prejudice without alluding to its negative connotation in everyday use. This marks a further important aspect in the assessment of European constitutionalism as prejudice indicates that there are limits to what one can understand of the surrounding world – or even the limits of what is imaginable. If, for instance, a country's horizon does not comprise a notion of a constitution or yields negative connotations, such as in the United Kingdom, it is hardly surprising to witness antipathy (Lord, 2007) as a constitution lies outside one's horizon and prejudice held endows it with negative meaning. As we will see in the next section, myths prove a powerful means of stabilizing subject positions – and they provide obstacles to the fusion of horizons if they contain a fear of heteronomy.

Prejudice, then, originates from the reservoir of symbolic resources contained in the horizon and describes literally the prejudgement that takes place in order to understand (Warnke, 1987, p. 76, cited in Michel, 2008, p. 173). Prejudice thus quite literally 'makes sense' in that it provides conceptual scanners during processes of interaction. It is, however, susceptible to change as it is constantly revised in the encounters with others (Arnswald, 2002, p. 37). At the heart of prejudice lies a conceptualization of language as the medium in which human existence is immersed and according to which it allocates meaning. It is inherently social in nature as there is no private language, only one which precedes the individual. Language manifests itself in its public instantiation but its meaning is never entirely fixed. A residue of contestation comes to bear in every interaction. It is therefore central to establishing the constitution of meaning.

Individual, Social and Cultural Memory

Memory-research refuses to conceptualize an Ego as autonomous and emphasizes its collective nature instead. Similarly, myth is never individual but dependent on interaction processes. It is thus embedded within the continuous (re-)construction of collective memory. Assmann (2006) contends that all groups form a collective memory that resembles the time span of their existence and exceeds the time span of individual membership. They differ, however, in terms of the time spans covered as well as the geographical area, but also in terms of group size as well as stability. However, her approach to the problem of collective agency is not anti-individualist. Although in a direct reference to Gadamer she refutes the notion that an individual is the bearer of one's own memory, she emphasizes that it is immersed in a hierarchy of types of memory. She distinguishes between the individual's memory, that of a social group, the political memory of a nation and finally a cultural memory, as contrasted in Table 2 below.

While it is easily understandable that the *individual's memory* is contained in the neural structure of one's brain, it requires external stimulation, which takes shape in terms of social interaction and communication (Assmann, 2006, pp. 32–3). In the Gadamerian sense, this insight into the constellation of *social memory* emphasizes the hermeneutic condition of all Being. It is through this connectedness that social networks form and social memory takes place. Note that this happens through interaction and in its practical instantiation: memory is not built (passive) but rather takes place (active) (François and Schulze, 2001, p. 13). On top of these two, *cultural memory* forms a third level. As will be explained below, it consists of symbolic media that mark the exchange between individual and social memory. These are no longer bound to the appropriation of a particular individual and his or her immediate experience of a situation. Rather, they transcend the individual as well as the group – which could be understood as a form of collective thrownness – and thus are endowed with a degree of longevity. The key to Assmann's concept of memory is that institutions or associations such as

Table 2: Different Levels and Dimensions of Memory

Dimension	*Neural memory*	*Social memory*	*Cultural memory*
Based on:	Individual brain	Social communication	Symbolic media
Milieu:	Social communication	Individual brain	Social communication
Supported by:	Symbolic media	Symbolic media	Individual memory

Source: Assmann (2006, p. 33).

states, nations, the church or a company do not 'possess' a memory but 'produce' it by means of symbols, thereby creating a type of identity for themselves (Assmann, 2006, p. 35).

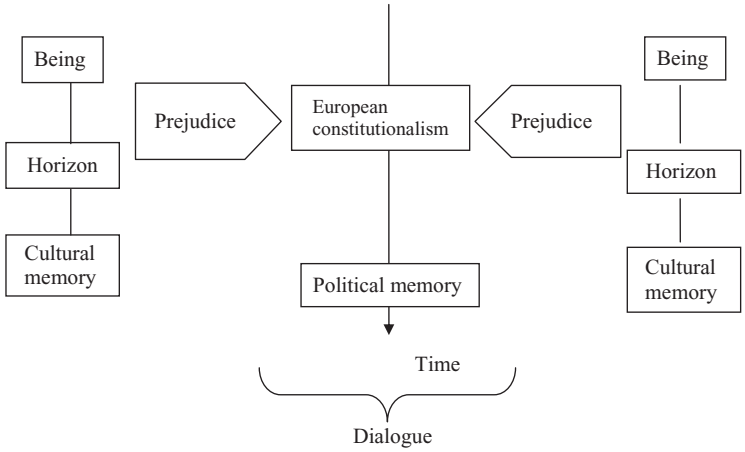
Interaction/Dialogue

The formation of collective memory occurs through processes of interaction in which horizons become fused. To Gadamer, this is very much a process of active engagement with an 'other'. During the encounter with the other, one's horizon is changed – explaining the identitarian dimension of interaction and processes of understanding. It is simultaneously a relational positioning towards an 'other' and comprises a form of social learning. It cannot be overstated that it is thus not a matter of unidirectional change as is so often the case in accounts that conceptualize understanding as the outcome of an undistorted and free deliberation in which eventually a better argument comes to bear (Risse, 2000; Müller, 2004). Likewise, notions that foresee a sphere of uninterrupted communication as the precondition for a community (Habermas, 1996; Schlesinger, 2007; Kielmannsegg, 2003) do not problematize the formation of a given political community, omitting processes of force that might have contributed to their formation and the existence of horizons from which contemporary European constitutionalism is forming. By contrast, Gadamer's notion of interaction is based on the concept of play, in which actors engage in a mutual exchange, usually by means of language. The engagement results in their mutual reconstitution. This understanding of dialogue and exchange provides the basis for a development of normative order and simultaneously for their permanent contestation. As Gadamer writes,

> A successful interlocution means that one cannot fall back into the dissent from which it originated. Agreement which is shared to an extent that it is no longer *my* understanding and *your* understanding but rather a shared interpretation of the world ensures moral and social solidarity. What is considered as proper and taken as the norm requires essentially the kind of sharedness originating from people mutually understanding each other. (Gadamer, 1993, p. 188)

What Gadamer describes in this passage is the praxeological and performative aspect of dialogue which becomes especially important in times of crisis during which mutuality is no longer ensured. But once mutual understanding has been ensured, i.e. a fusion of horizon has occurred, everything goes back to 'normal' – albeit with a different horizon than previously: 'Shared meaning is built during dialogue and then sinks back into the silence of agreement and normality' (Gadamer, 1993, p. 188). Interaction processes that result in a

Figure 1: Contemporary European Constitutionalism Unfolds Over Time through the Contribution of Actors with Different Subject Positions/Cultural Memories



Source: Authors' own data.

fusion of horizons thus generate a common narrative structure, containing mytho-motoric potential. Myth becomes part of a horizon that is now shared.

Figure 1 visualizes how a dialogic engagement between different actors, each with distinct notions of Being and horizon, contributes to the formation of European constitutionalism. This engagement might ultimately add up to political memory, which is explained in the next section. It cannot be overemphasized that this is a deeply ontological process which cannot be adequately understood by analysing speech acts per se or by looking at the instances of arguing or bargaining which they are expected to contain (Risse, 2000; Schimmelfennig, 2003; Müller, 2004). Rather, emphasis needs to be placed on the performative dimension of meaning-in-use in which 'subjective understandings are derived [. . .] from intersubjective practices' (Weldes and Saco, 1996, p. 371; see also Milliken, 1999; Wiener, 2008). Rather than pondering on the nature of language one has to ask how it is used in a given context. This includes moving beyond the issue of 'What is truth?' i.e. what is the best argument, towards the question 'How are practices verified and validated?' (Michel, 2008, p. 74). These practices, described as meaning-in-use, are inherently intersubjective and partially linguistic in the sense that they rely on the use of symbols, mostly spoken or written language. The intersubjective dimension comes to bear as the symbolic resources upon which people draw are necessarily shared (Weldes and

Saco, 1996, p. 373). Note the proximity to Assmann's and Gadamer's position as Weldes and Saco explain, 'The discourses or "codes of intelligibility" through which experiences are classified and invested with meaning are therefore not the possession of individuals; instead they pre-exist any particular individual' (Weldes and Saco, 1996, p. 373). But whereas meaning-in-use as a heuristic tool predominantly attempts to capture the performative dimension of interaction in the present, an additional focus on the historicity of these encounters and the respective subject positions can be achieved by paying closer attention to notions of myth and memory.

III. Memory as Performance of Horizon

Myth and Memory

This insight of the importance of practices in (international) politics finally prepares us to consider a fourth dimension of memory, i.e. political memory as a special variant of cultural memory. As such, it is a special type of collectively produced, symbolically structured memory and differs significantly from the more broadly conceived cultural memory (Assmann, 2006, p. 32). Cultural memory, as we saw earlier, contains material representations in the form of texts, images and memorials as well as symbolical practices such as festivities and rites. Similar to the formation of neural memory which develops through interaction with other people, cultural memory is formed and expanded through interaction with other artefacts and practices. It differs from the aforementioned social memory which does not consist of a stable form of representation, and unfolds over time in dynamic processes of performance and practice. Media of the cultural memory, however, contain a stable basis which is institutionally assured. As Table 3 indicates, memories can be differentiated according to their basis as well as the mode in which they are reproduced.

Table 3: Types of Memory and their Formation

Basis	*Biologically mediated*		*Symbolically mediated*	
(Re-)production	Neural	Communicatively	Individually	Collectively
Formation of type of memory	Individual memory	Social memory	Cultural memory	Political memory

Source: Assmann (2006, p. 36).

Whereas cultural memory resembles an archive that maximizes its content, by contrast, political memory seeks to strategically select it. In the Gadamerian sense it selects prejudice from within the horizon. This way, it does not work on the strategy of maximization but rather on one of optimization. In this process political memory encompasses not only remembering but also oblivion as a strategy of forgetting and misremembering. As a collective formation, it is detached from the individual's influence and exists in the interplay of collective agents, as the overview above reveals. However, particularly in times of crises and under time constraints, the individual dimension and background assumes importance (Wiener, 2008), which is why we maintain that the distinction is not a dichotomy. Following Assmann, two different dynamics of cultural memory are at play here which can be translated as 'storage memory' (*Speichergedächtnis*) and 'functional memory' (*Funktionsgedächtnis*), respectively (2006, pp. 55–8; 1999, cited in König, 2008, pp. 113–15; we use the terms as translated by Erll and Nünning, 2005, p. 285). They complement each other, emphasizing the more passive process of storing and selecting as well as the active component of retrieving items from the archive. On the one hand, factual memory comprises the archival function of memory, containing a pool or background of latent memories which are not currently activated. According to Assmann, these are material remains of earlier epochs that are no longer in practical use but somehow remain residual – and potentially waiting to become rediscovered and activated in re-contextualized form. Yet as memories are partially dependent upon the medium in which they are stored, there is the danger that they cannot be retrieved. This relates to systems of script which can no longer be decoded as well as to memorials (Erll, 2005, p. 137). On the other hand, in its dynamic as functional memory such decontextualized symbolic raw material could, for instance, become part of a canonical representation of the past and thereby form part of a broader, future-oriented narrative. The distinction between 'storage' and 'use' is not rigid but potentially open to an exchange in either direction. Functional memory thus re-contextualizes past memories in the present, regardless of whether this bears any connection to a 'real event' (Koch and Oesterreicher, 1985; Oesterreicher, 1993).

Politicized Memory and Myth

Let us now take a closer look at the role of myth within *political* memory. The politicized national memory focuses on this process of active remembrance, selection and oblivion more than the broader cultural memory. While the latter is fragmented, heterogeneous and contested, political memory strives towards uniformity and clarity. It compresses content to achieve a higher symbolic

density, emphasize collective rituals and achieve normative clarity. It thus lends itself to standardization and instrumentalization, unlike the more individual and diverse cultural memory that defies such processes through its openness to diverse content. For the assessment of contemporary constitutionalism in Europe myth matters in particular, as it takes a prominent position for the political variant of collective memory (Assmann, 2006, pp. 40–2; Stråth, 2000, p. 20; François and Schulze, 2001). This is due to the fact that antagonistic myths pertaining to different cultural and political memories will make a fusion of horizons difficult as the apparent incompatibility of subject positions needs to be overcome. Ideas and mental images assume iconic character and narratives turn into myths of particularly persuasive power. Both can be demonstrated empirically with reference to contested meanings of norms that come to the fore in international encounters where the absence of shared social recognition means that cultural validation, identified as individually held background information or normative baggage, plays a central role in the interpretation of meaning (Wiener, 2008).

A shared recognition marked by less fierce contestation originates from the affective dimension of these myths, which transcend the immediate and individual experience of history and allow for one devoid of time-bound contextuality – as Assmann's table earlier showed, political myths are collectively reproduced. They facilitate emotions to become synchronized through myths and are endowed with a sense of direction. Emotions are thus transformed into a means of understanding the world, as an access point to reality (François *et al.*, 1995, p. 23). In this process the affectual understanding of the world is enabled through the matrix or plot provided from myth which provides a sense of legitimacy and historical meaning by emphasizing specific values or characteristics, providing frames of understanding. We argue that for the assessment of the constituted meaning of European constitutionalism it is particularly important that this can be taken as part of a horizon in the Gadamerian sense described previously. According to Stråth, 'Successful construction appeals to certain cultural chords and conceptual tropes, to narrative plots or discursive frames' (Stråth, 2000, p. 20; on frames see Barnett, 1999; Payne, 2001). Similarly, Jan-Werner Müller states with reference to domestic politics (2002, p. 30) that this process is key to actions available to political actors: 'when nations identify with a certain vision of the past, policies which threaten this vision will at first be resisted, and will have to be justified in terms of the larger interest of the nation'. Referring to the affective appropriation of one's own history, myth assumes an identitarian dimension. Core themes of myths that helped form nations during the 19th century are personalization, continuity and community (François and Schulze, 1998, pp. 20f.). Arguably, a myth that would form the basis of a European community

and which would successfully advance the dialogic processes contributing to contemporary European constitutionalism would contain references to consumerism. This could form the *Gestalt* of the polity (Haltern, 2006).

We contend, however, that this is not to say that myth necessarily refers to an *intended* tampering with historical incidences, nor can it deliberately project images of finality. Memory-research can venture into two directions. On the one hand, it can focus on the institutional (re)production of myth, in schools, the army or indeed through any other proponent of traditional symbolic material. Myths as such do not originate from a particular author but are being reiterated through institutional channels. They can be understood as a process of collective learning, aggregating knowledge that is assumed to be authoritative and 'correct'. In the Gadamerian sense, institutions can thus possess a horizon akin to individuals. Particularly the repeated interaction processes of individuals within a stable context can thus lead to a solidification of mutual understanding (Puetter, 2004; Puetter, 2007; Juncos and Pomorska, 2008). On the other hand, and complementary to the former, research can focus on the practical consequences of myth, such as the options for action that it opens up. Underlying this insight is a conceptual distinction between the *event* that 'really happened' and the *fact* – 'constructed by reflection upon the documents that attest to the occurrence of the event' (Stråth, 2000, p. 22). Apart from investigating what happened and why, memory-research is interested in its reception and how it is put into use. As imagined communities are not merely functional aggregations of discrete components, the dynamics that unfold to endow them with meaning must be scrutinized. Assmann refers to this as the 'myth-motoric capability' (*mythomotorisches Potential*, Assmann, 2006, p. 42) of shared memories. Myths do not, for instance, objectively relate to proto-national ages but rather mask that the formation of nations was only possible in the process of modernization, arguably requiring a certain degree of social and economic development (Germer, 1998, p. 33). As a means to imagine belonging beyond the confines of communities in which members know each other face-to-face, a myth (by virtue of its framing potential) 'bridges the gap between high political and intellectual levels and the levels of everyday life' (Stråth, 2000, p. 22). Ideally, it is part of all constituent members' horizon.

IV. Contemporary Constitutionalism and Vertical Legitimacy

Given our interest in assessing the meaning of contemporary constitutionalism in Europe as the platform from which the legitimacy gap can be

addressed, it is important to note that the understanding of political memory and myth which has been developed above operates with a notion of legitimacy that lies outside the confines of either *input* or *output* legitimacy. However, when conceptualized as part of the thrownness or Being in the world, myths are constitutive for an individual sense of legitimacy that includes complementary *vertical* and *horizontal* dimensions (Brunnée, 2002; Alkoby, 2008). This distinction is very much process-oriented and praxeological in its methodology. We could, for instance, refer to the successful ending of the European Convention as an instance marked by horizontal legitimacy – and the subsequent reservations in the UK and Poland towards the European Charter of Human Rights as a problem of vertical legitimacy.

It is thus in the vertical dimension of legitimacy where notions of myth as functional memory become relevant. Problems arise due to the inherently contested nature of norms and are exacerbated in the presence of multiple horizons from which interaction unfolds (Wiener, 2008). While the negotiation setting was marked by horizontal legitimacy, agreements originating from such context may come under strain when transposed to another political level, usually the domestic arena. Vertical legitimacy expresses the connectedness of these levels as a genuine shared understanding (Alkoby, 2008). Yet the problem arises from the need to fuse horizons and subject positions of very different types in order to achieve this. Agreements have to resonate within a domestic context, i.e. with potentially very different memories and myths and with a broad range of agents engaged in their instantiation. This performative and practical dimension is omitted by analyses that refer exclusively to notions of input and output. Thus, issues of compliance with a norm (Chayes and Chayes, 1995; Checkel, 2001; Risse, 2002; Schimmelfennig, 2003) are not of interest, but rather the actual practices that unfold as vertical legitimacy takes shape.

In the European context further strains, such as the fluidity of the community's boundaries, emanate from conditions of inter- and transnationalization and characterize the contemporary variant. They dissolve the modern constitutional congruence of community and constituents (Wiener, 1997, 2008, pp. 26f.; Schmitter, 2000, p. 15). Social practices which are constitutive for the meaning of constitutional arrangements vary depending on the actor and context in which the constitution is enacted: individual actors such as citizens, collective actors such as social groups and associations and organizations, or Member States' governments. Tully's re-conceptualization of a constitution marked by ancient/Aristotelian notions of the construction of the nomos helps emphasize the practical dimension of constitutionalism – and move beyond the modern

Table 4: Types of Memory, Contestation and its Visibility

Symbolic dimensions		Formal validity constitutions	Social recognition	Cultural validation		(Re-)production / supported by
	Visible ▲ ▼ Invisible		Socialization	Individual expectations, background knowledge	Collective ▲ ▼ Individual	
			Political	cultural		
			Type of memory			

Source: Wiener and Puetter (2009).

constitutionalism's notion of regulative elements. Accordingly, he states that 'Constitutions are not fixed and unchangeable agreements reached at some foundational moment, but chains of continual intercultural negotiations and agreements in accord with, and violation of the conventions of mutual recognition, continuity and consent' (Tully, 1995, pp. 183–4). As Table 4 summarizes, their formal validity finds expression in visible means of communication, usually a treaty or other type of document, and thus contributes to the formation of a political memory. However, in the process of this formation, cultural memory retains importance as the receptacle of symbolic raw material from which documents emerge. Researching functional memory and cultural validation thus provides an inroad into understanding different subject positions that contribute to contemporary constitutionalism in Europe. They can be assessed, for instance, in terms of their compatibility or convergence – a notion that is overlooked when pondering over possible scope conditions for community, such as the existence of a public sphere or pre-existing shared identities.

Conclusions

This article argued that the denial of a possibility of an evolving sense of legitimacy between the institutions of the EU and citizens is due to quasi-essentialist concepts about democratic polities that stem from a retrospective assessment of the modern nation-state. As we have demonstrated, such approaches overlook the fact that interactions between individuals or, for that matter, between collectives are always pre-structured by respective horizons which require fusion in order to generate shared understanding. This is methodologically different from approaches that argue for the possibility of conviction by means of a better argument. By contrast, we have

demonstrated that interaction and dialogue enable a change in subject positions by way of altering the parameters that demarcate one's horizon. Insights from the understanding of how cultural and political memory works help understand that it is very much an interaction process that facilitates its instantiation. This is important for the project of assessing the identitarian dimension of social groups and also their possible longevity, for instance in order to devise institutional set-ups that mediate between different horizons and provide access for individuals or groups to participate on an equal footing.

We have stressed the importance of the concept of 'myth' for the analysis of legitimacy in contemporary constitutionalism since it constitutes a *raison d'être* for the Being of individuals or groups. It follows that while variants of modern constitutionalism continue to resonate in the present and therefore must be regarded as contributing to contemporary constitutionalism in Europe, they must be considered as *one among several*. And, as collective memory is forged through ongoing interaction and a fusion of horizons, we hold that *access to participation in this memory's ongoing instantiation* is the key element to enabling affirmative relations between polity and people in contemporary Europe. It follows that a top-down process aiming to provide a 'European Soul' (Delors) in the form of symbols or *lieux de mémoire* around which discrete notions of what they mean exist is unlikely to excel. Instead, European constitutionalism is a developing, dialogic process during which distinct horizons interact and *may* fuse over time. Taking myth and memory seriously offers insights into how such fusion might or might not occur.

With a view to future research we suggest exploring and comparing the quality of memory and myth pertaining to diverse collectivities, including those constituted by domestic, regional or transnational arenas. In terms of Europe, the way forward does not lie in retreating to the old dualism of 'culture' versus 'constitution' (Weigel, 2008). Instead, culture needs to be taken seriously by recognizing the existing plurality of European countries and their respective trajectories over time. These trajectories are a product of interaction processes and dialogue concerning heterogeneous symbolic material, practices, ideas and norms. Particularly those instances from countries which contain a diversity of culture, language, religion and so on can yield insights into the unfolding contemporary European constitutionalism. But insights are not brought to the fore if culture is treated as a fixed and finished item of storage memory. Rather it is the dynamic knowledge of instances of cultural validation and the role of functional memory that enriches our understanding of dialogues of different horizons beyond the confines of nation-states.

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References

Adler, E. (2008) 'Normative Power Europe: A Civilizational Community of Practice'. Paper presented at the Annual Meeting of the American Political Science Association, Boston.

Alkoby, A. (2008). 'Theories of Compliance with International Law and the Challenge of Cultural Difference'. *Journal of International Law and International Relations*, Vol. 4, No. 1, pp. 151–98.

Arnswald, U. (2002) 'On the Certainty of Uncertainty: Language Games and Forms of Life in Gadamer and Wittgenstein'. In Malpas, J., Arnswald, U. and Kertscher, J. (eds) *Gadamer's Century: Essays in Honor of Hans-Georg Gadamer* (Cambridge, MA: MIT Press).

Assmann, A. (2006) *Der lange Schatten der Vergangenheit: Erinnerungskultur und Geschichtspolitik* (München: C.H. Beck).

Barnett, M. (1999) 'Culture, Strategy and Foreign Policy Change: Israel's Road to Oslo'. *European Journal of International Relations*, Vol. 5, No. 1, pp. 5–36.

Bauböck, R. (1994) *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot: Edward Elgar).

Böckenförde, E.-W. (1992) 'Geschichtliche Entwicklung und Bedeutungswandel der Verfassung'. In Böckenförde, E.-W. (ed.) *Staat, Verfassung, Demokratie*, 2nd edition (Frankfurt/Main: Suhrkamp), pp. 29–52.

Brunnée, J. (2002) 'COPing with Consent: Law-Making under Multilateral Environmental Agreements'. *Leiden Journal of International Law*, Vol. 15, pp. 1–52.

Chayes, A. and Chayes, A. (1995) *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard: Harvard University Press).

Checkel, J.T. (2001) 'Why Comply? Social Learning and European Identity Change'. *International Organization*, Vol. 55, No. 3, pp. 553–88.

Di Fabio, U. (2001) 'A European Constitutional Treaty: The Blueprint to the European Union'. *German Law Journal*, Vol. 2, No. 14.

Doty, R.L. (1993) 'Foreign Policy as Social Construction: A Post-Positivist Analysis of US Counterinsurgency Policy in the Philippines'. *International Studies Quarterly*, Vol. 37, No. 3, pp. 297–320.

Doty, R.L. (1997) 'Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory'. *European Journal of International Relations*, Vol. 3, No. 3, pp. 365–92.
Dunn, J. (2005) *Setting the People Free* (London: Atlantic Books).
Elster, J. (1993) 'Introduction'. In Elster, J. and Slagstad, R. (eds) *Constitutionalism and Democracy* (Cambridge: Cambridge University Press).
Erll, A. (2005) *Kollektives Gedächtnis und Erinnerungskulturen* (Stuttgart/Weimar: J.B. Metzler).
Erll, A. and Nünning, A. (2005) 'Where Literature and Memory Meet: Towards a Systematic Approach to the Concept of Memory used in Literary Studies'. *Literature, Literary History and Cultural Memory* (Tübingen: Gunter Narr Verlag).
François, E. and Schulze, H. (1998) 'Das emotionale Fundament der Nationen'. *Mythen der Nation: Ein Europäisches Panorama* (Berlin: M. Flacke).
François, E. and Schulze, H. (2001) *Deutsche Erinnerungsorte* (München: C.H. Beck).
François, E., Siegrist, H. and Vogel, J. (1995) 'Die Nation'. *Nation und Emotion. Deutschland und Frankreich im Vergleich (19. und 20. Jahrhundert)* (Göttingen).
Friese, H. and Wagner, P. (2002) 'Survey Article: The Nascent Political Philosophy of the European Polity'. *Journal of Political Philosophy*, Vol. 10, No. 3, pp. 342–64.
Gadamer, H.-G. (1993) *Gesammelte Werke: Wahrheit und Methode, Bd. 2* (Tübingen: Mohr).
Germer, S. (1998) 'Retrovision: Die rückblickende Erfindung der Nation durch die Kunst'. *Mythen der Nationen: Ein Europäisches Panorama* (Berlin: M. Flacke) (Begleitband zur Ausstellung des Deutschen Historischen Museums vom 20. März 1998 bis zum 8. Juni 1998), pp. 33–52.
Grande, E. (1996) 'The State and Interest Groups in a Framework of Multi-Level Decision-Making: The Case of the European Union.' *Journal of European Public Policy*, Vol. 3, No. 3, pp. 318–38.
Greven, M.T. (2000) 'Can the European Union finally become a Democracy?' In Greven, M.T. and Pauly, L.W. (eds) *Democracy beyond the State? The European Dilemma and the emerging Global Order* (Rowman & Littlefield).
Grimm, D. (1995) 'Does Europe need a Constitution?' *European Law Journal*, Vol. 1, No. 3, pp. 282–302.
Habermas, J. (1988 [1967]) *On the Logic of the Social Sciences* (Cambridge: Polity Press).
Habermas, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity Press).
Haltern, U. (2006) *On Finality: Principles of European Constitutional Law. Modern Studies in European Law* (Oxford: Hart).
Harlow, C. (2002) *Accountability in the European Union* (Oxford: Hart).
Heidegger, M. (2006 [1926]) *Sein und Zeit* (Tübingen: Max Niemeyer).
Hilson, C. (2007) 'Legitimacy and Rights in the EU: Questions of Identity'. *Journal of European Public Policy*, Vol. 14, No. 4, pp. 527–43.

Jenson, J. (2007) 'The European Union's Citizenship Regime: Creating Norms and Building Practices'. *Comparative European Politics*, Vol. 5, No. 1, pp. 53–69.
Juncos, A. and Pomorska, K. (2008) 'Does Size Matter? CFSP Committees after Enlargement'. *Journal of European Integration*, Vol. 30, No. 4, pp. 493–509.
Jung, M. (2001) *Hermeneutik zur Einführung* (Hamburg: Junius).
Kahn, P.W. (1999) *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago, IL: Chicago University Press).
Katzenstein, P.J. (1996) 'Introduction: Alternative Perspectives on National Security'. In Katzenstein, P.J. (ed.) *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press).
Kielmannsegg, P. (2003) 'Integration und Demokratie'. In Jachtenfuchs, M. and Oesterreicher, W. (eds) *Europäische Integration* (Opladen).
Koch, P. and Oesterreicher, W. (1985) 'Sprache der Nähe – Sprache der Distanz. Mündlichkeit und Schriftlichkeit im Spannungsfeld von Sprachtheorie und Sprachgeschichte'. *Romanistisches Jahrbuch*, Vol. 36, pp. 15–43.
König, H. (2008) *Politik und Gedächtnis* (Weilerswist: Velbrück).
Lakoff, G. and Johnson, M. (1980) *Metaphors we Live By* (Chicago, IL and London: University of Chicago Press).
Lipset, S.M. and Rokkan, S. (1967) *Party Systems and Voter Alignment: Cross-National Perspectives* (New York: Free Press).
Lord, C. (2007) 'Contested Meanings, Democracy Assessment and the European Union'. *Comparative European Politics*, Vol. 5, No. 1, pp. 70–86.
Majone, G. (2006) 'The Common Sense of European Integration'. *Journal of European Public Policy*, Vol. 13, No. 5, pp. 607–26.
March, J.G. and Olsen, J.P. (1989) *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press).
Michel, T. (2008) 'Shrouded in Darkness: A Phenomenological Path towards a New Social Ontology in International Relations'. School of International Relations. St Andrews, University of St Andrews (PhD Dissertation).
Milliken, J. (1999) 'The Study of Discourse in International Relations: A Critique of Research and Methods'. *European Journal of International Relations*, Vol. 5, No. 2, pp. 225–54.
Moravcsik, A. (2002) 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union'. *JCMS*, Vol. 40, No. 4, pp. 603–24.
Müller, H. (2004) 'Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations'. *European Journal of International Relations*, Vol. 10, No. 3, pp. 395–435.
Müller, J.-W. (2002) *Memory and Power in Post-War Europe: Studies in the Presence of the Past* (Cambridge: Cambridge University Press).
Oesterreicher, W. (1993) 'Verschriftung und Verschriftlichung im Kontext medialer und konzeptioneller Schriftlichkeit'. *Schriftlichkeit im frühen Mittelalter* (Tübingen: ScriptOralia), Vol. 53, pp. 267–92.
Payne, R.A. (2001) 'Persuasion, Frames and Norm Construction'. *European Journal of International Relations*, Vol. 7, No. 1, pp. 37–61.

Puetter, U. (2004) 'Governing Informally: The role of the Eurogroup in EMU and the Stability and Growth Pact'. *Journal of European Public Policy*, Vol. 11, No. 5, pp. 854–70.

Puetter, U. (2007) 'Providing Venues for Contestation: The Role of Expert Committees and Informal Dialogue among Ministers in European Economic Policy Co-ordination'. *Comparative European Politics*, Vol. 5, No. 1, pp. 18–35.

Reinhard, W. (1999) *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (München: C.H. Beck).

Risse, T. (2000) ' "Let's Argue!": Communicative Action in World Politics'. *International Organization*, Vol. 54, No. 1, pp. 1–39.

Risse, T. (2002) 'Constructivism and International Institutions: Towards Conversion across Paradigms'. In Katznelson, I. and Milner, H.V. (eds) *Political Science: The State of the Discipline* (New York and London: W. W. Norton & Co).

Rosenfeld, M. (1994) 'Modern Constitutionalism as Interplay between Identity and Diversity'. In Rosenfeld, M. (ed.) *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Durham, NC and London: Duke University Press).

Scharpf, F. (1995) 'Demokratische Politik in Europa'. Discussion Paper, No. 4, Europäisches Zentrum für Staatswissenschaften und Staatspraxis.

Scharpf, F. (2007) 'Reflections on Multilevel Legitimacy'. *EUSA Review*, Vol. 20, No. 3, pp. 2–11.

Schimmelfennig, F. (2003) *The EU, NATO and the Integration of Europe: Rules and Rhetoric* (Cambridge: Cambridge University Press).

Schlesinger, P. (1991) *Media, State and Nation: Political Violence and Collective Identities* (London: Sage).

Schlesinger, P. (2007) 'A Fragile Cosmopolitanism: On the Unresolved Ambiguities of the European Public Sphere'. In Fossum, J.E. and Schlesinger, P. (eds) *The European Union and the Public Sphere: A Communicative Space in the Making?* (London and New York: Routledge).

Schmitter, P.C. (2000) *How to Democratize the European Union . . . And Why Bother?* (Lanham, MD: Rowman & Littlefield).

Simons, O. (2009) *Literaturtheorien* (Hamburg: Junius).

Slingerland, E., Blanchard, E.M. and Boyd-Judson, L. (2007) 'Collision with China: Conceptual Metaphor Analysis, Somatic Marking, and the EP-3 Incident'. *International Studies Quarterly*, Vol. 51, No. 1, pp. 53–77.

Snyder, F. (1990) *New Directions in European Community Law* (London: Weidenfeld and Nicholson).

Stråth, B. (ed.) (2000) *Myth and Memory in the Construction of Community: Historical Patterns in Europe and Beyond* (Brussels: Presses Interuniversitaires Européennes).

Tilly, C. (1975) 'Reflections on the History of State-Making'. In Tilly, C. (ed.) *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press).

Tully, J. (1995) *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press).
Tully, J. (2002) 'The Unfreedom of the Moderns in Comparison to their Ideals of Constitutionalism and Democracy'. *Modern Law Review*, Vol. 65, No. 2, pp. 204–228.
Tully, J. (2006) 'Reflections on Democratic Constitutionalism'. Annual Lecture on Democratic Constitutionalism, Queens University Belfast.
Tully, J. (2008) *Public Philosphy in a New Key* (Cambridge: Cambridge University Press).
Van de Steeg, M. (2006) 'Does a Public Sphere Exist in the European Union? An Analysis of the Content of the Debate on the Haider Case'. *European Journal of Political Research*, Vol. 45, No. 3, pp. 609–34.
Wallström, M. (2004) Commissioner-Designate for Institutional Relations and Communications, European Parliament Hearing, Brussels.
Weigel, S. (2008) 'Die Flucht ins Erbe. Alle wollen die "Kulturnation" – warum?'. *Süddeutsche Zeitung*.
Weiler, J.H.H. (1999) *The Constitution of Europe: Do the New Clothes Have an Emperor?* (Cambridge: Cambridge University Press.
Weldes, J. and Saco, D. (1996) 'Making State Action Possible: The United States and the Discursive Construction of "The Cuban Problem" 1960–94'. *Millennium: Journal of International Studies*, Vol. 25, No. 2, pp. 361–95.
Wiener, A. (1997). 'Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union'. *Theory and Society*, Vol. 26, pp. 529–60.
Wiener, A. (1998) *'European' Citizenship Practice: Building Institutions of a Non-State* (Boulder, CO: Westview Press).
Wiener, A. (2008) *The Invisible Constitution of Politics: Contested Norms and International Encounters* (Cambridge: Cambridge University Press).
Wiener, A. and Puetter, U. (2009) 'The Quality of Norms is What Actors Make of It: Constructivist Research on Norms'. *Journal of International Law and International Relations*, Vol. 5, No. 1, pp. 1–16.
Zweifel, T.D. (2002). '. . . Who is without Sin Cast the First Stone: The EU's Democratic Deficit in Comparison'. *Journal of European Public Policy*, Vol. 9, No. 5, pp. 812–40.