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MERGER OR ACQUISITION?

IDEATIONAL AND REPUBLICAN LIBERALISM AND THE EUROPEAN POLICY OF GERMANY'S GRAND COALITION

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Abstract This paper suggests a dialogue between different strands of liberalism and veto player theory in order to explain the ambivalence in German Grand Coalition's European policy. We argue that veto player theory can contribute analytical clarity to the republican liberalism without losing parsimony. By specifying the republican liberalism, the significance of the ideational liberalism as constitutive for veto player creation and conditional for veto player activation becomes evident. Furthermore, taking on ideational liberalism seriously advances our concept of "policy interdependence" that links societal (and veto player) preferences and inter-state cooperation. The illustrative case study of German policy on ESDP and EU constitutional reform reveals the constraining effect of anticipated and actual veto playing by ideational motivated actors. We conclude that republican and ideational liberalism are powerful explanatory tools, but that they should be integrated to advance their potential for a combination of causal and constitutive reasoning.

1. Introduction

German European policy is something of a paradox. While there is a strong public and political commitment towards European integration, Germany's European policy also exhibits a marked tendency towards domestication, a process by which domestic veto players – the legislators and the Federal Constitutional Court (FCC) – limit the delegation of authority to supranational institutions (Harnisch 2006; 2009). This paradox is not only empirically puzzling, but also theoretically challenging.

There is little systematic research on the role of parliaments and courts in the FPA literature. Conventional wisdom holds that governments are rather unconstrained in pursuing foreign policy (Kesgin/Kaarbo 2010, 20-25; as an important exception see Hagan 1993). Liberal theoreticians, such as Kevin Narizny (2003) and Andrew Moravcsik (1997; 2008), share this lacking emphasis on domestic veto players. They make a strong claim for the analytical primacy of societal preferences and their unhindered transmission onto the state level by mechanisms of representation. A pro-European German policy is thus easily explained by liberal foreign policy theory. It may even constitute a best case. The effects by the intermediate institutions are not systematically considered and thus liberalism fails to explain the opposing trend towards domestication without further specification. Liberalism implicitly assumes decision-makers to be fully accountable to their constituencies. So far, liberalism has spent too little time in its republican variant on the institutional pathways which constrain representative policy-making. There is considerable doubt in the literature that "societal preferences float freely" and decision-makers directly serve their electorate in democracies despite of various constraints (Hagan 1993; Risse-Kappen 1994).

We argue that a dialogue between veto player theory (Tsebelis 2002) and liberalism, particularly Moravcsik's republican and ideational threads, can further clarify the latter without sacrificing its parsimony. We hold that veto player theory augments republican liberalism by focusing it on policy ratification procedures whereas ideational liberalism specifies the scope conditions and policy direction of veto-playing. In our definition, a veto player is an individual or collective actor that can inhibit a policy decision or change the decision ex post (Wagschal 1999, 232; Tsebelis 2002, 19). These actors have the power to negate foreign policy decisions, thereby limiting the leverage of the state's foreign policy. Veto player theory holds that the number of veto players and their programmatic distance complicates and constrains decision-makers' behavior. At the same time, all political participation of societal actors is eventually directed towards the institutions or parties with

veto power. Therefore, veto player theory gives a systematic and general account of the liberal transmission belt.

We claim that veto player theory also benefits from dialogue with liberalism. As Tsebelis (2002, 18) makes clear, his theory "(…) establishes the possibility of different institutional settings to provide policy change, but does not and cannot identify the direction of it." Thus, its theoretical range is significantly restricted. As Wolfgang Merkel has argued, the identification of veto players' positions without considering the underlying causality leading to these positions, is of limited value (Merkel 2003, 23-26; see also Ganghof 2003). One may even draw a more fundamental conclusion: Due to its lacking causal foundation, veto player theory has difficulties explaining the creation of veto players in the first place, the activation of impermanent veto players and the policy direction of veto-playing.

We suggest that the interplay between the liberal bottom-up perspective and veto player theory may cure some of the ills of both theories. In our reading of ideational liberalism, actors, holding ideas about the appropriate political and economic order, establish institutional orders – including veto points – and interact within them. Domestic institutional orders are thus more than a constraining framework. When veto players engage in politics, they pursue not only the material preferences of their institution, but also confirm/disconfirm the ideational preferences weaved into this institution.

To illustrate our claim about the value of theoretical dialogue, we will focus on the European policy of the German Grand Coalition under Merkel 2005-2009.[1] This case arguably constitutes a best case selection for both liberal and veto player theory. Because of the strong pro-European consensus and low number of veto players, both theories expect a largely unchallenged government. We posit that only a combination of both theories can adequately account for the empirical paradox outlined above. Since a single case study allows neither for formal hypothesis testing, nor for a generalization of findings, this analysis, based on process-tracing methods, aims at providing first indicative evidence for the plausibility of this theoretical approach (see Bennett/Elman 2008, 503). Process-tracing provides causal plausibility and offers additional insights on the systematic relationship between the analyzed variables.[2] Hence, this case study sheds some new light on the

[1] "Grand coalition" is a historic-contextual term for coalitions with a parliamentary base much larger than the minimum-winning criterion. Müller (2008) argues that an analytical definition of grand coalition is neither possible nor reasonable. Kaarbo's (1996, 523) findings suggest that the foreign policy decision-making of Grand Coalitions does not or only slightly differ from more asymmetrical coalition constellations. Recent studies on central aspects of the Merkel government largely confirm this assessment for the case at hand (on the role of the chancellor see Niclauß 2008, 10; on legislative relations see Gast/Kranenpohl 2008, 23).

[2] George/Bennett (2005, 181-232) discuss spuriousness, causal priority und causal depth at length.

relevance of domestic veto players and expands the analytical reach of republican liberalism in FPA research.

We proceed in four steps. First, we present the theoretical argument, incorporating veto player theory into the liberal framework. The second part assesses the number of veto players and the programmatic coherence of the Grand Coalition's European policy. To gain analytical grid, we compare the parties' manifestos, the coalition treaty, and public opinion to unveil the within-coalition coherence and its match with societal demands. We then cover major strands in the Grand Coalition's policy concerning European Security and Defense Policy (ESDP) and EU constitutional reform. It becomes evident that the Merkel government was constrained by anticipated and actual behavior of institutional veto players in both fields, which resulted in ambivalent policies. The final section focuses on the activation of the Federal Constitutional Court (FCC) as an institutional veto player. We find that the ideational preferences of the Court clearly limit the executive's leverage in European policy. We do detect, however, that the FCC's domestication varies considerably over time and is thus not reducible to institutional self-interest (Kottmann/Wohlfahrt 2009, 443). A conclusion will sum up the results and reflect on theoretical implications.

2. A theoretical dialogue: Liberalism and veto players

Liberal theory building in FPA has a long tradition, but only recently emerged as a coherent and coequal alternative to state- and system-centered approaches (Doyle 2008; Ikenberry/Lake/Mastanduno 1988). Andrew Moravcsik deserves credit for trying to overcome theoretical fragmentation by formulating an unambiguous and testable liberal theory of foreign policy (Carlsnaes 2002, 339). Yet, liberal theory, focusing on "state-society relations" (Moravcsik 1993, 6; 1997, 514), and its application has two key weaknesses in our view: (1) Moravcsik provides a substantial account of the societal end of the equation, but his theory is vague on the state end and the state-society relation itself; (2) While Moravcsik integrates an ideational and commercial preference formation into his framework, he only takes on the latter seriously.[3] Neither the ideational preference formation on the state level nor the ideational policy interdependence on the international level is fully explored. Moreover, by focusing on the role of veto players as "self-appointed guardians of

[3] Brian Rathbun (2010) has challenged Moravcsik's strategy of appropriation lately. While we do not share his central claim, an undue appropriation of levels of analysis and policy outcomes, by liberalism, we agree that liberalism itself is not an unambiguous and testable theory in a positivistic sense.

policy choices", we find that the theoretical nexus between ideational and republican liberalism is still to be explored.

Moravcsik's (2005) own case study of U.S. human rights policy can serve as good starting point here. In his analysis, the fragmented institutional setting in US foreign policy making allows for ideas of conservative minorities to capture the government's policy and prevent it from implementing international human rights norms. And yet, in Moravcsik's account it remains unclear exactly when minorities will speak up and be able to capture state policies, and to which extent this affects policy interdependence and alters the delegation of authority to international organizations. Recent U.S. Supreme Court rulings on U.S. counterterrorism policy elucidates the problem with regard to U.S. human rights practice: During the Bush Jr. administration, the Supreme Court referred policies back to the executive for further consideration in the Rasul and Hamdi cases (acquiescence). But in the Hamdan case, the Court's majority held, relying heavily on international law, that the administration's position with regard to the treatment of enemy combatants was illegal in two important respects. Thus, in a short period of time the court changed track and constituted itself as a veto player (referring to international law), thereby substantially limiting the executive's prerogatives and congressional legislative competences. To date, Congress has rejected the Court's veto claim through the Military Commission Act of 2006 and again widened the executive's discretion vis-à-vis enemy combatants, but it is plausible that the Supreme Court may still respond to this direct challenge of its veto player decision (Benvenisti 2008).

We suggest that this example is instructive for our argument for two reasons: Firstly, in order to explain U.S. human rights policy fully, the formation of veto players and their potentially divergent preferences should be systematically taken into account: in contrast to Moravcsik's claim, even in a mature democracy such as the US, veto playing in human rights policy can involve referring to standards of international law. Secondly, if we focus on a single veto player, in this case the Supreme Court, the initiation, scope and consequences of veto playing must be traced back right to "ideas as causes and reasons for action". In short, republican liberalism must be ground in ideational liberalism when veto playing is to be explained and not merely described.

In our view, Moravcsik's application of republican liberalism so far is underspecified. It falls far short of giving a systematic account of how institutional settings play out in different political systems and across issue areas. The liberal paradigm models state actors as more or less perfect agents of a societal principal. The implicit reason for this

self-imposed constraint in democracies is the agent's desire for reelection (see Bueno de Mesquita *et al.* 1999, 2003 for the so called selectorate theory). To provide for some variance in preference representation, Moravcsik (1997, 530-533) integrates republican liberalism, arguing that institutions of domestic representation play a crucial role in determining whose preferences define foreign policy goals. As representation is never perfectly symmetrical, the governing groups will try to maximize their gains by passing the costs and risks to underrepresented groups. Thus, highly asymmetrical representation may result in high risk policies, which promise high gains for the represented and high costs for others. Since asymmetrical preference representation is less pronounced in democracies, they will lean more towards less costly policies. (see for this thread of the democratic peace literature: Lake 1992; Lake/Baum 2001)

From a theoretical point of view, republican liberalism as a causal mechanism for state-society interaction is unsatisfactorily simple: A more open system may lead to a broader representation of societal foreign policy positions.[4] This tells us neither why in some cases the formula does not hold nor why policy often turns out more ambivalent than the societal preference formation leads us to expect.

We hold that veto player theory, most prominently stated by George Tsebelis (1995; 2000; 2002), can under certain conditions provide this systematic account. Tsebelis' attempt to compare the political stability of political systems across common classifications, e.g. presidential vs. parliamentary democracy, stirred broad discussion and follow-up research within the field of comparative politics. To overcome the barriers of inherited classifications, Tsebelis introduces veto players as independent variables. Two types of veto players can be distinguished: Institutional veto players, whose veto power is constitutionally grounded, and partisan veto players, within these institutions, such as parties in governmental coalitions, which "(…) are generated by the political game." (Tsebelis 2002, 19) The number of veto players within a political system is the first indicator for policy stability. But Tsebelis' absorption rule, veto players without any impact on the win-set are absorbed by other involved veto players, shows that the congruence of veto players is more important than their number (Zohlnhöfer 2003, 255-256). Congruence refers to the ideological overlap of the players concerning the desirability of a policy choice. In short, the causal chain is that the number and congruence of veto players determine the difficulty of significantly

[4] The lacking theoretical clarity also causes empirical difficulties. Hagan's (1993) comparison on the impact of domestic opposition on foreign policy decision-making clearly shows that the conditions for representation differ significantly even among mature democracies. But they are not without patterns which are of particular scientific interest. A systematic approach would help to structure results and improve cross-case understanding.

deviating from the status quo. In a nutshell, the smaller the number of veto players and the higher their congruence, the easier policy change.[5]

Returning to our reading of liberal theory, we claim that the formation of veto players and their reasons for action are the crucial conditioning variable for the transmission of societal preferences in state policy. We suggest, this augmented liberal approach considerably improves our understanding of the causal mechanism of representation. It goes beyond Katzenstein's (1976) distinction of strong and weak states and adds institutional structures to the coalition-building process (Risse-Kappen 1991). The approach not only explains why asymmetry of representation varies across time, political systems and issue areas. It also describes more clearly how domestic actors influence foreign policy. Since access to the institutional veto players rests on different procedures, we gain a much more comprehensive view of the ways of preference formation.

The suggested dialogue between veto player theory and liberalism stresses the importance of ideational preferences. As noted above, veto player theory lacks not only a causal explanation for veto players' preferences and dynamic change, but – even more fundamentally – cannot explain the creation and nature of veto players in the first place (Ganghof 2003; Green/Paterson 2009,182-183). Critics have repeatedly pointed out that the theory cannot account for non-permanent veto players such as supreme courts (Merkel 2003, 28-29; Wagschal 1999, 231).

We posit that ideational liberalism can help solve these problems. According to Moravcsik (1997, 525-526), societal actors hold not only material preferences, but also ideational preferences concerning an appropriate political (and economic) order. In our reading, any institutional setting, including institutional veto points, is the result of implementing some of these preferences. This implies that institutions are perpetuated ideas and that their setting may change depending on the underlying ideational preferences. In contrast to rational choice approaches, we expect the ideas about an appropriate political order to affect the players within institutions more frequently than previously acknowledged. This is particularly important for institutions which are activated only in some situations. On policies which directly or indirectly affect the political order, veto players with conflicting

[5] The third factor in Tsebelis' theory, the internal cohesion of collective veto players is left out here. The internal cohesion is theoretically hard to catch and does not contribute to the study at hand. Tsebelis argues that policy stability increases with the internal cohesion. But Zohlnhöfer (2001, 659) rightly replies that it strongly depends on the internal mechanisms of agreement whether higher policy cohesion results in more or less policy stability. Thus, if all members of the collective actor have to agree on a position, less policy cohesion leads to a more rigid position of the actor which makes reform more unlikely. In other words, the effect of internal cohesion depends on the veto player constellation within the veto player.

ideational preferences will step in. Hence, ideational liberalism explains not only a central element of the congruence of veto players. It also adds a dynamic element to republican liberalism. In our view, ideational and republican liberalism are clearly interdependent.

A full account of ideational liberalism also extends on patterns of international relations and the dynamics of two-level games. Thus, ideational constellations of international policy interdependence must be differentiated from material constellations, which can overlap or displace each other at times. We hold, regardless of the policy field, that veto players will constrain governments in pursuing cooperative policies with international actors if this cooperation imposes disproportional "ideational costs" on the veto player. The creation of an international organization therefore depends not only on the demand for policy coordination, but also on ideational preferences concerning the appropriateness of the emerging institution (Alter 2000). In this vein, Risse-Kappen (1996) convincingly argued that "democracies are then likely to form *democratic international institutions* (…)." (emphasis in the original) He shows that the rules and procedures within NATO resemble the member states' conceptions of an appropriate political order. Yet, if groups have conflicting ideational preferences, they will attempt to use the domestic institutional framework to stop or limit cooperation by capturing veto player positions. In fact, one may argue that – unlike commercial liberalism in which the material trade-offs can be manifold – the ideational costs, e.g. the departure from a preferred polity, leave little room for compromise.

The argument can be summed up as follows:

1. Veto players help to specify republican liberalism by highlighting the channels of society-state relations.
2. Ideational liberalism helps to explain the initial creation of veto players.
3. The interplay of ideational and republican liberalism extends our insights on the formation of veto players on a given issue beyond material incentives.
4. Ideational policy interdependence can trigger veto player action and helps to further differentiate the patterns of international policy interdependence.

3. The Grand Coalition' European policy

The European policy of the Grand Coalition is arguably a best case for our dialogue between theories. The unrestricted support for the European project has cleared the way for

a contingent integration policy since the Maastricht treaty, but Germany's European policy is still consensual: all mainstream parties share a clear commitment to European integration (for the development of the parties' ideas on European membership see Jachtenfuchs 2002, 171-209). Grand coalitions are mandated by large majorities and represent a broad share of the selectorate at the center of the political spectrum. Accordingly, liberalism would expect a government which is largely unconstrained in their European policy. Grand Coalitions, in fact, tend to marginalize domestic political opposition (Zohlnhöfer 2009, 9).

The same holds for veto player theory. A Grand Coalition has strong majorities and – in the case at hand – even a majority in both legislative chambers for the longest part of its term. Accordingly, the institutional veto players Bundestag and Bundesrat are absorbed. As European integration policy rests on a considerable programmatic overlap, the coalition partner, as partisan veto player, is of diminishing significance. In nuce, there is little reason to expect challenges against further integration.

Yet, the government faced constraints in both policy areas under consideration here. German ESDP policy turned out to be much more ambivalent than was expected based on the pro-integrationist consensus. We assert that the anticipation of veto player constraints caused the government to pursue a contingent approach towards ESDP. In the case of the EU constitutional reform, the ex post activation of the Federal Constitutional Court, putting clear limits on German European policy, is only explained by ideational preferences in a veto position. As the preferred political order is threatened and the Grand Coalition holds all other institutional access points to foreign policy making, the external veto player steps in.

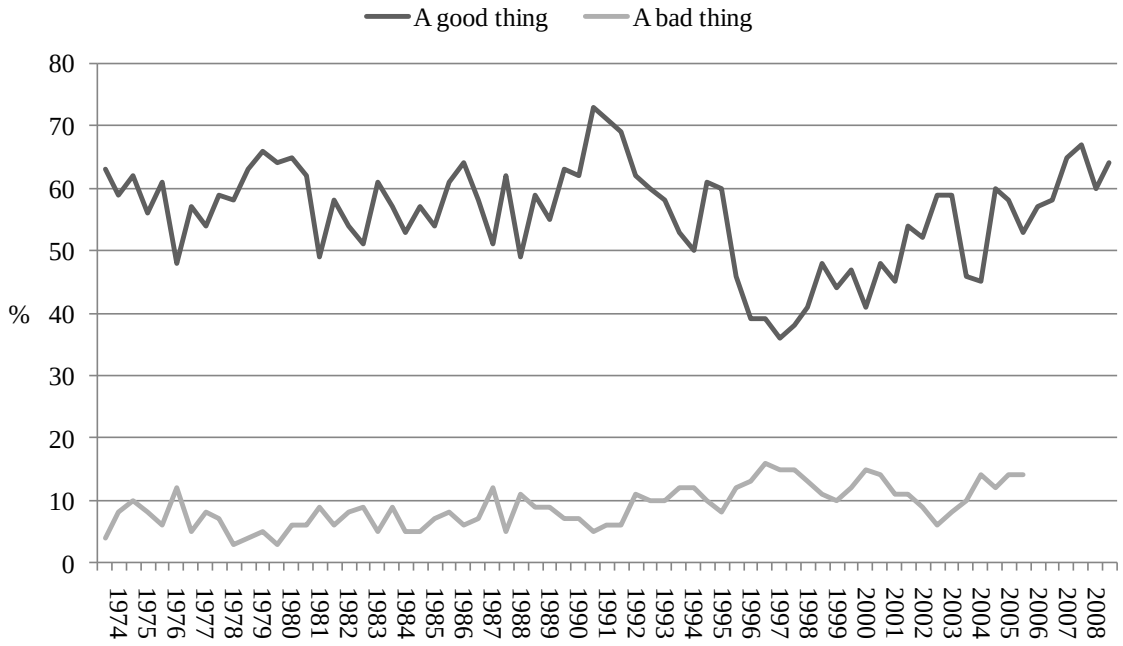
3.1. European policy: Societal preferences and veto player coherence

To assess the government's leverage in our bottom-up framework, a look at the societal preference formations is in order. An analysis of public opinion data reveals two important findings (see Chart 1). First, the decline of support for European integration witnessed throughout the last decade has stopped and turned towards more positive stance on the European project. During the late 1990s, Germany as well as the member states on average showed a trend of decreasing public support for the EU (Göler/Jopp 2007a, 463-464; Hix 2005, 149-174). Yet, at least in Germany, support has substantially increased after a low in 1997/1998 and has reached pre-1990 heights during Merkel's first term in office (Scheuer/Schmitt 2009, 580). Secondly, support for European Union membership clearly surpasses Euro-sceptic or anti-European positions even in the late 1990s. This trend seems

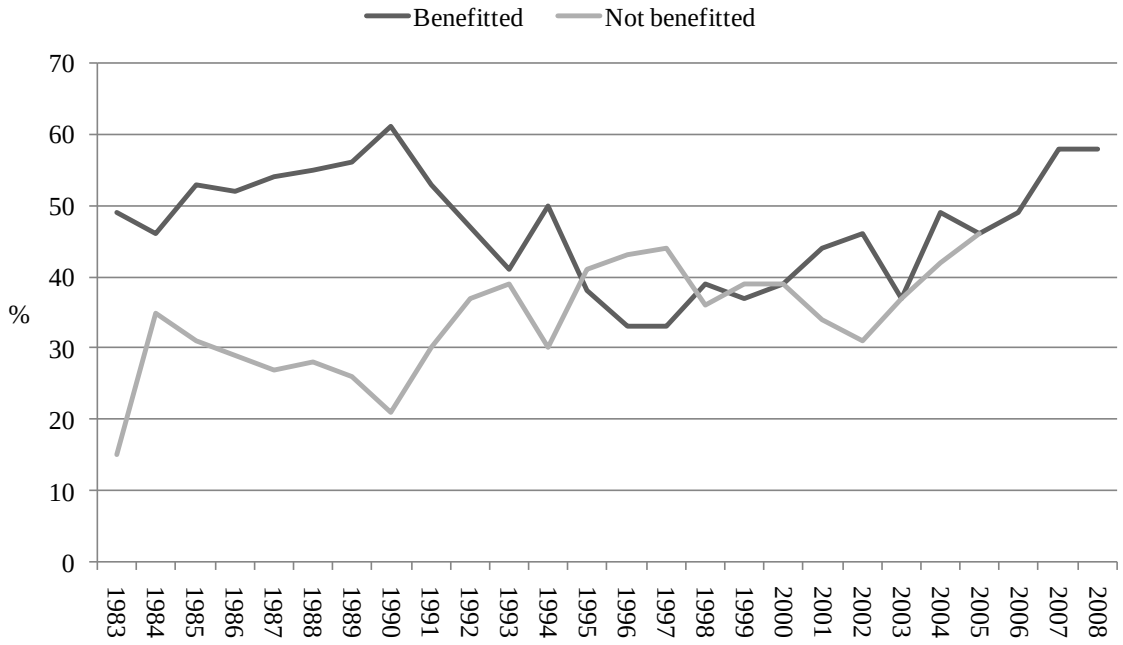
independent of more ambiguous poll results on the question whether Germany is generally benefiting from its membership (Hellmann 2006, 179-184). Overall, the surveys point at a strong affective support, i.e. "(…) an ideological or non-material attachment to a political institution." (Hix 2005, 148), for the European Community, which is not plausibly causally related to material utility expectations.

Chart 1: Public opinion on the European membership of Germany

Generally speaking, do you think that Germany's membership of the EC/EU is…



Taking everything into consideration, would you say that Germany has on balance benefited or not from being a member of the European Community?



Source: Eurobarometer surveys 1973-2008. Answers "neither good nor bad" and "DK" for question 1 and "DK" for question 2 are not shown. No data available for the answers "a bad thing" and "not benefited" 2006-2008.

Support for European integration is even higher among elites than among the general public. The last Eurobarometer (1996) study on the attitudes of top decision makers showed overwhelming support for EU membership. 98% of the respondents considered EU membership "a good thing". This is 59% percent points higher than the support of the general public at that time. A recent study by the Deutsche Gesellschaft für Auswärtige Politik (DGAP 2009) confirms this finding: 95% considered the EU membership as very important.

For liberalism, it is not surprising that public support creates a strong party consensus on the European project. All mainstream parties, i.e. parties with experience in federal government (CDU/CSU, SPD, FDP, and Bündnis 90/Die Grünen) support the European project.[6] In fact, a clear commitment to European integration is an indispensible precondition to be met by potential coalition partners on the federal level. The debate concerning potential coalitions with the left-wing party Die Linke is instructive here. Although the moderate-left SPD has joined coalitions with Die Linke at the Länder level, it repeatedly rejected coalitions on the federal level. The EU-critical position of Die Linke is a central obstacle in this context. The SPD's frontrunner Frank-Walter Steinmeier stressed during the general election campaign 2009: Cooperation with Die Linke was no option, since the latter acts irresponsibly in questions of foreign and European policy (Die Welt 2009; see also the position within the electoral manifesto, SPD 2009, 95).

Given the shared commitment of all mainstream parties to European integration, European policy was uncontroversial during the election campaign and the ensuing coalition negotiations (Marhold 2006). An analysis of the parties' general election programs of 2005 shows a strong programmatic consensus which is also reflected in the coalition treaty (see Chart 2). Long-term visions of the European Union differed slightly, but both parties shared a positive reading of the European Constitutional project and major initiatives in the short term. Particularly, coalition parties stressed the commitment to strengthen the relationship between the EU and its citizens and the principle of subsidiarity. Furthermore, the CDU/CSU and the SPD wanted to improve the European foreign and security policy (Wagner 2005; CDU/CSU/SPD 2005, 146-153).

The only significant disagreement existed over further EU enlargement. The Social Democrats argued for continuation of the Turkish accession process. The Christian Democrats opposed the perspective of full membership for Turkey and called for a privileged partnership instead. The coalition partners solved this problem by deferring a

[6] This is regardless of the low salience of the issue among the German public (cf. Oppermann/Viehrig 2008).

final decision (Pries 2005). Thus, the Grand Coalition's agenda on Europe overall has a strong pro-integrationist bias and continuity with previous German governments (Wagner 2005).

Chart 2: Comparison of the election programs and coalition treaty

CDU/CSU manifesto	SPD manifesto	Coalition treaty
Overlapping elements		
EC is the key for enduring peace, freedom and prosperity on the continent.	Europe is a region of peace and stability.	EU is guarantor of stability, security, and prosperity in Germany and Europe.
Europe of citizens.	Citizen-centric, social Europe.	We want to strengthen the Europe of citizens.
Separation of competencies according to the principle of subsidiarity.	Clear definition and allocation of competencies.	Strict adherence of the principle of subsidiarity.
Improvement of the EU foreign policy.	Improvement of EU capabilities for international activities.	We want to advance the ESDP to a European Security and Defense Union.
Support of the constitutional process, especially the Charter of Basic Rights.	Support of the constitutional process.	We stand by the European constitutional treaty. We support a new impetus during the German presidency.
Conflicting elements		
Privileged partnership, but no full EU membership for Turkey. Membership only for countries which meet the accession criteria (Rumania, Bulgaria, Croatia).	No breach of promise concerning the accession of Bulgaria, Rumania and Turkey.	Date of accession of Bulgaria and Rumania depends on compliance with defined requirements Accession negotiations with Turkey are an inconclusive process.

Source: Own compilation based on the general election programs of CDU/CSU (2005, 35-36) and SPD (2005, 40-41) and the Grand Coalition's coalition treaty (CDU/CSU/SPD 2005, 146-153). Entries are close but no literal translations.

The constellation of a Grand Coalition with strong programmatic consensus has important implications for the number and significance of veto players in the field of European policy (Merkel 2003, 5). Germany's political system is often characterized as having one of the most constraining institutional frameworks. The usual imperative for

coalition building, the second chamber with veto power on many issues[7], and the constitutional court as potential veto point result in high requirements for policy formulation (Katzenstein 1987, 2005). Yet, the number of actual veto players strongly depends on the parties in government and their majorities across the Bundestag and Bundesrat. In the case at hand, the Grand Coalition had not only a large majority in the Bundestag, but also an own majority within the Bundesrat based on five single-party governments and four Grand Coalitions in the states.[8]

In consequence, the Grand coalition held majorities in both legislative chambers for most of its term. The governing parties bridged the executive-legislative divide as well as the bicameral divide and the veto players Bundestag and Bundesrat were largely absorbed (Green/Paterson 2009, 193). To be sure, the Bundesrat as representative of the states may have had departing interests on some issues. But there is good reason to assume that these conflicts were settled within the parties. Therefore, the coalition partners remained the only permanent veto players. Yet, the high policy congruence renders this veto constellation almost meaningless.

In sum, the conditions for the government to pursue a consistent and unconstrained pro-integrationist European policy were ideal due to strong public support and a favorable veto player constellation.

3.2. German European policy and veto player impact 2005-2009

Since reunification, German European policy is subject to close scientific scrutiny and debate. Within this context, some authors highlighted a newly assertive and interest-oriented German European policy and speak of a gradual return to "normalcy" and "de-Europeanization by default" (Hellmann *et al.* 2005). Others argue more cautiously that the German European policy is characterized by a contingent commitment to integration policy, i.e. the stabilization and advancement of some integration policies and a status-quo approach to others, with no roll-back initiatives attached thus far (Jeffrey/Paterson 2003; Harnisch/Schieder 2006).

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7 The approval of the Bundesrat was required for 50-60 percent of legislation since unification. Although it is too early to draw more general conclusions, the federalism reform act of 2006 has probably reduced the number of legislation which required approval of the second chamber to approximately 40 percent (Zohlnhöfer 2009, 10). On European policy, the Bundesrat is more often involved.

8 The majority in the Länder chamber even increased to a two-thirds majority in late 2006. Even though the two-thirds majority lasted only until May 2007, the simple majority held until February 2009.

In Germany's ESDP Policy, the normalization argument seems to hold some water. But our in-depth analysis reveals that the contingent ESDP integration policy is more plausibly explained by actual and anticipated actions of veto players constraining the government's leeway.

The Grand Coalition's rhetoric on ESDP showcased a pro-integrationist stance. The importance of an ESDP that is capable of acting decisively internationally was stressed. During the German EU presidency, Chancellor Merkel even suggested the creation of a European Army as a long-term policy goal (Heise 2009, 32). But actual contributions to the ESDP were less impressive. While Germany committed some 18,000 troops to the European Rapid Reaction Force and contributed to five EU battlegroups during Merkel's first tenure (Miskimmon 2007, 151; Quille 2006, 8; Mölling 2007, 8-9), process-tracing of policy choices reveals substantial veto player impact.

To begin with, the ESDP operation EUFOR RD Congo clearly displayed a gap between the rhetorical ESDP commitment and subsequent deployment behavior (for an overview see Ryjáček 2009; Major 2009; Burkhardt 2008). In December 2005, the UN asked the EU to deploy a deterrent force to back up the forces of the UN-led MANUC operation during the precarious election period. The European Council, with German consent, had declared its willingness to help even prior to this UN request. But the Merkel government took a very ambivalent position, torn between two objectives: On the one hand, it was committed to the ESDP and thus tried to avoid blame and conflict on the EU level. On the other hand, the government tried – anticipating the necessary constitutive mandate by the Bundestag – to avoid costly and risky concessions which would stir domestic opposition (Schmidt 2006, 75).

Thus, when Chancellor Merkel promised troops to the French President Jacques Chirac in January 2006, considerable (and foreseeable) resentment among the Grand Coalition's parliamentary fractions ensued (Volkery 2006). To satisfy potential domestic veto players, Defense Secretary Franz Josef Jung immediately stressed that Germany would not assume the lead-nation status for the operation and thus rejected the first deployment of an EU battlegroup ever. [9] In addition, Jung also rejected the deployment of German combat forces (Leersch 2006) as the government had to answer a host of difficult questions concerning fears of overstretching the German armed forces, the military soundness of the mission, and "German interests" in this operation. Since Britain and France also objected

[9] Although no Battlegroup was deployed, the EU mission to secure the Congolese general elections in fall 2006 was widely considered a de facto test for the European capacity to act.

taking the helm, the deadlock over the leadership question put the Grand Coalition in a tight spot. Only after France agreed to assign troops in comparable strength in March 2006, the Grand Colition reluctantly agreed to assume the operational command. With military preparations well advanced and political costs in the EU rising, the potential domestic veto players were put under strong pressure to give way.

The Bundestag approved the mission in June with a large majority. But prior to approval, the government had to concede several national caveats to the skeptics (Ryjáček 2009; Miskimmon 2007, 161-162; Major 2009, 315-316; Schmidt 2006): With regard to the deployment period – an important factor influencing the deterrent effect on spoilers – Defense Secretary Jung promised early on that the troops would be home by Christmas (Ehrhart 2006, 12). French suggestions to extend the mission, providing stability during the immediate post-election time, were rejected outright. With regard to force disposal – an important factor influencing force flexibility in unexpected contingencies – Germany sent the second largest troop contingent. However, 500 of its 780 soldiers served as "on-call forces", stationed not in Congo, but in Gabon's capital Libreville, thus limiting operational flexibility.[10] Moreover, another important caveat confined the area of operations for German forces to Kinshasa.

Anticipated veto playing also accounts for inconsistencies in Germany's contribution to the civilian part of the ESDP. Overall, Germany contributes 910 police men to the ESDP police pool and Berlin has also played a central role in transforming the failed German national capacity building project for an Afghan National Police (ANP) into the EUPOL Afghanistan mission during its 2007 presidency (Bund-/Länder-Arbeitsgruppe Internationale Polizeimissionen 2007, 6; Gross 2009). However, German police officers do not and will not participate in the integrated European Police Units or the French-led European Gendarmerie Force in the near future. Equally, Germany provides no police headquarters for the ESDP, because of anticipated institutional veto playing. Up to now, consensual interpretations of German constitutional law call for a clear separation of police and military functions, thereby banning paramilitary forces. Yet, many current ESDP civilian operations succeed or overlap with military missions, thus requiring close coordination with military forces (Heise 2009, 23).

In sum, despite the government's positive rhetoric, legal constraints and the anticipation of veto playing by the Bundestag had (and still has) a decisive impact on the German contribution to the ESDP. To be sure, the parliament's concerns were not limited to

[10] The mission consisted in total of 2,400 troops from 21 EU member states and Turkey.

the material costs and risks. Rather, the ideational preferences for a militarily reticent foreign policy, which are strongly embedded in German society, affected the calculations. In fact, the founding fathers (and mothers) of Post-World War II foresaw that the legislative bodies should serve as institutional veto players to prevent executive excesses and military excursions (Pradetto 2006; Dalgaard-Nielsen 2006). Thus, the original preferences, which stimulated the creation of the veto player, are also evident in its potential activation.

In comparison to the ESDP case, veto player activation and orientation is the key to understanding the Grand Coalition's role in European constitutional reform process. When Merkel took office, the Constitutional project was in crisis. Referenda in France and the Netherlands had rejected the ratification in early summer 2005, putting the process in doubt and causing other critical states to openly question the treaty. The limbo lasted until June 2006, when the Austrian presidency succeeded in consolidating the member states' perspectives and set a roadmap to proceed with the reform project (Maurer 2007, 27). The Merkel government and the German presidency in 2007 were charged with the lion's share of the difficult negotiations. Against this backdrop, the Grand Coalition became the champion of reviving the reform process. It acted as a broker, pragmatically searching for common ground in order to overcome the reform blockade, but also pursued its own agenda. As stated in the coalition treaty, the German government actively worked to retrieve as much of the Constitutional Treaty as possible.

Initial momentum was achieved by the Berlin declaration, signed on March 25, 2007. It was prepared in cooperation with representatives of the member states – the so-called "Focal Points" – and EU institutions (Schwarzer 2007). The third part of the declaration clearly set the path for the coming month: "We are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009." (Presidency of the EU 2007) The cooperation, leading to the Berlin declaration, and the declaration itself set a positive context for the successive preparations of the mandate for the EU summit in winter 2007. The German government organized the negotiations around 12 questions which were debated among the Focal Points in bilateral and multilateral rounds. This approach helped to identify critical questions and common ground, paving the way for concluding negotiations under the Portuguese presidency (Göler/Jopp 2007b, 21).
The emerging Lisbon Treaty at the end of 2007 largely resembled the Constitutional Treaty, thereby meeting several of the conditions set by the Federal Constitutional Court in its rulings on the Maastricht treaty (1993) and the European Arrest Warrant Act (2005): the inclusion of the European Charter of Fundamental Rights, the Subsidiarity Principle, the

(German) tri-partite scheme of EU legal acts as well as several limits on the delegation of competences in specific policy areas (Harnisch 2007; 2009).

With international negotiations of this two-level game proving successful, Germany's domestic dynamics were also mostly supportive (Bulmer 2009, 10-11). Although EU competences are shared between the parties across ministerial portfolios, the Grand coalition showed few signs of disunity or conflict. Even top-heavy negotiations through the Focal Points, which largely excluded the parliament and the SPD-led Foreign Office, did not cause vocal discontent. Close cooperation between Chancellor Angela Merkel and Foreign Secretary Frank-Walter Steinmeier seemed effective in overcoming party disagreement. The Bundestag ratified the Lisbon Treaty with overwhelming majority in April 2008, the Bundesrat followed suit in May.

And yet, the Grand coalition's competence to delegate authority was challenged twice. First, on July 18, 2005 the federal Constitutional Court ruled the European Arrest Warrant Act unconstitutional and void, thereby severely limiting the Coalition's room for maneuver in the field of cooperation in criminal law (Satzger/Pohl 2006). Second, MP Peter Gauweiler (CSU) appealed repeatedly to the FCC, seeking a referendum on the ratification of the Constitutional Treaty. The FCC first considered the question had no priority after the failed referenda in France and Netherlands and rejected the claim. However, the Damocles sword of judicial review constrained the Grand Coalition's policy options significantly (Maurer 2007), and the concerns of the government turned out to be justified when Peter Gauweiler again appealed to the FCC, the court taking up the case this time (Prantl 2008). MP Gauweiler claimed that the Lisbon Treaty was unconstitutional, because it violated Art. 38 GG - the right to general, direct, free, equal and secret elections - by circumscribing the issues the Bundestag may decide upon.

4. Veto player activation and ideational policy interdependence: The case of the Federal Constitutional Court

The ruling of the German Federal Constitutional Court on the Lisbon treaty marks a particularly appropriate moment to reconsider the impact of veto players on the delegation of authority to the European Union. First, the treaty itself is a "poster stepchild of veto politics in the European Union". Not only does the development and content of the treaty feature various mechanisms, including the Convent Method and an extensive subsidiarity mechanism, to forego domestic vetoes. But also the treaty's ratification process – two earlier

treaty revisions were rejected by popular referenda in France, the Netherlands and Ireland – displayed considerable reservations nonetheless. Secondly, the tortuous ratification process suggests that the Lisbon treaty is likely to be the last of a whole class of EU treaty revisions (Maastricht, Amsterdam, Nice, Constitutional Treaty, Treaty on the Constitution of Europe), thereby bringing the "Constitutionalisation of Europe" to a halt. In short, European integration appears to have reached a plateau at this time.

In the following we argue that this is case because the German FCC, among other veto players, began to severely circumscribe the power to delegate competences to the European Union in the 1990s. This resulted in a dynamic drive towards constitutionalisation, focussing on a delimitation of competences between the Union and its member states. (Alter 2000; Harnisch 2006; 2010)

Of particular concern here is the fact that the FCC's judicial oversight, the principal check on the legislative's and executive's discretionary power to engage in European integration, defies easy explanations. In the literature on comparative international constitutional law, a common trend among national constitutional courts to curtail and reject delegation of authority to international organizations is acknowledged (Benvenisti/Downs 2009; Jackson 2010??). Some scholars suggest, that this veto playing is primarily motivated by parochial, even selfish concerns for power-maximization vis-à-vis other branches of government or pure survival (Benvenisti 2008; Sadurski 2008).

However, based on the FCC's track record of European rulings (Kokott 1998; Müller-Graff/Lenk 2001; van Ooyen 2006), we posit that how and to what extent National Constitutional Courts become "international actors" varies considerably and thus cannot be reduced to a clear pattern of either office or policy seeking. Specifically, we suggest that the Court's variable deference to the other branches of government and international courts is rooted in its changing conceptualization of democracy and the attached definitions of constitutive core norms rather than institutional self-interest.

Theoretically, we argue that democratic ideas held by the FCC on the domestic level create ideational policy interdependencies with the evolving European law, resulting in distinct patterns of cooperation and conflict with the ECJ in particular and the EC/EU in general. Empirically, we suggest that these ideational interdependencies have come to shape Germany's European Policy stronger than ever under the Grand Coalition. Core features of the Merkel government's constitutionalisation policy directly fulfil demands of the FCC's Maastricht ruling (Basic Rights Charta, Parliamentarization, Subsidiarity principle) and various policy strategies and choices (Battle Group deployment; HJA cooperation,

Gendarmerie) respond to anticipated veto positions of either the FCC or the Bundestag. Moreover, we find that the recent Lisbon ruling of the Court so fundamentally altered both the Court's veto position vis-à-vis the legislative and executive branch and the power to further integrate in the Union that the FCC's changing veto position deserves an in-depth analysis. Conceptually, and in contrast to Andrew Moravcsik's interpretation of U.S. human rights policy as captured by a vocal conservative minority which holds a fixed veto position, we focus on the variation in veto playing by one important institution, the Constitutional Court.

We identify four distinct phases of judicial domestication in the case of Germany's European policy and hypothesize about the causal forces that may account for these changes. As such, we do not reject the bottom-up logic of Moravcsik's liberalism, but we posit that ideational liberalism in connection with its republican liberal implications (veto positions) must be taken seriously.

In retrospect, the Court first employed legal heuristics in the 1950s and 60s that allowed for nearly unhindered integration, thereby leaving considerable discretion to interpret European rules to the executive. In this phase, the FCC relied on the European Court of Justice's argument that the Community's law constituted an autonomous legal order (22 BVerfGE 293, 296). But in doing so, even then the judges in Karlsruhe did not concede that Community law emanates from an autonomous source equal to that of the German Grundgesetz (GG). What the FCC recognized was the supremacy of Community law over national law (not constitutional law) in the form of a "priority of application" (Anwendungsvorrang), but not a "priority in validity" (Geltungsvorrang) (31 BVerfGE 145, 169).

In the second phase, beginning with the so-called "Solange I-judgement", the Court altered this approach. It reasoned that Art. 24 GG only allowed for a limited transfer of competences to interstate institutions and it asserted its position vis-à-vis the emerging powerful European Court of Justice (ECJ). In particular, in Solange I the majority of the judges held that "as long as" (Solange) European law had not reached a level of protection equivalent to that provided by the Basic Law (Grundgesetz), as well as a comparable level of democratic legitimacy of its legislative process, the Court itself would continue to review secondary European law according to the Grundgesetz's standards.[11] Also, the judges argued that Art. 24 did not literally transfer national sovereign competences to the European level,

[11] The dissenting judges agreed that the Grundgesetz did not allow for unlimited delegation of authority and maintained that the core principles of the EEC had to be in accordance with the core principles of the GG. However, the dissenting vote posited that this was the case (37 BVerfGE 271, 296).

but only left room for the implementation of European law within the national legal realm (so-called Öffnungstheorie) (37 BVerfGE 271 at 280).

In sum, the Court recognized that European law raised important concerns with regard to the constitution, but it also asserted that these concerns affected "only" the realm of fundamental rights and that these may be overcome in the future through a democratization of European legislative process. Based on this generic interpretation of European law, which may or may not reach the standards spelled out by Karlsruhe, the Court reasoned that the ECJ and the FCC had a "duty" to reach consensus in conflicts arising from the overlap of the two respective legal orders (37 BVerfGE 271, 278). Theoretically speaking, ideational interdependence as interpreted by the FCC allowed for cooperation between the Courts.

After a period of active ECJ rulings on fundamental rights, the Court again changed course in the Solange II decision. Right after the treaty revision of the Single European Act (SEA) it expressed substantial satisfaction with the level of protection for fundamental rights provided by the ECJ. It reasoned that "as long as" the European Communities through the ECJ ensured an effective protection of fundamental rights, the FCC would no longer scrutinize secondary European Community legislation. While the Court did not abdicate its control function vis-à-vis the ECJ, the adjournment was based on the increase in the level of basic rights protection and democratic responsibility in the EC (73 BVerfGE 339, 384). As a consequence, European integration could intensify with the ECJ watching and the FCC looking on from the sidelines. One may argue that ideational symmetry was high, so that cooperative behaviour between the courts could ensue.

But make no mistake – in an important variation on the question of the source of the autonomy of the European legal order, the FCC in the Solange II decision found that the obligation to reach consensus between the Courts did not flow from the European level, i. e. the EC founding treaties, anymore. It held steadfast that the obligation for consensus emerges from the German law transferring sovereign competences to the Communities (73 BVerfGE 339, 375). Thus the ideational point of reference for the adjudication of that question lay within the German legal sphere and not in European law as an autonomous legal source.[12] Theoretically speaking, the Court now defined cooperation on German terms only.

[12] Thus, it should come as no surprise that the German FCC never referred a case to the ECJ under Art. 174 EC Treaty.

In the third phase, the Court substantially changed its reasoning and ideational underpinnings for its veto position. While the judges in Karlsruhe continued to refer to a cooperative relationship with the ECJ, they now formulated a ringing critique of the European Union in general and the EU Commission and ECJ in particular, which allegedly engaged in the "transgression of the competences limits confer to them" (ausbrechende Rechtsakte) (89 BVerfGE 155, 188). To begin with, the Maastricht decision continued the trend in doctrinal evolution of the Court to qualify the autonomous status and source of Community law (Kokott 1998, 81). Metaphorically speaking, the FCC, as the gatekeeper of the bridge between two legal spheres, continued to interpret the bridge as built by Germans according to German construction rules, safety standards etc. But more importantly, the Court employed fresh sources to legitimize to put clear and present limits on the competences of both the executive and legislative branch to delegate authority to the EU. Whereas the Solange I-doctrine had rooted the limits to delegation in the protection of Basic rights – and subsequently conceded the rising EC/ECJ competence to provide for equal protection –, the judges in Karlsruhe now based their reasoning on a particular interpretation of Art. 38 GG, which stipulates the equal and unhampered right to vote. Thus, the interpretation did not refer to democratic process only, but to substantive issues of democracy, i.e. the content the representatives of the people had to decide upon:

> "Art. 38 GG forbids the weakening, within the scope of Art. 23 GG, of the legitimization of state power gained through an election and of the influence on the exercise of such power by means of transfer of duties and responsibilities of the federal parliament, to the extent that the principle of democracy declared as inviolable in Art. 79 para. 3 with Art. 20 paras. 1 and 2 is violated" (Headnote 1 89 BVerfGE 155).

Hence, the ideational point of reference changed from basic rights to the principle of democracy as such (Kokott 1998, 94). This "ideational turn" not only opened the prospect of citizens challenging ratifications of treaties they deemed "undemocratic", an open invitation to more veto playing via the FCC. It also enabled the court itself to directly change the constitutional limits of German European policy by changing its own definition of democracy.

In the Maastricht ruling, the Court defined a new, more demanding threshold, rooting its democratic core in the static, primordial concept of the demos, i.e. Staatsvolk, which itself is constituted through pre-legal requirements such as shared culture, a common language and history (89 BVerfGE 155, 185; Weiler 1995).[13] Void of a Staatsvolk, the European Union, as a confederation of States (Staatenverbund), would have to be

[13] Van Ooyen 2006: 19-22 traces the concept of the „Staatsvolk" also in other rulings of the FCC.

legitimized to a substantial degree through the national democratic processes. While this did not prejudge the emergence of a European demos through pre-legal developments in the future, it ruled out that "integration through law" could proceed much further under the given German constitution (89 BVerfGE 155, 191).

Theoretically speaking, the Court turned the tables on the ideational interdependence between the German constitution and the European treaties. From now on Germany's highest court would not only regulate legal/political transactions from Germany to the EU, but it would also scrutinize EU secondary law with regard to their accordance with its own self-defined new threshold (Mayer 2000, 105).[14] Under the banner of the so-called "Kompetenz-Kompetenz", the court declared itself as the final arbiter for both German and European law in Germany, relegating the European Court of Justice to a subordinate role. Thereby, the German constitution's core principle – democracy in Germany – was confined to democracy through the German people, cutting European democratic governance in Germany more or less out.

With the Lisbon decision, the FCC appears to enter a fourth phase. While the Court held that the Treaty itself is constitutional, it ruled that the accompanying German statute on the rights of the Bundestag and the Bundesrat in European Union was not. Moreover, it instructed the legislators to modify the statute in accordance with its own decision, thereby leaving no doubt that the FCC ultimately sets the limits for legislative acts (Niedotibek 2009, 1246). Arguably, the Lisbon decision marks a clear departure from the Maastricht decision in doctrinal terms (Schönberger 2009, 1207; Halberstamm/Möllers 2009, 1247; Kiiver 2009, 1290; Müller-Graff 2009, 337).

First, the Court introduces an individualistic concept of democracy that stands in clear contrast to the statist conceptualization of democracy in the Maastricht decision:

> „The standard of review of the Act Approving the Treaty of Lisbon is determined by the right to vote as a right that is equivalent to a fundamental right (Article 38.1 Sentence 1 in conjunction with Article 93.1 no. 4a of the Basic Law). The right to vote establishes a right to democratic self-determination, to free and equal participation in the state authority exercised in Germany and to compliance with the principle of democracy including the respect of the constituent power of the people." (BVerfG, 2 BvE 2/08, para. 208, http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html)

But, later in the ruling, the Court's reasoning returns to the Maastricht ruling's concept of the demos as the ideational reference point:

[14] In a related argument, the Court's ruling on the European Arrest Warrant Act found stressed that the EAW was „European Union law" and not „Community Law" which remains a legal sub-order of public internatioonal law, cf. Van Ooyen 2005: 52.

> „The Basic Law does not grant the bodies acting on behalf of Germany powers to abandon the right to self-determination of the German people in the form of Germany's sovereignty under international law by joining a federal state. Due to the irrevocable transfer of sovereignty to a new subject of legitimisation that goes with it, this step is reserved to the directly declared will of the German people alone." (BVerfG, 2 BvE 2/08, para. 228, http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html)

This doctrinal ambivalence has led some scholars to interpret the Court's judgment as one of a "divided gatekeeper" (Kottmann/Wächter 2009). In contrast to the unidirectional referencing in Maastricht, the court, through these diverging conceptualizations of democracy broadened the doctrinal room for maneuver (Kottmann/Wächter 2009, 468; Müller-Graff 2009, 339).

Secondly and with regard to the material limits to further integration under the given German constitution, the ruling takes another (radical) step to delimit the integrative competences of the legislative and executive branch. Under the guise of the concept of "responsibility for integration" (Integrationsverantwortung) (BVerfG, 2 BvE 2/08, Headnote 2 and paras. 236, 238ff., 243, 245, 264, 272, 317, 319f., 365, 375, 409, 411, 415), the court withdraws a large chunk of procedural and normative competences from the legislative and executive branches which they may not delegate to the Union under the given German Constitution.[15]

The Court's definition of "Integrationsverantwortung" is strong on obligations, soft on rights and ambivalent in nature: Based on its doctrine of democracy and with reference to Art. 20, para. 1, 2 as well as Art. 23 and 79, para. 3 the court substantially enlarged the sphere of legal concepts it will protect: democracy, "sovereign statehood" and "constitutional identity",[16] thereby considerably advancing its own position vis-á-vis the sovereign's representatives. In procedural terms, it sharply delineates the executive's competence to participate in the various EU treaty amendment procedures, in particular the flexibility clause and the so-called Passarelle (or general bridging) clause. Henceforth, the Bundestag and Bundesrat have to give their consent in law before the executive branch may engage in numerous cases of dynamic treaty development. Arguably, here the mistrust vis-à-vis the EU, the ECJ, but also the Bundestag as the responsible representative of the sovereign is greatest (Kiiver 2009, 1291).

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15 In some passages of the decision, the court even goes so far as to suggest that Art. 79, para. 3 forbids the delegation under a new constitution, cf. BVerfG, 2 BvE 2/08, para. 217.

16 The latter two concepts are unknown to the Grundgesetz. Systematically, they strengthen the state-centric conceptualization of democracy and again stress the defensive and self-centered semantics of the decision, i.e. „Deutsche Volk", „German people" (in capital letters), „Unterwerfung", „submission"; „Aufgabe der eigenen Identität", foregoing one's own identity (cf. BVerfG, 2 BvE 2/08, paras. 113, 228).

In normative terms, the judges in Karlsruhe also curtail Germany's ability to integrate beyond the limits set by its early doctrine based on basic rights and democracy. The court now defines five specific areas, which have to stay put under the existing German constitution:

1. substantive and formal criminal law,
2. disposition of the police monopoly on the use of force towards the interior and of the military monopoly on the use of force towards the exterior,
3. fundamental fiscal decisions on public revenue and public expenditure,
4. decisions on the shaping of circumstances of life in a social state,
5. decisions which are of particular importance culturally, for instance as regards family law, the school and education system and dealing with religious communities).

In doctrinal terms, it remains unclear why these areas are specifically worthy of protection (and e.g. not civil law). The Court's assertion, "what has always been deemed" (seit jeher), is unconvincing (BVerfG, 2 BvE 2/08, para. 252), its argument is deductive and political and is thus ripe for public debate. And yet, the court's attempt itself to singlehandedly draw up a list of necessary state functions (Staatsaufgabenlehre) only adds to the list of indicators that the court itself has changed the goal posts of its own role in the German and European political order.[17] Against this background, it should come as no surprise that in the Lisbon ruling, the court does not refer to a cooperative relationship with the European Court of Justice anymore.

In sum and in spite of the Grand Coalition's advances to satisfy the Court's monita in earlier rulings (including the one on the European Arrest Warrant), the Lisbon ruling again upped the ante. The judgment holds considerable potential to alter the course of Germany's European policy and the European Union as such. Not only does it clearly delimit EU competences in a wide spectrum of policy areas: Home and Justice affairs, cooperation in civil and criminal law, trade policy, foreign, security and defense policy. It also cuts back procedural autonomy of the executive branch by necessitating prior parliamentary consent or legislative action with qualified majorities. Moreover, the courts positioning as a final arbiter on the question of the applicability of European law in Germany clearly second guesses the

[17] Simply, the Court answers many questions that were never asked (Müller-Graff 2009, 347). For examples, it speculates widely about its own role as final arbiter *if* EU institutions transgress their competences *and if* legal protection cannot be obtained at the Union level; In a similar, the ruling introduces various new (legal) concepts to ban usurpation of competences by not further specified European institutions (BVerfG, 2 BvE 2/08, paras. 238, 240, 339).

European Court of Justice role as the guardian of EU law. It is thus plausible to suggest that the German executive will opt more often for intergovernmental cooperation outside the EU legal framework rather than challenging veto player on its own premises.

Chart 3: Summary of FCC's rulings on EC/EU

	Solange I	**Solange II**	**Maastricht**	**Lisbon**
Concept of Democracy	Open (individualistic)	Open (Individualistic)	Closed (Statist)	Mixed (Individualistic/ Statist)
Core Elements	Fundamental Rights / Democratic process	Fundamental Rights / Democratic process	Fundamental rights / Art. 79, 3	Fundamental rights / Art. 79, 3: right to vote, sovereign statehood, constitutional identity + 5 policy fields
Cooperation with ECJ	Division of labor (active)	Division of labor (passive)	Declared Cooperation	No reference to Judicial cooperation
Coalition of Nat. Constit. Courts	No clear reference	No clear reference	No clear reference	Reference to Czech Const. Court

Source: Own compilation based on FCC decisions.

5. Conclusion

This explanation of Germany's European Policy suggests that ideational and republican liberalism are powerful explanatory tools, but that they should be integrated to advance their potential for a combination of causal and constitutive reasoning. In particular, ideational liberalism is consistent with the concept of "policy interdependence" that links societal (and veto player) preferences and inter-state cooperation. In addition, ideational liberalism promotes our understanding of republican liberalism by specifying the conditions under which a veto player comes into play and how it may exert influence on decision making. The European policy trajectory of the Grand Coalition showed anticipatory and post-hoc effects for both the Bundestag and the Federal Constitutional Court on a wide range of issues.

These observations should give substantial food for thought for those that have interpreted European integration primarily through the lens of economic liberalism. Our findings suggest – for one of the most pro-European states – that ideational preferences of

domestic veto players do not only shape constitutional or enlargement decisions – which they do (Moravcsik/Schimmelfennig 2009, 85). They also potentially touch upon a wide realm of policy areas which are defined by veto players, such as the German FCC.

The synthesis of ideational and republican liberalism in the guise of the veto player approach is more or less self-explanatory, because they all rest in a positivist epistemology. Our findings about the variance in the FCC's doctrine, however, suggest that this form of "domestication" cannot be reduced to "institutional self-interest". Therefore, we challenge recent advances in comparative constitutional law (Benvenisti/Downs 2009) that imply bureaucratic self-interest as the prime motive. Rather, our finding from this in-depth case study suggest that various causal pathways – transjudicial dialogue with the ECJ and other national Constitutional Courts, idiosyncratic factors such as foreign socialization by reporting judges etc. – may be present. Theoretically, this opens up a conceptual space at the intersection between a rationalist and constructivist logic. While rational republican and ideational liberalists can account for the creation of veto players and the ideational policy interdependence at a specific point in time (agents setting structure), ideational constructivist may be better in covering how agents and structures co-constitute one another (agent and structure interaction).

This analysis is instructive for further research on the impact of legislators and courts in FPA. Our single case study confirms our theoretical arguments, but the study of further cases with different institutional contexts is imperative to assess the significance of ideational liberalism and veto players more generally. Moreover, as the treatment of the Federal Constitutional Court suggests, FPA research should also cross disciplinary boundaries in a drive for theoretical and empirical dialogue and synthesis.

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