

From Policies of Fear to Politics of Values

Human Rights on the Agenda of the European Union

Synopsis

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Why have human rights been included on the agenda of the European Union (EU)? At the heart of this thesis is an analysis of the politics of attention¹ to human rights in the EU institutions between 1992 and 2012. In expounding the reasons why and the way in which human rights have been included on the EU agenda, I present a critical assessment of the normative nature of the EU. I argue that the reference to human rights as constitutive of the founding principles of the EU is not genuine. Rather, the EU human rights agenda between 1992 and 2012 was a signifier of fear, meaning that the EU has resorted to include human rights on its agenda as an instrument to reinvigorate *raison d'être*, to mitigate perceived threats to the European internal market and to circumvent threats to the security and safety of EU citizens. Furthermore, the EU has allocated attention to human rights as a consequence of normative spill-over processes in order to eliminate the threat of a democratic legitimacy deficit. Democratic legitimacy matters because it gives the EU *raison d'être* and because it is a precondition for a well-functioning internal market. The main thesis therefore confirms both neo-functionalist and realist perspectives by asserting that the allocation of attention to human rights is a consequence of spill-over processes, but only because the attention to human rights is functional to fundamental EU interests. In addition, I argue that the politics of attention to human rights unveils how EU policies determine EU politics.

To examine the extent to which, and why and how the politics of attention to human rights in the EU institutions has changed between 1992 and 2012 I adopt a mixed-method approach. This approach combines an empirical view of the relative attention to human rights and a qualitative analysis of the EU speech. The empirical data collection displays that the overall relative attention to human rights on the EU agenda decreased from 'prominent' in 1992 to 'average' in 2012. I use critical discourse analysis (CDA), existing agenda-setting theories, and interviews to analyze the changes in the relative attention and to explain why and how the EU includes human rights on its agenda. A single case study on the politics of

¹ The notion 'politics of attention' is indebted to Bryan Jones and Frank Baumgartner: B.D. Jones and F. R. Baumgartner, *The politics of attention. How government prioritizes problems* (Chicago and London 2005), 1. *PhD Thesis submitted by A.C.L.M. Zwagemakers on 8 November 2013 and successfully discussed at LUISS University in December 2013. The total or partial use of the PhD Thesis is subject to copyright restrictions.*

attention to female genital mutilation (FGM) clarifies why and how the EU allocates attention to specific human rights issues.

Human rights emerged as a prominent EU agenda item in 1989. The impact of internal market policies, aimed at facilitating the freedom of movement, compelled a politics of attention to the safety of workers and to security on the internal market. This politics of attention implied a politics of attention to human rights, needed to protect the citizen as the core element of the internal market. This indicates how EU policies influence EU politics. Moreover, the politics of attention to human rights is a consequence of normative spill-over. Berthold Rittberger and Frank Schimmelfennig coined the notion of ‘normative spill-over’, indicating that functional integration at the EU level has shown to attenuate democratic and human rights institutions at the national level, which in turn caused a democratic legitimacy deficit at the EU level.² Normative spill-over illustrates that the EU responds to perceived threats to EU integration by allocating attention to human rights. Indeed, the empirical data collection exposes that the relative attention to human rights increased at times when the EU reported on ‘negative’ developments to the integration process. The relative attention to human rights decreased when the EU reported on ‘positive’ developments to EU integration. In consequence, the successful elimination of threats to security and the internal-market led to a more modest human rights discourse. I attest that, even though EU enlargement as a ‘positive’ development to EU integration engenders a decrease of the attention to human rights, emerging concerns over transparency, legitimacy, and democracy after the accession of new member states constitute threats that urge the EU to allocate more attention to human rights.

The politics of attention to human rights does not only conceal fundamental EU interests; attention to human rights is used to pursue EU interests. The EU interests of maintaining a well-functioning internal market, and therefore of maintaining security standards have warranted normativity. Hence, normativity is inherent to the EU, but only as a strategy to circumvent threats to the EU. This also explains why female genital mutilation emerged as an internal EU affair on the EU agenda; to ensure security standards on the internal market and to meet demands of responsiveness to public concerns. The EU focus on citizens is pivotal in understanding the EU politics of attention to human rights between 1992 and 2012. This is because the attention to citizens is closely intertwined with the alleged democratic legitimacy deficit. Because democratic legitimacy is a requirement for European co-operation and integration, and because normativity is required to mitigate threats to democratic legitimacy, normative inherence has become an

² B. Rittberger and F. Schimmelfennig, “The constitutionalization of the European Union: explaining the parliamentarization and institutionalization of human rights’ in: S. Meunier and K.R. McNamara eds., *Making history. European integration and institutional change at fifty* (Oxford University Press 2007), 216.

interest of the EU. The launch of the Citizen's Initiative in 2009 not only confirms that responsiveness is a concern of EU policy makers; the Citizen's Initiative also indicates that responsiveness is a significant agenda item especially at the EU level. Precisely because democratic legitimacy is not self-evident at the EU level through input legitimacy, the EU needs to ensure a high level of output legitimacy in order to maintain relevance.

The EU has resorted to a politics of emphasizing common values to reinvigorate the EU *raison d'être*, to ensure advanced economic and monetary co-operation, to justify an area of justice, freedom, and security, and to pursue a leading role at the world stage. Two turning points in the politics of attention to human rights, in 1997 and in 2009, are indicative of why and how the EU transformed its fears into values. The EU speech in 1997 and in 2009 exposes the lack of an ideologically biased context model. A context model refers to a set of dominant common beliefs and perceptions at a specific moment in time, and that is often the result of shared episodic memory. After 1945, the EU constitutive ideals, of which human rights are a component, were recognized within a specific context model that determined the perceptions of EU actors and EU citizens. However, with the advancement of economic and monetary integration in the 1990s and the 21st century, this (ideologically biased) context model has been replaced by a context model in which EU integration and common values are not by definition recognized as necessary to EU citizens. Therefore, EU policy makers have been trying to reinvigorate an ideologically biased context model in which not only the relation between common values and economic and monetary integration is emphasized, but in which also the relevance of the EU is more widely recognized. This was needed to enhance democratic legitimacy.

The 1997 Amsterdam Treaty paved the way to talk about human rights in the EU institutions, to pursue EU human rights policies, and to mainstream EU human rights policies into other policy areas. The introduction of the 'foundation frame' and the increased attention to racism and discrimination are at the heart of this change. The 'foundation-frame' is a type of speech that allowed the EU to justify the presence of human rights on its output agenda, namely by asserting that the EU was founded on the principles of democracy, human rights and the rule of law. The inclusion of the foundation-frame was an attempt to articulate and amplify these EU constitutive ideals. The politics of attention in 1997 is also characterized by increased attention to racism. I argue that there is a connection between the attention to racism and the launch of the foundation-frame. The launch of the foundation-frame and the increased attention to racism coincided with the launch of an EU area of freedom, justice, and security. For security to become prominent I surmise the existence of insecurity. The threat of insecurity constituted the motivation for the launch of the foundation-frame and the allocation of attention to racism. Keeping in mind that the EU

allocates more attention to human rights when confronted with perceived threats to security and the internal market, I claim that a perceived threat in 1997 not only led to more attention to racism, but also to the articulation of EU constitutive ideals. Constitutive ideals are made explicit as a result of moral evaluations of certain focusing events. For a focusing event to trigger moral evaluations resulting in the attention allocation to racism and to the EU constitutive ideals, the focusing event must somehow be related to racism and the EU constitutive ideals. One focusing event in the 1990s that not only constituted a threat to EU security but also touched upon racism, and upon the ‘founding principles’ of the EU was the war in Yugoslavia. However, the EU justified the increased attention to racism by underscoring the emergence of societal problems. These problems were identified as being caused by racism, and touched upon social and employment affairs in particular. I state that this illustrates the discrepancy between why and how issues emerge on agendas. The EU did not mention the impact of the Yugoslav wars as a reason for the prominence of constitutive ideals and instead resorted to highlighting concrete economic and social problems. Moreover, the survey that indicated racism as a problem to the internal market had been executed years before 1997. Hence, the use of problem indicators is merely a strategy to pursue other interests in a different context. Racism had been on the agenda of EU actors before 1997, but it was only in the aftermath of the Yugoslav wars that the European Council articulated the EU constitutive ideals. The European Council referred to racism as an impediment to the economic and social situation in the EU, which provided a way to include human rights on the agenda. Issue initiation, thus, occurs before a particular discourse allows for the ultimate inclusion of the issue on the output agenda. Issue inclusion depends on context and discourse, and thus interests, rather than on indicators of problems as such.

The EU speech in 2009 reflects that the EU sees itself increasingly confronted with the misapprehension of its citizens, portending that there is a perceived threat of a democratic legitimacy deficit. The 2009 speech also reveals EU ideology, exposing that the EU has started to generate a sense of ‘closeness’ to its citizens in order to justify advanced economic and monetary cooperation. The EU has attempted to engender closeness by highlighting EU shared values, by appealing to the citizens as belonging to an ‘in-group’, and by emphasizing EU accomplishments while highlighting how the EU could support ‘others’ in living up to certain standards. Moreover, the politics of attention to human rights in 2009 coincides with the politics of attention to justice and European citizenship, underscored by the launch of a Directorate-General for Justice, Fundamental Rights and Citizenship. Indeed, the politics of attention in the EU institutions is tailored to discuss the needs and daily life concerns of EU citizens, and responsiveness is a key element in the politics of attention to justice, fundamental rights and citizens. This focus on responsiveness also applies in a similar vein to individual political actors who, when confronted with fears

and threats, resort to emphasizing EU common values. In 2009 the politics of attention changed with José Manuel Barroso's campaign to be re-elected as European Commission President. In the effort to render himself responsive to the demands of his opponents, Barroso used agenda-setting, as well as the agenda-setting of human rights as a strategy. Barroso adopted a normative discourse, to which he applied the urgency of the economic and financial crisis to human rights.

Moreover, the politics of attention to human rights changed in 2009 due to the launch of the Lisbon Treaty. This is particularly so because the Lisbon Treaty requires EU accession to the European Convention on Human Rights (ECHR). I argue that the accession of the EU to the ECHR provides an opportunity to legitimately pursue an EU human rights agenda. The EU uses the Council of Europe and the ECHR as a framework of reference for human rights protection because all the EU members are party to the ECHR. In the thesis I analyze that this is an agenda-setting strategy because the EU is not an appropriate actor to pursue a human rights agenda based on the fact that the EU member states are party to the ECHR. Rather, human rights are raised to salience through accession to the ECHR. Moreover, EU accession was pursued with the objective of generating democratic legitimacy.

The turning points in the politics of attention to human rights in the EU institutions between 1992 and 2012 coincide with the turning points in the EU politics of attention to FGM. I purport that the politics of attention to FGM in 1997 was determined by the shock of the discovery of the human rights violations in Belgium in 1996. The EU consequently stressed the importance of protecting the vulnerable groups in society; children, young people, and women. On the basis of funding on-going projects through the DAPHNE Initiative, launched in 1997, the EU adopted a policy that provided for a 'guarantee of attention' to the rights of children and women. FGM emerged on the EU agenda as one of the projects funded within this framework. Hence, the attention to FGM was mainstreamed into the attention to the human rights of women and children and into the attention to human trafficking. Linking human trafficking to FGM allowed for the securitization of human rights. One of the main objectives of the DAPHNE Initiative, as well as of the FGM-project, was the creation of information networks and the gathering of data on human rights violations. I conclude that a lack of information was interpreted as a contributing factor to the possibility of human rights violations. This lack of available information was subsequently assessed as a threat to the safety of EU citizens and to the security of the internal market as a whole. The lack information moreover reveals the reason why FGM emerged as an internal EU affair; FGM entered the EU through international migration. Hence, the fact that FGM is not inherent to European societies is closely aligned to a lack of consensus on FGM and to the unfamiliarity of EU based professionals confronted with FGM. These factors inspired a focus on generating more knowledge on the

practice.

In 2009-2010 the EU included FGM on the agenda as an indication of EU responsiveness to public concerns. Moreover, FGM functioned as a ‘bridge’ that allowed the EU to connect its policies on justice and its policies on security. The emergence of FGM on the agenda occurred within a discourse of reorientation, through which the EU sought to change the focus from fear to values. However, where the focus had been on protection and prevention in 1997, the politics of attention to FGM in 2010 is characterized by criminalization with an emphasis on sanctioning. This is primarily the result of shame; shame pertaining to the lack of successful and effective concrete action to eliminate FGM, implying that the politics of attention to FGM developed in response to the policies pursued in 1997.

The securitization and criminalization of issues paves the way to agenda-success at the EU level. This is particularly successful in the case of the attention allocation to FGM. I assert that the lack of concrete policies and political attention in the field of FGM is due to the lack of a clear solution to the issue and due to the lack of a clear legal basis that allows EU policy-makers to tackle this issue effectively. Criminalization and securitization offer an alternative to raise this issue to salience without pursuing concrete policies. The EU also uses a number of frames to allocate attention to human rights. The most widely used frames are ‘value-frames’, ‘citizen-frames’ and ‘foundation-frames’.

In addition, in explaining how the EU allocates attention to human rights, I outline a number of ‘allocation styles’: strategizing critique, following the international trend, mainstreaming, agenda-setting, responsiveness, the logic of politics, and the logic of relocating attention. Especially the ‘relocation of attention’ accounts for the overall decrease of prominence of the relative attention to human rights between 1992 and 2012. The relocation of attention feeds into an overall trend in the EU institutions of pursuing policy coherence and rationalization. This touches directly upon issue linkage, and more specifically on the institutionalization of issue linkage. I call this ‘attention merging’; two or more policy areas are merged into one policy area. The relocation of attention is particularly evident in the 2009 shift in the politics of attention. Human rights ‘merged’ into one policy area with European Citizenship and Justice and a Commissioner for justice, fundamental rights, and citizenship was appointed. Issue linkage is indicative of the more general trend of compressing attention. This compression of attention, which means that the EU allocates attention in a more concise and effective way was introduced in 2004 when Barroso took office as Commission President. This is reflected by the empirical data, showing a significant decrease of prominence in 2004. This trend is also visible in the attention allocated to other policy areas.

In analyzing how the EU human rights agenda is set, I expound two specific agenda-setting dynamics in this thesis: passive agenda-setting dynamics and responsive agenda-setting dynamics. The

role of the Council of Europe in setting the EU agenda is an illustration of passive agenda-setting dynamics. Moreover, I also state that the involvement of the European Parliament and civil society embodies a passive agenda-setting dynamic. This is because EU policy-makers avail themselves of the commitment, expertise, and authority of the Parliament and NGOs to justify the need for issue inclusion and for concrete action. Hence, the Parliament and NGOs set the agenda without engaging in a proactive approach. Passive agenda-setting dynamics are also at play among civil society organizations. In trying to influence the agenda of EU Presidencies, civil society organizations in Brussels refer to the expertise, knowledge and experience of civil society organizations in the country holding the Presidency. Reference to the name and involvement of these organizations on the ground is a useful tool to exert pressure on the government holding the presidency, despite the fact that the knowledge and experience are sometimes absent.

Responsive agenda-setting dynamics also play a role in setting the EU human rights agenda. In this regard, I discern responsive agenda-setting dynamics and responsive strategies. Responsive agenda-setting dynamics touch upon the dynamics that set the politics of attention after issue inclusion. When responsive dynamics are at play, the Parliament and NGOs have the opportunity of influencing the course of action once the EU policy-makers (the Commission, the Council, or the Council of the EU) have decided to include an issue on the EU decision agenda. Responsive strategies are devised by civil society in response to EU-level action. These strategies were influenced by discontent with EU-level policies.