Rights Constitutionalism and European Integration: The Charter of Fundamental Rights of the European Union

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Paper prepared for the 2001 European Community Studies Association, Madison, Wisconsin, May 31-June 2.

The process leading to the Charter of Fundamental Rights of the European Union (2000) has been heralded by members of the European Parliament as a model of how "Treaty reform" should take place. It was taken as evidence that the Parliament can contribute to the constitutional debate by drafting a "constitutional proposal" based on "wide-scale public debates" for upcoming Intergovernmental Conferences. [1] Yet Tony Blair described the Charter as an unimportant piece of writing. Drawing a different lesson, some national government representatives suggested that the Charter process showed that a "wise men" approach is the better way to get constitutional reform.

Non-partisan observers will likely notice that the Charter reads like a typical piece of EU legislation. Its exact legal status is unclear, and the narrative is dense. For the most part, the Charter repeats declarations of rights and priorities picked from existing charters and protocols, case law, and human rights conventions. Written to be a binding document, the Charter aroused opposition from the Council and was passed only as a non-binding document at the December 7-9 meeting in Nice. NGOs that had been invited to participate in the process as civil society representatives denounced it as insufficient or

[1] Comments made by Inigo Mendez de Vigo (PPE, Spain), one of four members of the "Convention Bureau" managing the Charter process for the Charter Convention, in a May 3, 2001, post-Nice report to the parliament (*European Report*, 2591, may 9, 2001, page 1.2). The Convention consisted of 15 representatives of member States' governments, 30 representatives of national parliaments, 16 representatives of the European Parliament, and one representative from the Commission. At its plenary meetings in December 2000 and again in March 2001, the European Parliament held the Convention up as a model for how national parliaments may be included in the constitution writing process, with the EP Constitutional Committee as manager of the process.

a step back for the development of a "social dimension."[2] The intention to incorporate the Charter into the EC Treaty by means of a horizontal reference in the Treaty's article 6 was blocked at the Nice meeting by opposition led by the UK, Denmark, and Ireland. Worse, no agreement was reached on the timetable for an eventual decision on the Charter's legal status. Nevertheless, the Commission agreed in March 2001 to apply the Charter in its decision-making, with the implication that all regulations and legislation to be put before the Commission has to undergo a prior review process for compatibility with the Charter (European Report 2576, 14 March 2001, I).

Considering this history, the conclusion that the Charter is yet another failed effort to federalize Europe looms close. But as I shall argue, the Charter's shortcomings and contested history should not be allowed to obscure its significance. It consists of 54 articles organized into seven chapters enumerating rights and protections ranging from well-established rights to controversial proclamations of new rights with uncertain implications. The list spans anti-discrimination clauses protecting exposed or disadvantaged groups to a list of "social rights" in areas as diverse as education, health care and environmental protection. The Charter offers little for those who have called for a founding document elaborating basic European values the way the federalist papers contributed to the founding of the United States.[3] The Charter is, as its drafters took pains to stress, a compilation of rights—civil and political, social and economics—drawn from a long list of existing rights legislation, some of it contained in international human rights

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[2] The Convention held its constituent meeting in December 1999 and a draft of the Charter completed by the Council meeting in Barritz, 13-14 October, 2000. NGO comments are available at www.europarl.eu.int/charter/civil/.

[3] It is worth noting that the US Declaration of Independence too may have been less of an original document than historians have tended to assume. The discovery by the American historian, Pauline Maier, of a large number of local proclamations of independence preceding the official 1776 Declaration of

declarations, some in the national constitutions of the member states, and some drawn from existing community law. For this reason, the Charter's status is extremely complex. It has non-binding status as a whole but many of the components are already applied in community law and supported by case-law drawn from national courts, the European Court of Justice (ECJ), and from the Human Rights Court in Strasbourg.

As is generally the case conclusions about the importance of an event depends upon the context in which the event is viewed. It is too early to reach any conclusions with respect to the Charter's contribution to the development of jurisprudence on rights, but it is in itself significant that an attempt has been made to make rights the centerpiece of a new European legal-political identity. The argument put forward here is that the Charter represents a significant step in the evolvement of a new European political identity. With the Charter, Europe has joined a transnational movement of new rights constitutionalism. The Charter imports to the European legal tradition elements of what the comparative legal scholar, Mary Ann Glendon, once referred to as "rights talk." Glendon took a dim view of "rights talk," which she defined as a uniquely American propensity to reconceptualize value issues as legal entitlements (1991, 7). It is an unfortunate tendency, in her view, because issues which really are about the balancing of different interests—say of women's interests against men's—become matters of legal judgement and the judgments of judges and lawyers rather than elected officials.

The Charter represents a significant innovation in European constitutional thinking because it conceptualizes basic European values as "rights" and does so through the vehicle of constitutionalism. Charter advocates repeatedly discussed the Charter as

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Independence suggests that even then documents of this sort were part of a collective process of narrative innovation.

part of the process of the constitutionalization of Europe but never as an effort at constitutionalism. There is a difference between constitutionalization and constitutionalism, and the Charter may well fail at the first and succeed at the latter. In what follows, I will discuss this distinction and why it matters, and then turn to a discussion of the Charter process and content.

Constitutions and Constitutionalism: Institutional Architecture vs. Rights

Constitutions define the powers of various governing institutions and constitutionalization is the process of defining the competencies of the different parts of government. Constitutionalism, in contrast, is a political-legal principle that award certain types of law primacy of other legislation, e.g. subordinates acts of parliament and administrative decisions to a bill of rights (Jackson and Tushnet 1999, 190). The collapse of communism in 1989 had practical consequences that made constitution writing a growth industry. The reliance of the European Union member states on a progression of treaties negotiated by a series of standing Intergovernmental Conferences (IGC) as the primary means for driving expansion and federalization of the Union has effectively transformed the Treaty of Rome into a "constitution for Europe" (Weiler 1999). The Charter differs from these efforts in both substance and form.

The appropriate counterparts to the Charter are bills of rights that have been added to existing constitutions in recent years, most importantly the 1982 Canadian Charter of Rights and Freedoms and the 1998 British Human Rights Act.[4] The fundamental rights and freedoms listed in Chapter two of the 1994 South African

constitutions (which were in some part inspired by the 1982 Canadian charter) presents us with another comparable effort at rights constitutionalism. There have also been less sweeping but targeted efforts to in national contexts to add gender equality rights to existing constitutional and legal frameworks.

In 1999, French legislators voted to change the constitution to say that, "[t]he law favors equal access by men and women to electoral mandates and elective functions."[5] The German constitution, the Basic Law from 1949, was changed in 1994. It originally stipulated that men and women should have equal rights. The gender neutral language became the focus of criticism after the Constitutional Court held state level affirmative action plans that awarded women priority over men in public sector hirings unconstitutional with the argument that they violated men's rights to be judged on merit. A proposal to change the constitution gained support in the wake of the decision and in 1994 it was changed to allow for proactive policies promoting equality. The constitution now stipulates that, "[t]he state shall promote the realization of equal rights for men and women and strive to abolish existing disadvantages." Hostility on the part of courts to affirmative action policies compelled advocates of positive equality measures to a constitutionalist strategy they may not otherwise have taken. Yet the choice of a legal strategy reflected also generalized frustration with the inability—or resistance—of existing governing institutions to change the nature of political decision-making and policy-making (Klausen and Maier eds. 2001).

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[4] Foreign influences on British constitutional development—particularly the need to create a legal barrier against British subject seeking redress abroad—are accepted in the case of the Human Rights Act, whereas the recent Devolution Act is mostly seen as a peculiarly British constitutional crisis.

[5] *Journal Officiel* (157) July 9, 1999. The vote marks the conclusion of a process that began when the Constitutional Council voided a 1982 law creating numerical quotas giving women 30% of the slots on ballots in municipal elections.

Rights constitutionalism has drawn inspiration both from US affirmative action policies, particularly article 7 in the 1964 Civil Rights Act, and from the international realm, principally the 1948 Universal Declaration of Human Rights, the 1976 International Covenant on Economic, Social and Cultural Rights, and the 1979 UN Convention on Elimination of Discrimination Against Women and its successor the 1995 Beijing Platform for Action. The diffusion of rights clauses into domestic law has had the consequence that such rights now are *justiciable*, that is, are made directly applicable in domestic law and enforceable through national courts.[6]

The European Convention of Human Rights and the creation of the European Court of Human Rights notwithstanding, rights constitutionalism has remained marginal to European constitutional frameworks until recently. Some of the liberal twentieth-century European constitutions included social protection clauses and enumerated social rights, but the clauses implied only an obligation on the part of states to mind the social welfare of the national community.[7] Individual citizens were not made bearers of social rights, nor did their mentioning imply particular entitlements that individual citizens could go to court to have enforced. From the perspective of comparative legal theory, the Charter bridges the gap between common law and civil law traditions and their divergent views of judicial review. (It is interesting in this context that Tony Blair's distaste for the Charter was not shared by the House of Lords, which recommended that the Charter be

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[6] The politics of human rights enforcement change when universal rights become justiciable in domestic legal systems by means of the incorporations of rights declarations into national constitutions. While a highly effective way of overcoming the problem of lacking international human rights enforcement, the central problem remains the same. Countries that already violate human rights are the least likely to embrace efforts to constitutionalize such rights, see Andrew Moravcik 1995

[7] Examples are the Irish constitution, which says, "the State shall strive to promote the welfare of the whole people" (article 45) or the Norwegian constitution, which imposes a duty on the government to ensure that "all persons capable of working can earn a living" (article 110).

made binding.) European liberal nationalism avoided judicial review—and constitutionalism—in part because nineteenth-century constitutional assemblies tended to distrust judges because they belonged to the state elite that the assemblies sought to constrain, and in part because parliaments were set up to be the sovereign expression of the nation's political will.

Writing only ten years ago, Glendon could draw inspiration for her critique of US "rights talk" from Europeans. Paradoxically, Europeans are now learning "rights talk" just as US courts and legal scholars are beginning to argue for legal restraint on these matters. The politics of rights constitutionalism received little attention in the Charter process, in part because opponents found sufficient other reasons to oppose the Charter. It is a question that deserves attention. As Cass Sunstein has argued in a number of contexts, constitutionalism is a strategy that aims to limit the power of elected representatives, governments, and civil servants, by creating legal pre-commitments to certain principles and values (1991, Holmes and Sunstein 1999). By elevating a particular concern to a protected legal category—a "right"—the law shields the concern from the democratic process. Legal entitlement cannot be renegotiated in the policy process.

Advocacy groups had some influence in the Charter process but the Charter's format as a "bill of rights" cannot be ascribed to pre-commitment strategies on the part of advocacy groups. The decision to formulate a list of rights was ultimately based on pragmatic concerns, in particular the need to produce a document that was sufficiently innocuous to be accepted by member state representatives acting in the Council and yet capable of responding to the Parliament's perceived need to find a niche in the IGC process. The document that emerged by September 2000, when the Parliament's role

came to a close, differed from the preliminary draft written when the Convention first began its work in a number of respects that are suggestive of interest group influence. Women's groups and children's right advocates were effective in getting the Convention's attention. Among the "add-ons" were also workers' rights, something that both the ETUC and the French government demanded included on par with civil and political rights. The Convention and the Convention Bureau headed by Inigo Mendez de Vigo tightly controlled the drafting process. (Roman Herzog, who had been appointed president of the Convention, was absent at the critical time in the early summer of 2000 due to his wife's death.)

The Convention discussed at some length the difference between civil rights and social and economic rights, and if the latter are actually "rights" or simply budget priorities. Much discussion also took place of how a link could be established between the Charter and the European Convention on Human Rights. Yet no attention was paid to the problems associated with accommodating European legal frameworks to rights constitutionalism. This was, in part, because the Convention early on defined its task as the enumeration of pre-existing rights into a consolidated bill of rights and, in part, because the make-up of the Convention militated against principled legal discussions. The Parliament had mundane and rather opportunistic reasons to want to write a fundamental rights charter for Europe. Discussions touched upon questions of strategy in two connections, the need for the Parliament to carve out a role for itself in the creation of a European constitution and the need for a constitution. Roman Herzog, president of the Convention, and a number of MEPs, including Daniel Cohn-Bendit, urged that the Charter be a launch pad for the creation of "a constitution for Europe" and for the

Parliament to be "involved in the constituent process" (European Report, 2510, June 21, 2000, 3).

The Charter was a vehicle for Parliament, not an objective in itself. Individual participants in the Convention may well have been concerned about achieving substantive progress on rights issues but political passions of this sort did not motivate the process as such. It follows that to the extent that the Charter serves as a lever for the introduction of new rights constitutionalism in Europe, it is a wholly unintended consequence of behaviors informed by institutional self-interest and the constraints of the EU policy process.[8] The Charter process may have worked to produce a compromised document but it does not decide what role the Charter may ultimately play as a founding document for Europe. It is to this question that I now turn.

A Constitution for Europe: Values vs. Institutions

The argument that Europe needs a constitution is mostly based on two concerns, both of which are by themselves sufficient reasons for wanting a founding document although the requirements towards that document vary. One concern is the faulty institutional architecture of the European Union, which gives rise to what is popularly known as the "democratic deficit" (Schmitter 2000). Satisfaction in this case rests upon the creation of a governance structure that allows to linkage between democratically elected representatives and the governing institutions of the Union, chiefly the Commission. Federalism is one answer to the concern. The Charter does not address this concern.

Others have argued that the Charter was essentially about values and the need to reassure the public and the rest of the world that the European union "isn't only about money." The cynical observer may well point out that it is easier to produce a list of rights, particularly if they mostly uncontroversial reiterations of already existing commitments to anti-discrimination and equality guarantees, than it is to produce a new architecture of decision-making institutions. But a less defensive statement of the need for an authoritative statement of values has been put forward by the British political theorist, Larry Seidentop (2001). His argument is controversial in that in his view, the moral identity of Europe rests on secularized Christianity articulated in Kantian principles of reciprocity and equality (2001, 191). "Asking about the moral identity of Europe is [...] no secondary matter or mere afterthought", Seidentop argues, "[f]or unless a coherent identity presides over the process of European integration, that process will, sooner or later, lead to disorder. The habits and attitudes required to sustain new European institutions depend, finally, upon some shared beliefs (189)." As for the problem about institutional architecture, Seidentop favors a constitution to cement federalist union with limited powers and to protect the dispersal of power and self-government, as well as a system of checks and balances.

Current sensitivities to issues of multiculturalism to the contrary, it is not controversial to say that European liberalism is based on secularized versions of Christian humanism. Scholars have long pointed to the importance of religion in shaping distinctive European welfare states and political movements. The emphasis upon state-centered delivery of services and broadly universal and egalitarian principles of

[8] The Charter appears to support Alec Stone Sweet's causal theory of European constitutional politics, which posits the politicization of constitutional justice as a central vehicle of integration, even if the

entitlement have been ascribed to Scandinavian pietism (Sorensen). The familialism and generosity of the Christian Democratic welfare state has similarly been traced to the influence of catholic social thought (Kersbergen 1995). Both currents of political thought clamored to put their imprint on the Charter. Socialist members of the Parliament repeatedly insisted that social rights, defined primarily as labor rights, be given a more prominent place. Christian democratic members wanted the Charter to make clear references to religious values.

The Charter's preamble explicitly reaffirms quasi-Christian principles by stating, in the second sentence after listing the objective of "an ever closer union," that,

> Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The preamble repeats the mantra of European integration—"the free movement of persons, goods, services and capital, and the freedom of establishment"— but in the context of affirming respect for national cultures, identities and polities, all in one sentence.

In my view, the Charter presents a clear statement of uniquely European values in a number of respects. One example is the right to life clause in article 2, which declares the death penalty incompatible with fundamental European values, which has turned out

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parliament rather than the ECJ was the initiating actor. See Stone Sweet 2000, 194.

to be a particularly effective tool for highlighting some of the ways in which Europe is different from the United States.[9]

A guide to the Charter published by the Parliament enumerates article by article the sources for the different articles. It duly notes that the "explanations" have no legal value and are intended simply to "clarify the provisions" but aims nevertheless to make clear how much of the Charter is based on pre-existing jurisprudence and binding law.[10] The practical source for the human rights (labeled "Freedoms" and "Citizen's Rights) is the European Convention of Human Rights. Great care was taken in the process to reiterate as precisely as possible the meaning and scope of articles in the Convention or, in some instances, to widen its scope. Other sources are the existing Social Charter, the Charter of Fundamental Social Rights for Workers, and the Treaty of Rome. From these sources emerge a number of different narratives regarding the proper constitution of the relationship between individual and state. Human rights narratives color the chapter on "Dignity" (chapter 1). Chapter four on "Solidarity" echoes both Christian social thought and social democratic solidarity norms. Provisions on family life resemble similar clauses in the German Basic Law (1949) and reflect Christian democratic view of the importance of the family as an intermediary between state and individual. Efforts to gain recognition for non-traditional families were blunted, as the article simply states that "the right to marry and found a family shall be guaranteed in accordance with national law."[11] The continued influence of nineteenth-century national liberalism emerges as a practical

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[9] "No one shall be condemned to the death penalty, or executed." (Article 2.2)

[10] Brussels 11 October 2000. CHARTE 4473/00. Available at http://www.europarl.eu.int/charter/pdf/04473_en.pdf

[11] Notes on discussions as of July 2000 read that, "discussions on the right to family life have shown that there are underlying differences of approach: the "right (of every person) to found a family" is not the same thing as the "right to marriage" (the first expression allows for the option of founding a family outside marriage). Available at the time at www.europarl.eu.int/charter/activities/.

constraint in chapter seven, which under the title of "General Provision" limits the application of the Charter to the "institutions and bodies of the Union with due regard" for the Member States.

Kantian notions about equality and autonomy inform chapter three on "Equality," which is in part based on the Amsterdam Treaty's expansion of community prohibitions on discrimination on the basis of nationality to a long list of protected categories. The anti-discrimination clause in article 21 of the Charter lists 16 protected groups, including nationality (the one "right" enumerated in the Treaty of Rome) with gender, disability, genetic features, and age. Article 23 goes further to mandate positive action to promote equality between men and women. Both articles reiterate prohibitions of discrimination on the basis of "sex, race or ethnicity, religion or belief, disability, age or sexual orientation" contained in the Amsterdam Treaty, which also included the requirement that, "the Community shall aim to eliminate inequalities, and to promote equality, between men and women." The equality section is one of the stronger parts of the Charter and in comparison to other rights charter, but it was still criticized by the European Women's Lobby for not addressing the "structural" underpinnings of gender discrimination.[12] The EWL's impatience to the contrary, it is particularly on questions of gender rights that the new European rights constitutionalism promises to have far-reaching consequences as a precommitment strategy that aims to overcome political inertia and resistance.

As a practical matter, the Charter raises important questions about the distinction between negative rights—freedom of thought and expression, freedom from unlawful

[12] Discussed in European Report 25525, 8 September 2000, 2. See also deposition by the EWL from May 25, 2000, on www.europarl.eu.int/charter/civil/.

seizure of property—and positive rights—housing rights, right to social security, or equal opportunity in employment. How may courts go about enforcing rights that imply a proactive obligation to promote social change on the part of government? The Convention refrained from including certain clauses, e.g. the right to a living wage, to minimum income, because they were seen as policy objectives rather than "rights." Yet several of the clauses that did make it into the Charter appear to suffer from the same problem. Some social rights imply a legal protection and others imply social engineering. The chapter on solidarity defines a series of legal protections; e.g. the right to collective bargaining, prohibition on child labor and protection against unjustified dismissal. Most of these clauses reiterate existing community law and are in any case subject to the qualification "in accordance with Community law and national laws and practices." The chapter also lists more innovative social rights, including the right to health care and social security and social assistance articles 34 and 35). The right to an education defined as free compulsory education (article 14) is curiously put in other chapter.

The meshing of positive and negative rights and of rights constitutionalism into European legal frameworks pose conceptual and practical conundrums. But how could any attempt to express fundamental European political values in the context of a presumptive bill of rights do anything else? The question is if the attempt to do so is, in itself, subversive or conducive to the project of creating a European political identity? In an essay on the "Reformation of European Constitutionalism," Joseph Weiler wrote that, "[c]onstitutionalism is the DOS or Windows of the European Community" (Weiler 1999, 221). We may regard the Charter as an addition to the operating system for European

integration and, as operating systems are wont to do, it sets out certain procedures and commands for activity. "Rights talk" is a particular language of communicative action, which relies on courts, legal narratives, and adjudication as a conflict resolution process. It is one of the ironic aspects of the Charter process that a weak Parliament would be the author of a document that potentially allows adjudication to substitute for deliberative democracy and judges to substitute for elected representatives in the making of authoritative decisions about distributive justice.

Conclusion: European Values and Transformative Constitutionalism?

It is easy to find fault with the Charter's list of rights running the gamut from self-evident and well-protected rights (e.g. freedom of speech, religious freedom) to quasi-rights that appear to be little more than statements of policy consensus (e.g. right to social security, free compulsory education). Yet what are the fundamental European values if not a commitment to economic development with a social conscience? While the Charter's [redacted] "rights talk" approach, betrays American influences, the substantive rights included in the Charter also delineate a unique set of European values, raging from the prohibition on the death penalty, the right to social security and equality to men and women are the most obvious examples. The US, after all, never did get an Equal Rights Amendment.

[redacted] The prospects for European rights constitutionalism will depend on the speed and willingness of ECJ to apply the existing rights contained in the *acquis*. The Charter does not by itself add to the list of binding rights, primarily protections against discrimination on the basis of gender

and nationality. (Interestingly, the Convention found it particularly difficult to agree on the language to be contained in the Charter regarding non-discrimination on grounds of nationality. This is the oldest and most fundamental right to the *acquis*, yet the one that continues to cause the most difficulty.) It is clear, based on the ECJs current case law, that social justice adjudication is a part of the political language of European integration. The Charter presents various actors—the Parliament, NGOs, and institution-builders within the Commission and the Directorates-General—with a new language of mobilization. Judicial actors—legal scholars, lawyers, and in some cases courts—have likewise been provided with a legal framework for addressing social justice issues. Adjudication precedes "one case at the time," and is unlikely to produce change on the scale that some proponents of legal activism desire. The disagreements among legal scholars with respect to the prospects for social change strategies through rights adjudication are instructive for what some of the core problems lying ahead are. Writing about the South African constitution and constitutional court, Karl Klare praised "transformative constitutionalism," which he defined as "a long-term project of constitutional enactment, interpretation, and enforcement committed to the transformation of political and social institutions." In his view, it is a means for obtaining social change through law-grounded processes (1998, 150). The South African Constitutional Court has in fact assumed a primary role in the articulation of values and institutional balance in an emergent polity. The need to balance minority interests against majority interests and the lack of a unifying political culture after the collapse of Apartheid facilitated a strong role for the Court. Are legal culture and social justice adjudication a possible answer to the problem of a "social dimension" for European

integration? The failure of Jacques Delors' "social partner" and the comparable success of the ECJ in carving out a significant role for itself in promoting European integration and a "value system" of legal norms under-girding the integration processes suggest that rights constitutionalism is a possible answer to a problem currently in search of an answer.

Yet there are also reasons to be pessimistic about the prospects of rights adjudication as a pillar for the construction of "social Europe." The institutional limits to the reach and effectiveness of rights constitutionalism as a source of social change are significant. Based on the US experience, Stephen Holmes and Cass Sunstein have cautioned about the political implications of rights adjudication, because as they say, "all rights have costs" (1999). Courts and judges should be aware, in their view, that they do not have the legitimacy (or prerogative) to stake out claims to spending priorities, as appropriation powers continue to rest with elected representatives. Yet others take a less definitive view of the distinction between positive and negative rights. Mark Tushnet [redacted] that civil rights are not absolute rights and, consequently, nor are civil and social rights fundamentally different. [redacted]. As he puts it, "once an interest is called a right it follows that it must be protected by an enforcement mechanism that can compel compliance with the right" (Jackson and Tushnet 1999, 1478). Hence, Tushnet concludes that courts are free to design strategies for enforcing social rights, while Holmes and Sunstein conclude that questions of costs impose an obligation on courts to act with restraint in civil rights cases.

Will the ECJ rush to apply parts of the Charter that already applies in Community law to create a new jurisprudence on basic European rights and values? How likely is it that rights adjudication will emerge as a constraint on political actors within Community institutions and in the gray areas between national and Community policy making? The ECJ showed its willingness to reach deep into areas of national constitutional primacy already in the January 2000 *Bundeswehr* decision. The Court responded to a complaint by a young German woman, who had been denied employment in the army as an electronic engineer. In its decision, the Court held that the refusal to hire was a violation of community law provision giving men and women equal employment opportunities. The decision raises large questions about the balancing of national constitutional language and EU rights, as the German army based its refusal to hire the woman in part on a provision in the German constitution that says that only men shall carry arms in defense of the nation. The case did not simply reinstate the woman's right but also forced changes in the German army recruitment policies. Policy-making by means of adjudication is a spotty and lengthy process and the reach of legal decisions often difficult to estimate, but we have passed beyond the threshold towards an expanded scope for rights adjudication as part of the political-legal framework for European integration.

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