



Séminaire de PopAct en partenariat avec l'Atelier de discussion scientifique du laboratoire Pacte

12 février 2015

*Lieu & Horaire : de 14h00 à 17h00, salle Pactel
Politique&Organisations, Sciences Po Grenoble,
Domaine Universitaire, 1030 avenue centrale
38400 St Martin d'Hères*

Dans le cadre du séminaire « Action publique et opinion publique »,
le groupe de projet PopAct et l'Atelier de discussion scientifique
du Laboratoire Pacte organisent une séance sur

« Public opinion and the Court of justice : Germany and the EU compared »

■ Deux interventions sont prévues :

On the Influence of Public Opinion on decisions of the German Federal Constitutional Court: An Analysis of Abstract Judicial Reviews and Federal-State Disputes 1974-2010

avec **Thomas Gschwend**, Mannheim University, Mannheimer Zentrum für Europäische Sozialforschung, and **Sebastian Sternberg**, IEP de Grenoble.

The Court of Justice of the European Union and Civil Society

avec **Sabine Saurugger**, Sciences Po Grenoble, IUF, and **Fabien Terpan**, Sciences Po Grenoble, CESICE

■ Discussion : **Charlotte Halpern** (CEE, Sciences Po)

■ « On the Influence of Public Opinion on decisions of the German Federal Constitutional Court: An Analysis of Abstract Judicial Reviews and Federal-State Disputes 1974 - 2010 »

Is the German Federal Constitutional Court, as often depicted, an independent actor in the German political system? The present analysis shows for the first time that public opinion has a systematic influence on decisions of the Federal Constitutional Court. Our evidence is based on the analysis of abstract judicial reviews and federal-state disputes in the period from 1974 - 2010. We show that the Federal Constitutional Court is the more likely to rule in favor of the opposition, the stronger the public supports the specific substantive position of the opposition. Two mechanisms that could bring about this correlation are finally discussed. While the court does not blindly follow public opinion it will nevertheless view the acceptance of its decisions as an important source of legitimacy.

■ « The Court of Justice of the European Union and Civil Society »

Comparative research on Courts of Justice in regional organisations, such as the European Union, Mercosur or the Andean Community, is increasing over the past five years. The aim of this paper is to analyse specifically research undertaken on civil society and their relationship with the Court of Justice of the European Union. Anchored in a politics of law perspective, it argues that this stocktaking exercise is crucial for understanding the Court's role in a political system. The studies show that the Court's impact has been enhanced by the participation of civil society organisations, and thus reinforcing the integration process. The analysis of the scattered literature based on individual and comparative case studies allows us to identify the strengths but also the weaknesses of these approaches. On this basis, the paper develops a research design beyond case-study research that will be useful for comparative regionalism approaches beyond the European Union.

Non-state actors have used litigation in a strategic way. During the 1970s, and in particular in the field of equal treatment (Defrenne cases), women's groups adopted litigation strategies to plead their cause (Harlow, 1992, 1997; Dehousse, 1998; Cichowski, 1998, 2007; Mazey, 2001), and were rapidly followed by environmental, consumer or other cause groups. In this sense, the Court can foster negative integration, by deciding that specific national regulations contradict European law, and therefore must be amended. The extensive interpretation of the direct effect put forward by the Court has allowed a number of groups to defend their individual rights. Even companies do not hesitate to defend their rights before the Court. However, the decisions of the Court are not always in favour of the complainant. Therefore, going to the Court is, for many interest groups, only one strategy amongst many (Hilson 2002, McCown 2009). The use of the Court by non-state actors, thus the juridicisation of lobbying strategies, is another illustration of the politics of law we see in the European Union.