

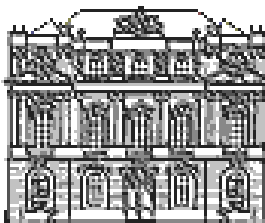


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Democratizing the European Union: *Representation is nothing;  
Responsiveness is everything*

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Democratizing the European Union: *Representation is nothing; Responsiveness is everything*

## I. Introduction

February 2002 marks a turning point in the European integration process. The Convention for the Future of the European Union has started to work. What is more astonishing than the simple fact that Members of the European Parliament, representatives of national governments and parliaments and the European Commission come together and discuss such diverse topics as e.g. the inclusion of the Charter of Fundamental Rights in the Treaties, the principle of subsidiarity, the Union's legal personality, the role of national parliaments is the mandate this Convention was given by the Heads of States and Governments.

The bazaar of Nice has proved to be a disaster, both in terms of outcome and marketing. But it forced the privy council of fifteen democratically elected kings to search for alternative ways to ensure legitimacy for the European project. As the Eurobarometer survey shows we are since more than 20 years confronted with a constant decrease in the approval rates to the European project. The elections to the EP are still regarded and treated as second-order elections, the knowledge about the merits of membership are at best modest and the exploitation of the EU's scapegoat function reaches new levels as the openly anti-European parties of Mr. Haider in Austria and Mr. Le Pen in France to name but a few show.

The humble retreat of the Heads of States and Governments after Nice was at the one hand motivated by the insight that Intergovernmental Conferences no longer present a suitable instrument to advance the European cause: From Maastricht to Amsterdam and Nice the list of left-overs became more burdensome. At the other hand as Laeken and the delegation of some political light-weights into the Convention has shown the kings are not willing to end up with a kind of Philadelphia Convention. The catalogue of questions in the Laeken declaration was the first move to influence the Convention work from the outside by drawing up a kind of agenda for the Convention. Choosing Valerie Giscard d'Estaing as president was the second: a person not especially well-known for his democratic leadership style. Skimming through the list of government representatives one can hardly ward off the impression that political heavy-weights were rather not welcomed. Against all odds the Convention's beginning is promising: it has resisted the autocratic leadership style by its president and started to organise itself around six thematic cores.

At least since Joschka Fischer's remarkable speech at the University of Humboldt in Berlin the magic word is on the agenda again: a Constitution for the European Union.<sup>2</sup> In this debate we identify three groups of interest: (1) For some a European constitution should be adopted as a basis for the establishment of the *United States of Europe*. (2) A second group considers

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<sup>1</sup> Revised version of a lecture at the Fifth Biennial Conference of the European Community Studies Association Canada/ Association d'Études sur la Communauté Européenne – Canada, Toronto, Canada, May 30<sup>th</sup> - June 1<sup>st</sup>, 2002

<sup>2</sup> The debate about a European constitution is at least twenty years old (comp. Schwarze/Bieber 1984). The roots can be traced back even further: As early as 1955 the Treaty on the European Steel and Coal Community was called a "Charter" (Schwarze 2000:1) by Advocate General Lagrange. See Case 8/55, Slg. 1955-1956, 266f.. See also the proposals for a European constitution advocated by the European Parliament (Spinelli, Herman).

constitutional progress as necessary and/or desirable in order to give more legitimacy to the European Union, but without defining the ultimate outcome. (3) A third group of actors strongly opposes any further deepening of the current state of the integration. The common ground of the above named positions is the acknowledgement of the fact that the process of European integration has severe consequences for the citizens and the institutional arrangements of the member states.

From an academic point of view this renewed discussion shows the inadequacies of certain key concepts of constitutional and democratic thought outside the context of the relatively homogeneous nation states, such as the issue of adequate representation in multi-level systems of governance. And it obliges to ask what a constitution is good for beyond advancing one's own political goals? Why do 2/3 of Europeans ask for a Constitution?<sup>3</sup> What is a constitution good for at all? Why have the traditional vehicles of representation ruefully failed to find their place in the new system of European governance? The paper tries to shed some light upon these questions and the following hypothesis: a constitution for the European Union might be a suitable means to advance the task of democratizing the EU.

Our premise is that the domination of the executive over parliaments on both, the national and the European level (Rommetsch/Wessels 1996) may lead to an erosion of legitimacy. Adhering to the principle of effectiveness and bureaucratic neutrality which alone is supposed to guarantee optimal solutions, the supranational and national executive elite are confronted with a reluctant public who increasingly shows signs of disaffection if not utter disapproval of European politics (Wolton 1993; Andersen/Eliassen 1996; Scharpf 1996, 1999; Lodge 1997; Puntcher Riekman 1998; Bach 1999; Gusy 2000). Public sentiment is enhanced by the fact that there is no clear-cut border line between 'national' and 'European' institutions and no clear allocation of competence as in classical state models.<sup>4</sup> Thus, one can hardly locate the areas of responsibilities and public accountability of national and European institutions since both are affected by, and involved in, the EU decision-making process. The combination of these features forms the core of the democratic deficit of the current European institutional arrangement (Andersen/Burns 1996).

We will first very briefly deal with the tedious bickering about the word constitution (II.) and then try to get to the bottom of traditional representation concepts being the core of every polity striving to follow Napoleon's advice that no government can sit on bayonets (III.). The next chapter (IV.) will deal with the connection between a constitution and the responsiveness of political institutions. Since the traditional means of representation have failed in the case of the EU we have to ask for the role of political parties (V.) The concluding remarks will deal with a (hopeless but not serious) short outlook on the future of the EU.

## **II. Constitution vs. Constitutionalism**

A constitution for the European Union is widely debated - its central terms and concepts being sometimes rather ambiguous and often highly controversial. In his speech at Berlin's Humboldt

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<sup>3</sup> See Eurobarometer No. 56, Autumn 2001.

<sup>4</sup> The allocation of competence is, of course, very different in different federal states, e.g. dual federalism in US vs. co-operative federalism in Germany.

University on 12 May 2000 the German Foreign Minister Joschka Fischer outlined a 'finalité'<sup>5</sup> of the integration process: a European federation that will create a government from either the Council or the Commission and will resolve the democratic deficit through a bicameral European parliament with real legislative power.<sup>6</sup> This federation is to be brought to life by a "constituent treaty".<sup>7</sup> The international reactions ranged from cautious acceptance to disapproval (comp. Hrbek 2001; Börzel/Risse 2000). Nevertheless, all commentators agreed about the importance of Fischer's speech in initializing a public debate about the future European political order.

Unfortunately the debate itself is blurred by the different meanings and understandings of its key terms: constitution and federalism and their relation to representation. The terms used in the debate show an impressive variety: *constitution* (as already used by some European law scholars), *Constitutional Charter* (as used by the European Court of Justice), *Constitutional Pact* (as proposed by the European Movement) or *Constitutional Treaty* (as proposed by Giscard d'Estaing 2002) contribute to misunderstandings. While many scholars do not hesitate to regard the founding treaties of the Union as a constitution (e.g. Thun-Hohenstein/Cede 1999: 70) as does the ECJ<sup>8</sup>, others strongly reject this view (Hilf 1994).

Since the European Union has completed the third stage of Monetary Union finding itself on the threshold of political union the constitutional question is back on the European agenda. Does the EC/EU have a constitution? If no, can it have one or does it need one? If yes, should it have a better one? Meanwhile, a huge body of literature has revolved around these rather tricky questions.<sup>9</sup>

Starting with a well-accepted voice of authority, the European Court of Justice (ECJ) has characterised the Treaties of the European Communities as a "Constitutional Charter".<sup>10</sup> This is so because the legal order of the EC/EU is embodied in fundamental legal texts defining the scope of competence of the relevant law-making institutions. If we accept this extremely formalistic view done by the Court, we can classify nearly every basic text of a political institution as constitutional. Thus, constitutionalism is more than such an arbitrary text. As a modern political doctrine a constitution based on constitutional principles is the embodiment of a complex relationship with liberal views of the modern nation state, parliamentary democracy, the rule of law and the market economy (comp. Castiglione 1996, p. 5). Consequently, we have to admit that the ECJ's approach is not extremely helpful in terms of our research interest because it tells us nothing about constitutionalism, i.e. the democratic quality of the beast. Apart from that, we do not intend to join a German-led debate that the European Union cannot have a constitution

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<sup>5</sup> Though the question of finalité itself appears to lack substance: has anybody ever asked about the finalité of Canada, the U.S., Austria etc.?

<sup>6</sup> For the full text of the speech see [http://www.auswaertiges-amt.de/6\\_archiv/index.htm](http://www.auswaertiges-amt.de/6_archiv/index.htm).

<sup>7</sup> The English translation of Fischer's speech is sometimes misleading, e.g. *Verfassungsvertrag* is translated "constituent treaty" rather than "constitutional treaty".

<sup>8</sup> Case 294/83, *Les Verts*, 1986 ECR, 1339, para. 23. This judgement is by no means a revolutionary rupture with the past but more a corollary from other judgements dating back to the early 1960ies. It rests on four pillars: the doctrine of direct effect, the supremacy of EC law, and the case law on the Community competence and "fundamental rights".

<sup>9</sup> Members of the fraction acknowledging that the EU has a constitution are e.g. J. H. H. Weiler 1999, F. Snyder, 1998. The other team consists – among others – of D. Grimm 1994; J. Isensee 1987.

<sup>10</sup> See Judgment of 23 April 1986 in Case 294/83, *Les Verts*, ECR 1986, p. 1365 para. 23; Opinion 1/76 of 28 April 1977, ECR 1977-I, p. 758 point 12; Judgment of 23 March 1993 in Case C-134/91, *Beate Weber/European Parliament*, ECR 1993-I, p. 1093.

because it is no state and does not have a single demos.<sup>11</sup> We strongly reject Kirchhof's argument that a democratic constitution can only be established within the conceptual boundaries of the nation-state (see also Kielmannsegg 1996, p. 54).<sup>12</sup> On the contrary, we argue that not the etatistic quality of the EU seems to be relevant but the exertion of power done by its respective institutions. Heinrich Schneider has already criticised the traditional German paradigm of the state by arguing that political theory shows two different traditions of the state - the etatistic and consociative conception of the state (see Schneider 1995). Bluntly speaking, we are not concerned whether the European Union has a formal constitution but rather with its democratic quality. Consequently, we focus on the material dimension of a constitution by asking what are the elements of a constitution satisfying democratic principles. According to Dario Castiglione<sup>13</sup> the core principles of today's constitutions are

—*a principled guarantee as to the political form of the state and individual rights*: Influenced by the theory of social contract and natural rights the individual rights were firstly enshrined in the great liberal manifestos of the American Declaration of Independence and Bill of Rights and the French Declaration of the Rights of Man and Citizen.

—*an organizational guarantee referring to the institutional organisation and separation of powers*: constitutional government requires a division of power among several organs of the body politic. Only this principle ensures the presence of restraints and *checks and balances* in the political system.

—*a representational guarantee that secures the equal participation for citizens in the political body concerned*: To represent means to be present on behalf of someone else who is absent. Historically, the empirical realisation of this concept varies heavily. Since the end of the 18<sup>th</sup> century the normative point of reference changed. Government was more and more considered to represent the citizens and not metaphysical entities.

Due to the fact that the current state of the Union does not satisfy these principles we stress the need for setting up an European constitution fulfilling two basic tasks: it ensures the responsiveness of political institutions and secondly it tames political power. Once again: It is not important whether the European Union is already a state, is a state in the making or will never become something we know from the development of the nation state. The Union exerts political power and this power needs to be democratically controlled. A constitution can set the rules for this control.

### III. A complex phenomenon: representation

E. Voegelin (1991, p. 17) identified representation as a fundamental political principle which stands for a "central problem of a theory of politics". A quite similar appraisal can be found in the introduction to a still important German publication by H. Rausch (1968): "The term

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<sup>11</sup> „Wo kein Staat, da keine Verfassung, und wo kein Staatsvolk, da kein Staat“ see P. Kirchhof, *Kompetenzaufteilung zwischen den Mitgliedstaaten und der EU*, in: *Europäisches Forum: Die künftige Verfassungsordnung der Europäischen Union* (Europäische Gespräche 2/94, edited by Vertretung der Europäischen Kommission in der Bundesrepublik Deutschland. Bonn, 1994, p. 59.

<sup>12</sup> See also P. G. Kielmannsegg, *Integration und Demokratie*, In: M. Jachtenfuchs / B. Kohler-Koch (eds.), *Europäische Integration*, Opladen, p. 54.

<sup>13</sup> D. Castiglione, 'The Political Theory of the Constitution', In: R. Bellamy / D. Castiglione (eds.), *Constitutionalism in Transformation: European and Theoretical Perspectives*. Oxford / Cambridge: Blackwell, 1996, pp.9-10.

representation is a fundamental part of every theory of democracy because it is the term which describes every indirect rule by the people ...". Though the concept of representation is one of the pillars of rule "(t)he unfortunate fact is that we do not have an adequate modern theory of political representation." (Hogan 1970, p. 289). This is reflected by the fact that the literature is full of obvious disagreements about the meaning of the term (Pitkin 1967, p. 4). Thus H. Eulau (1978, p. 31) concludes with an ironic touch that "we can finally say with some confidence what representation is not. But in spite of many centuries of theoretical effort, we cannot say what representation is."<sup>14</sup>

There is hardly any doubt that we are today confronted with a crisis in the theory of representation but not in the institution of representation (comp. Eulau 1967, p. 55). This crisis has at least three reasons: (a) the term representation belongs to the essentially contested terms<sup>15</sup> at times which means that only if we perceive a disturbing gap between the political reality and our concepts designed to analytically explain and comprehend this reality a scientific and political discussion seems to be worthwhile; (b) the older systematic approaches towards the concept of representation have tried to pin down one single 'true' meaning of the term thus neglecting its dazzling variety and (c) main stream political science has neglected an in-depth analysis and development of the concept of representation in the last decades confining itself largely to comparative election studies.

Ad (a)

Each controversy about words is also a controversy about meaning and objectives. A decision in the area of language, i.e. creations of neologisms, is sometimes also a political decision. Such debates about the meaning of words and/or concepts are integral part of politics. Nevertheless, there seems to be a stock of terms remaining rather outside the daily bickering between political opponents one of them being 'representative democracy'. Only in times of crisis and/or swift socio-economic changes these terms are radically questioned (comp. Skinner 1988). Paradoxically, these terms at the same time build the basis of political arguments even in times of societal normalcy. What changes is the intensity of the debate. Looking back into the history of European integration one can easily see cycles in the political and scholarly application of key terms like constitution, constitutionalism, representation, democracy etc. No wonder that especially in the aftermath of World War II. the debate about representative democracy flourished. The same holds true for the late 1960s witnessing the development of a new youth culture and for 1989 after the demise of the Soviet Empire. Also, the striving of women for recognition and representation in the political sphere has led to a rather rich and differentiated strand of feminist theories of representation. Today, the European Union is at crossroads again.

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<sup>14</sup> Similar statements can be found in e.g.: G. Leibholz 1966, p. 25; C.J. Friedrich 1968, p.221; G. Loewenberg 1972, p. 12.

<sup>15</sup> The view that political concepts are essentially contested is inspired by W.B. Gallie's seminal article: 'Essentially Contested Concepts'. *Proceedings of the Aristotelian Society*, Vol.56, 1956, pp. 167-220. The idea here is that the meaning of a concept is necessarily tied to the ideology within which it is used. Terms like e.g. democracy – a term of which everyone appears to approve, is simply a verbal weapon, to be used in the battle between ideologies. If one accepts this methodological position, there seems to be little point in trying to progress, by means of reasoned argument, towards the 'correct' definition. Politics is essentially an arena in which contests take place, and the meaning of terms is one of the objects of contention. W. Conolly 1974 and S. Likes 1974 argue more in favour of essential contestability. For the historical perspective see the approach of the so-called Cambridge School around Q. Skinner and J.G.A. Pocock.

The Convention for the Future of the European Union spurs a debate about the central questions of a democratic polity.

Ad (b)

Authors like E. Fraenkel (1991, p. 153), G. Leibholz (1966, p. 27), C. Schmitt (1957, p. 209) have presented sophisticated definitions of what representation is or might be. They have focused on the 'true' meaning of it. But already in 1968 H. Reuss wrote that "in reality there is no objective and fixed definition of representation. In fact the term was understood in different ways in different times in different spheres" (p. 24). Finding the one and only true meaning of the term is a rather useless undertaking and would imply taking sides for metaphysical realism. But this does not mean that an analysis of the concept of representation necessarily leads to historicism. Rather, we have to follow H. Pitkin (1967, p. 8): "Thus my first working assumption has been that representation does have an identifiable meaning, applied in different but controlled and discoverable ways in different contexts. It is not vague and shifting, but a single, highly complex concept that has not changed much in its basic meaning since the seventeenth century."

Ad (c)

Different strands of research in comparative politics particularly address the representation connections between the citizens and their elected representatives. G. Powell (2000, 2001) distinguishes between a body of research focusing on procedural representation. Here democratic representation means that votes for parties should correspond to the seats those parties win in the legislature. Much of this research has focused on the way different election laws shape such representation. A second body of research begins with citizens' preferences, rather than with their votes. Voter choices link citizens' preferences to the preferences and behaviour of legislative representatives. Democratic representation means that citizens' issue preferences should correspond to positions of their representatives. Other, less extensive research programs centre on social or symbolic representation analysing demographic correspondences, such as gender, race and class, between citizens and their representatives (see e.g. Norris 1996; Vowles et al. 1998). In feminist research e.g. empirical data on the impact of different electoral systems on the representation of women have been collected. Another is research on the role of campaign commitments, such as candidate promises and party manifestos, in government policymaking (e.g. Klingemann et al. 1993; Stokes 1999). Yet a third is the analysis of 'accountability' and retrospective voting, emphasizing conditions under which voters penalise policymakers for poor performance in office (e.g. Powell/Whitten; Cheibub/Przeworski 1999). It appears that these research foci are mainly based on mirror or descriptive representation: true representation requires that the legislature be so selected that its composition corresponds accurately to that of the whole nation; only then is it really a representative body. In J. Adams' (1954, p. 86) or Mirabeau's more poetic formulation: "a representative legislature should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason and act like them." In a speech before the Estates of Provence in 1789 Mirabeau (1834, p. 7) said: "A representative body is for the nation what a map drawn to scale is for the physical configuration of its land; in part or in whole the copy must always have the same proportions as the original." This understanding of representation has been greatly enhanced by the claims of women as well as of ethnic groups on their right of representation. While these demands were formulated parallelly to the movement for a 'representation of labour' in the 19<sup>th</sup> century there is a fundamental difference in that these new

movements reflect different inequalities than social class, namely usually differences for which elimination is neither a viable nor a desirable solution (Phillips 1995, p. 8) .

The understanding of representation as descriptive entails an over-emphasis on who is present in the respective legislative assemblies and thus diverts attention from more urgent questions of what the representatives actually do. H. Pitkin (1967, p. 226) writes: “Think of the legislature as a pictorial representation or a representative sample of the nation, and you will almost certainly concentrate on its composition rather than its activity”. In new social movements the claim for descriptive representation is often combined with a search for authenticity that “makes it difficult for anyone to represent an experience not identical to her own and, taken to the extreme, renders dialogue virtually impossible.” (Phillips 1995, p. 9)

This is not to say that the richness of empirical (election) studies and the abundance of definitions is useless to an understanding of what the concept of representation means. Quite contrary we have to place existing definitions and current questions into the proper context. The roots of today’s definitions can be traced back to Liberalism. Analysing these different definitions and understandings will bring the path dependency of political theory to the fore. We are building our concepts on the knowledge of an existing body of political theory. Substantial changes of our socio-economic environment demand not only an analysis of existing definitions but also a readiness to radically doubt them. But a mere academic analysis of existing definitions is void if the development of our political institutions is neglected.

New phenotypes of political life like e.g. party democracy, party government, the rise of the executive, and regional integration demand a new interpretation and analyses of theoretical approaches towards the concept of representation. One of the major changes for the West-European nation states in the last 50 years stems from the astonishing success of the European integration process. The continuous process of creating an “ever closer Union among the peoples of Europe” entails the transformation of national political systems engendering a new distribution of power among actors and reshaping their functions (e.g. Héritier 1999; Green Cowles et al 2000; Radaelli 1997; Börzel/Risse 2000). The once relatively closed boundaries of the nation-state – at least in terms of opportunities for the voicing and organizing of interest and thus for the organization of the linkage between politics and society – are being eroded (Bartolini 1998, 1999) and the realm of political and administrative control is redefined; politics are not state politics any more. These changes have a differentiated impact on national political representation, depending on varying pre-existing characteristics of the national states and societies. These severe impacts were only partly met by an adaptation of the institutional arrangements of the member states. Today's complex multi-level system of European governance needs an urgent overhaul if democratic standards are to be secured.

Speaking about democratic standards and representative democracy also means taking into account that democracy is merely one type of organisation of political rule. “Even in a democracy with equal social chances the people can only rule by means of organisation of rule.” (Heller 1934, p. 274) Every organisation needs authority and the exertion of power is liable to the law of small numbers. Those who govern need a certain area for discretion and are thus provided with some power which is not democratically controlled. Democracy always involves aristocratic elements (comp. Dahl 1971). In the second half of the 19<sup>th</sup> century H. Sidgwick took the representative system “even when the suffrage is universal, as merely a mode of organizing democracy, but rather as a coordination or fusion of democracy and aristocracy. This fusion or



coordination may become less or more aristocratic in character through various minor modifications” (Sidgewick 1968, p. 50). 1896 Seely (p. 350) continued and called the parliament an “elective aristocracy”. The development and fine tuning of democracy and its institutions in the second half of the 20<sup>th</sup> century guaranteed that these aristocratic elements are kept under control in a system of balance of power. Applying a cynical view to the European integration process one might say that it was/is an undertaking which mainly serves to free the executives from their bothersome parliaments and to return to a form of medieval politics.

Besides analysing the development of representative democracy and its different expressions we have to ask for the role of political institutions. A first basic definition of representing could be *acting in the best interest of the public*. It is not only the individual behaviour of the agent which characterizes representation but also the institutional frame. Do existing institutional arrangements allow such an acting? Do they foster the link between principle and agent? Despite all the socio-economic changes in the last 250 years the formal institutional arrangement remained astonishingly stable. B. Manin (1997, p. 6) identifies four institutions:

1. Those who govern are appointed by election at regular intervals.
2. The decision-making of those who govern retains a degree of independence from the wishes of the electorate.
3. Those who are governed may give expression to their opinions and political wishes without these being subject to the control of those who govern.
4. Public decisions undergo the trial of debate.

And “(i)t is indeed one of the most striking facts in the history of representation that, while there has been a broad and stable consensus over representative institutions, people have constantly argued over what was supposed to go on during representation.” (Przeworski et al. 1999, p. 3). This might be due to the fact that social science sometimes tends towards the use of heavily connoted terms. D. Sternberger (1971) identified several axioms which are integral but nonetheless doubtful pillars of modern theories of representation:

(1) The people: there is a people which acts via the representative bodies. Apart from the tedious reiteration of the existence of something like a people – an imagination which seems to be inherent in large parts of political philosophy – we have to accept that there are only heterogeneous, sometimes overlapping interests loosely kept together by an apparently common language. The construction of a political Union in Europe will have to do without an *ethnos*. Rather, we have to concentrate on the emergence of a *demos*.

(2) The myth of identification: A second tacit prerequisite is that there is an identity of will between the people and its representative bodies. Endless empirical analysis show the widening gap between the traditional political institutions and the people. The latest example at the European level: 2/3 of the interviewed in the latest Eurobarometer are in favour of a European Constitution and a Common Foreign Policy. By looking at the set up of the six working groups in the Convention on 13 May 2002 the ignorance of the presidency becomes striking.<sup>16</sup>

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<sup>16</sup> The Praesidium of the Convention has decided to set up the following six working groups: subsidiarity; Charter of Fundamental Rights; the Union's legal status; the role of national parliaments; complementary powers; accompanying the putting in place of the single currency.

(3) The topos of modernity: talking about modern representative democracy always involves the direct and immediate democracy in the Athenian polis. Furthermore, the idea that representation is a willfull, ingenious measure which was invented to make democracy in large polities possible. Some people still admire the a picture of the Athenian democracy which was passed on to us in the 19<sup>th</sup> century. This is the paradise we have left and no way leads back to it. But mankind has ingeniously invented representation as the second best. Apart from the beautiful simplicity of this picture it is historically wrong.

(4) This leads to the topos of rationality: representative arrangements appear as rationally constructed to serve the democratic purpose.

(5) The election axiom: representative bodies are to be elected. Democracy gets legitimacy through the process of election. This reflects one of the basic assumptions of the theory of democracy: democratic governments are representative because they are elected. But do elections guarantee that our governments are representative? Representation is a contested concept because the governing have their own objectives, interests, resources etc. In the European context election hardly serve the purpose of granting legitimacy.

There are scores of modern definitions for the term representation. By depicting the most important of them we can follow the change of meaning. Whereas older definitions sometimes tried to pin down the ‘true’ meaning of the term we are today confronted with a dazzling variety. It is no use to search for the one and only definition rather one has to take care that one follows a coherent application within a study.

The fundament of modern theories of representation is still built by the definitions of Eric Voegelin (1991), Gerhard Leibholz (1966), Ernst Fraenkel (1964) and Hannah F. Pitkin (1967). Starting point for these authors is the so called ‘duplication’ of representation. Leibholz (1966, p. 27) defines as follows: “Representation serves to make a being present which lies beyond representation. For every representation it is the represented which must be reproduced in the reality. Applied to persons one can say that the term representation always includes the duplication of the personnel existence.”

Like Carl Schmitt (1957, p. 209) Leibholz assumes that representing means to make something present which is in reality not existent. And Pitkin (1967, p. 8f.) repeats: “rather, representation, taken generally, means the making present in some sense of something which is nevertheless not present literally or in fact. Now, to say that something is simultaneously both present and not present is to utter a paradox, and thus a fundamental dualism is built into the meaning of representation.” Fraenkel (1964, p. 153) understands representation to be the “legally authorised exercise of rule by constitutionally bound bodies acting in the name of the people but without an imperative mandate. These bodies derive their authority directly or indirectly from the people and they justify their claim by serving the collective interest of the people in a such a way that the people’s true will is executed.”

Voegelin (1951, p. 57f.) differentiates between two types of representation: the descriptive and the existential. The first includes simple demographic data of the world, e.g. geographical areas, men and women, their age, their profession etc. The descriptive type encompasses the outward appearance of a political community. Existential representation is the realisation of the idea of the

institution. What does that mean? To comprehend the meaning of this second type one has to have a quick look into the theory of representation of Maurice Hauriou (1929). According to Hauriou rule is legitimate because of its posing as a representative of the 'idée directrice', i.e. especially the state. The state is a national community in which the governing power acts as the caretaker of the *res publica*. Primary task of the government is the creation of a politically unified nation by shaping the existing, unformed and disorganised multiplicity into a body or institution capable to act. This undertaking has its seeds in the so called 'idée directrice' - this could be e.g. the establishment of a peaceful political community. A government which is acting under the guidance of such an idea has the duty to contribute to the realisation of the idea in history. Representing means to steer this realization from an authoritative position. Voegelin draws the following conclusion from Hauriou's writings: "To be representative it is not enough for a government to be representative in a constitutional sense (descriptive type of representative institutions) only; it must be existentially representative by realizing the idea of the institution." (1991, p. 57f.)

Thus for Voegelin, representation always involves a strong normative element. Not even the most sophisticated representative system, based on e.g. a small population, a convergence of interests etc. can be truly representative if it is not guided by an idea. Representation founded solely on descriptive representation is hardly more than delegated administration. The problem seems to be that a representation of the existential type requires the reproduction of some higher 'being'<sup>17</sup>, a transcendent truth instead of stabilizing and institutionalising proper procedures for guaranteeing the responsiveness of the political system. However, especially the German tradition of 'Staatsrechtslehre' has introduced a kind of metaphysical note into the concept of representation. The sacredness of the process of representation was a warrant for the special position of the agent.

Pitkin's theory of representation comprises two basic conceptual elements: the formal and the substantive aspects. The formal aspect deals with the actors and the process: a principal transfers the authority to act on his behalf to an agent and consequently, can hold the agent accountable for his actions. Thus, this aspect contains two fundamental activities: the authorisation and the holding accountable. The substantive aspect focuses on the content of representation and the question of in-/dependence of the agent. These basic elements can be found in all four – well known – types of representation described by Pitkin: the authorization or Hobbesian view, the accountability view, the descriptive representation and the symbolic representation.

For Pitkin all these views put together still do not exhaust the concept of representation. The most important paragraph in her brilliant study is to be found on page 232:

"a representative government requires that there be machinery for the expression of the wishes of the represented, and that the government respond to these wishes unless there are good reasons to the contrary. There need not be a constant activity of responding, but there must be a constant condition of responsiveness, of potential readiness to respond. It is not that a government represents only when it is acting in response to an express popular wish; a representative government is one which is responsive to popular wishes when there are some. Hence there must be institutional arrangements for responsiveness to these wishes."

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<sup>17</sup> Comp. C. Schmitt (1957, p. 209ff.): "in the representation (...) a nobler form of being comes to a concrete appearance."

Thus, the key term is responsiveness as the proper relation between principal and agent. What the representative does must be in his principal's interest, and the way he does it must be responsive to the principal's wishes, but the principal's wishes must be potentially there and potentially relevant. Responsiveness seems to have a kind of negative criterion: conflict must be possible and yet nevertheless not occur. Looking back into the history of representation theory we witness a development from 'metaphysical realism' (the meaning of representation is out there – we only need to grasp it) towards the emphasis of flexibility and democratic accountability. Four components of responsiveness can be differentiated:

- Policy responsiveness
- Service responsiveness: involves the efforts of the representative to secure particularized benefits for individuals or groups in his constituency.
- Allocation responsiveness: refers to the representative's efforts to obtain benefits for his constituency through pork-barrel exchanges in the appropriations process or through administrative interventions.
- Symbolic responsiveness: involves public gestures of a sort that create a sense of trust and support in the relationship between represented and representative (Eulau/Karps 1978).

The institutional arrangements of representative democracies are amazingly stable over the last 250 years despite the massive socio-economic changes our societies experienced. By building the European Union a new structure was superimposed on the existing nation states with their different but resembling traditions. No doubt that these traditions influence the future of the EU. Seen from a democratic perspective it has to be ensured that the institutions devised for only six member states enable a proper responsiveness (and are not only discussed under the header of efficiency). Unfortunately the language of political science seems to be an obstacle for creative thinking. We still fall back on well trodden-paths of nation state building instead of radically rethinking the organisation of political power. The peculiar construction of the complex multi-level system of European governance demands an analysis of how the organisation of rule, e.g. federal, confederal and the responsiveness of the institutions interact.<sup>18</sup>

#### **IV. Ensuring responsiveness by drawing up a European constitution?**

The task of constitutions is to "*tame the Prince*" (Mansfield 1993), i.e. setting clear limits for political power within a fixed set of positive and negative rights based on democratic-representative institutions. This has been the primary aim of constitutional struggles since the French Revolution at the latest.<sup>19</sup> Taming the European *Prince*, or better the Kings is tantamount to creating a system of checks and balances between the Council (as well as the European Council) and the European Parliament, on the one hand, and between the supranational and national institutions, on the other hand, increasing thereby the public accountability of political decision making. So far we have tried to identify what a constitution should deliver, i.e. taming the executive. But a constitution also has to regulate who is going to be the 'tamer'. Within the framework of the nation state this obligation is trusted upon the parliament, being *the* representative body. The reading does not bode well for this institution. At the national level

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<sup>18</sup> Tuschhoff (1999) has drawn up a list of how federalism affects representation.

<sup>19</sup> This struggle may be traced back to the Magna Carta at least.

parliaments are becoming empty shells, not able to control their governments due to shifting policy arenas and due to the development of party government (Blondel/Cotta 2000). Parties have increasingly become part of the state, i.e. cartel parties (Katz/Mair 1995). The role of parties to function as a means or vehicle of the representative institution parliament is weakened by the process of European integration.

Party politics has mainly been studied within the context of nation states. The state level is the context within which political representation in the modern sense was developed: "The political party is essentially a national and local phenomenon" (Gaffney 1996, p. 2). In the context of the EU, the question of the role of political parties needs to be addressed at several levels. First, one can ask which role parties have played in the construction of the European Union. The widespread scholarly view is that the role of political parties has in general been usurped by other political actors. According to this view, interest groups, bureaucratic and academic elites and other actors such as big companies with access to restricted knowledge, skills and networks, and to the national and European bureaucracies, are in the main the actors who are responding to and attempting to shape micro- and macro-economic forces and the political responses to them. In this process, the political parties are of "very secondary importance" (comp. Gaffney 1996, p. 2f.).

The reason why political parties are perceived as being less than centrally relevant in the European context is that here they do not perform one of the essential functions of the political party, that of linkage (see Katz 1990); that is to say, on European issues "they do not act as channels between citizens' interests and governmental or supragovernmental institutions" (Gaffney 1996, p. 17) forfeiting their role as the citizen's agent asking for the responsiveness of political actors. If we assume that the role of the parliament is to make binding decisions and to control that government policy is in line with the preferences of the electorate and that the modern parliament is based on parties as representative vehicles we have to ask if parties are in line with the electorate. Being 'in line' conventionally is operationalized in terms of a Downsian smallest-distance voting model.<sup>20</sup> According to this model, voters must have a choice between different policy proposals offered by cohesive parties and voters are assumed to vote for the party whose policy proposals are closest to their own policy preferences. A more realistic conceptualisation<sup>21</sup> starts from the assumption that voters have political preferences. Are these preferences in line with the policies parties follow?<sup>22</sup> By comparing European citizens' perceptions of their national parties' positions on the EU and their own attitudes towards European integration Andeweg (1995, p. 67) reaches the following conclusion: "... neither the transnational party system, nor the 12 national party systems provide the link between voter choice and MEP behaviour that is crucial for democratic representation in the EU. This, rather than the 'democratic deficit', is the correct diagnosis of the European legitimacy crisis."

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<sup>20</sup> This comes close to what Thomassen (1994) and Schmitt/Thomassen (1999a) call "representative party model". As noted by themselves this starts from very strong assumptions about the degree of information and interest of the voter.

<sup>21</sup> As developed by Schmitt/Thomassen (1999a). The view presented here is much more minimalistic and less sophisticated than their model.

<sup>22</sup> We are only dealing with European policies here. Besides that, the power of parties to act as distributive agents according to their vision of a societal model and preferences is weakened by the monetary and stability oriented prerogatives of the European Union: the obligation to comply with the Maastricht criteria puts remarkable strain on national budgets and consequently has important effects on the capacity of political parties to design national tax, wage and labour market policies.

Imposing a constitution, even if it is devised by a 105 members strong body like the Convention on the complex structure of the EU carries a considerable risk. The danger to fail is not only due to the above mentioned limits, i.e. the kings not willing to share power but it is mainly due to the lack of a broad political movement who asks for such a constitution. This strategy paid off in 1988 when Paolo Cecchini on behalf of the Delors Commission drew up the report on the Cost of Non-Europe. Today, after the resignation of the luckless Santer Commission we recognise a certain exhaustion of the utopian potential. The political parties who should be the transmission belt for the citizens demands are not very keen to advance a topic like the European constitution since this could easily interfere with their comfortable position within the single nation states which they have built over the last 30 years. Furthermore, what is called e.g. social democratic in one country and what is meant by social democratic in other countries, is in no way the same thing. Hoping for the spontaneous emergence of a grass-roots movement which marches through Brussels vociferously demanding a constitution is naive. Thus, we simply do not spot an agent who is willing to advance the idea of a democratically constituted Union. What remains is a kind of Popperian peacemeal engineering and not putting the stakes on a big bang constitution.

## V. Modest Ideas

If we take these sometimes casual remarks into account we have to subscribe to the opinion that the democratic deficit, the lack of responsiveness of the European Union cannot be reduced by a European constitution alone. But this does not mean that a European constitution is worthless at all. On the contrary, representation follows the contours of political institutions. If there are no adequate mechanisms of representation in the European Union then something must be wrong with its political institutions. Institutional arrangements are usually settled in constitutions. A European constitution can and should provide a supportive environment in which all these factors mentioned above are able to develop. Or to put it more bluntly: A constitution should set the stage for a representative system of governance.<sup>23</sup> In order to create such a system we suggest firstly a uniform electoral system for EP-elections and cross-border voting districts. The five sets of elections held so far have all been contested on the basis of different national electoral arrangements.<sup>24</sup> A unified electoral system would guarantee the equal weight of the vote. Cross-border constituencies would guarantee that the party system in the parliamentary arena reflects the party system in the electoral arena because it can be expected that the transnational party federations would compete in such elections. Besides the question of a uniform electoral system based on cross-border constituencies the problem is how to convince parties to articulate interests that cross national borders. Does this necessarily need a form of 'European solidarity' as Habermas (2000) has stressed? What is required, secondly, is a political prize worth fighting for, and one that offers at least some of the parties a reasonable expectation of winning. The election of the Commission president by the European Parliament could be such a prize together with full co-decision rights for the EP. Additionally, the degree of responsiveness can be further increased by measures enhancing transparency of the whole legislative and executive process by opening the meetings of the Council and the countless committees to the public. An argument which can

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<sup>23</sup> Furthermore, it must not be overlooked that the act of constitutionalisation can provide a boost for emerging europeanized identities.

<sup>24</sup> In 1999 proportional representation was used in all member states.

be often heard in the current debate about the future of the Union is that a European constitution or at least a re-organisation of the Treaties in order to make them comprehensible can provide a necessary *katharsis* of the complex European politics. Last but not least, the incorporation of the Charter of fundamental rights into the Treaties as an attribute of EU-citizenship is also an appropriate policy to strengthen representative governance.

Where does the confidence in parties come from if we are less than impressed with them at the national level? What needs to be done is to break the link between the executive/government and the legislative. The institutional arrangement of the EU itself guarantees that the legislative function is divided between the Council and the EP. This would also be the case if the legislative competence of the EP is widened and the Council becomes a second chamber. Since the Commission would still remain limited to initiate Community legislation and to propose policies party government as we know it from the member states is simply not possible due to the fact that political ideologies are counter-balanced by member states interests.

Neither the drafting of a constitution by a convention nor the re-organisation of the Treaties – as suggested by the European University Institute in Florence – will suffice to tame the prince. As we know from various national experiences constitutions usually codify existing societal patterns, but they rarely incite such developments. No European constitution can create an interested public willing to engage in political affairs, no constitution can create a Europeanized public sphere, no constitution can create a European party system. All this rather depends on fundamental changes in social, economic, and educational conditions – matters that have proved to depend on a glacial process of structural transformation.

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