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Between Kant and Mega-Constitutional Politics

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In his philosophical essay *Perpetual Peace* Kant wrote 1795 that "laws always lose in vigour what governments gain in extent". This can be taken as a warning: states should not be allowed to become too big[1]. Otherwise there will come a point at which the distended state, if it is to hold together, must stifle freedom, or if it is to allow freedom to flourish, must collapse. The current tide of suggestions of how to reform the institutions of the European Union to secure enlargement and a deepening of the integration at the same time can be interpreted as an argument between those who still view the nation state as sole guarantor of freedom and those who base their hopes on Europe as a space of liberty, justice and security. As a consequence of this epic struggle Europe´s politicians, who are rather unwilling to speak about the *finalité européenne*, are engaged in "mega-constitutional politics" (Russell 1993), i.e. a phase of major constitutional transformations, in which discussions on institutional issues absorb a substantial part of the political system´s energy.

Over the last fifty years what is nowadays the European Union (EU) has been given considerable powers from the member states. The tedious question if the EU has thereby become a state, a state-in-the-making or still remains a weird *sui generis* creature strongly reminds of Puchala (1972) and his famous analogy: blind (mostly) men arguing about the different parts of an elephant. Without doubt this elephant exists and leaves ever deeper traces in the political systems of the member-states. Concepts that are meant to describe the same elephant include a *regime* (Keohane/Nye 1977; Efinger/Rittberger/Wolf/Zürn 1990) or *international organisation* (Waltz 1979; Bellers/Häckel 1990), a *supranational institution* (Haas 1958; Keohane/Hoffmann 1992; Lindberg/Scheingold 1970), a *federal system in the making* (Pinder 1991; Sbragia 1992) or *multi-*

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[1] Or as Schmitt and Thomassen (1999:10) describe it: "there is an obvoius trade-off between the size and the scope of democracy. With respect to the domain, or the question of the size of the demos, there is the almost classic temptation to argue the smaller the better. If we accept the view that the greater the weight of each citizen is, the more democratic a system is, then ceteris paribus a larger system is bound to be less democratic than a smaller system."

level system (Puchala 1972; Kohler-Koch 1992; Eising/Kohler-Koch 1994), a *network* (Héritier 1993; Pitschas 1994; Kassim 1994; Grande 1996; Jachtenfuchs 1996; Kohler-Koch 1996), a *"would-be-state"* (Caporaso 1996; Lepsius 1991; Wessels 1992; Majone 1996; Puntscher Riekmann 1998).

What can hardly be doubted is the fact that the EU wields state-like power and functions in important policy areas. With the transfer of government functions to `Brussels´ the functional boundaries of the member states have been redrawn (comp. Weiler et al. 1995a). Thus the question whether the Union has already become too big (or whether the coming enlargement will deal the ultimate blow) for freedom to flourish seems adequate. Political freedom is usually connected with democracy. Mass democracy means that the legitimacy of those in positions of authority is open to challenge from below. The notion of sovereignty implies that the people should not merely support those in power but exercise power themselves. Since public squares have become too small for the gathering of all of our fellow citizens democracy in modern times is equated with representative democracy. Thus, it is necessary and desirable that power should be entrusted to the few by the many. However, the latter can withdraw their consent periodically at elections, when competing candidates solicit their votes. Political representation refers to the concept of representative democracy, including both the institutions of responsible government and the process of political representation, i.e. the process by which the making of government policy is related to the wants, needs, and demands of the public (Schmitt/Thomassen 1999: 4). It is not size but the quality of representation which matters in order to secure political freedom.

In order to sharpen the definition of representation we draw on the model elaborated by H. Pitkin (1967) and distinguish between formal and substantive aspects of representation. Formal aspects refer to the actors and process of representation. The represented or principal transfers authority to the representative or agent to act on his or her behalf and subsequently may hold the agent accountable for his or her action. Thus the formal aspects encompass the two fundamental activities: authorization of acting on behalf and holding accountable. The substantive aspect focuses on what content is represented as well as the dependence/independence of a representative from the represented. Thus it entails issues of how interest can be represented and of the principal´s control over agents.

Representative democracy inevitably rests on intermediate organisations. Where intermediate organisations between the government and the governed, notably political parties and interest organisations, operate effectively in synchronising the wishes of the public and the actions of those in office, the political system managed with the indirect influence of the people on the politicians (comp. Hayward 1995). Because humanity is made out of crooked timber people were wise enough to base this on solid contracts, i.e. constitutions. Thus, questions of representation are constitutional questions.

But are people represented by their representatives? Over the last decades we witness a certain disaffection not only with politicians but also with the process by which legitimate authority has been transmitted upwards. Inter alia, the emergence of the green movements, which do not regard themselves as traditional parties - clearly indicated that only casting one´s vote every four years is not sufficient to satisfy the desire for political participation. And in the last years anti-European movements pressing for more direct democracy try to circumvent the traditional way of representative decision-making. What has turned out to be crucial in the development of representative government are political parties. The twentieth century "is not only the century of democratisation, and hence of democracy, but it is also the century of *party* democracy. "(Mair 1995: 41). But are parties still functioning as the link between civil society and the state? Or do parties and the state form an ever closer symbiosis (a development brilliantly analysed by Katz and Mair 1995)? 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.

We are starting from the following assumptions: there is (at least) a dilemma of European democracy: 1) Representative democracy depends on intermediating organisations, notably political parties gathering in parliaments. But national political parties have become state organs, government has become party government shifting the role of national parliaments from controlling towards confirming government policies and thus hardly conveying the will of the people; 2) the situation is even worse at the European level: a European Parliament facing a dominating executive based on a weak European party system that is hampered in its growth by

its short-sighted masters, the national parties. This results in a distorted balance between the legislative and the executive and thus an increasing disillusioning of the European citizens concerning their rights and possibilities of participation in the European project. As a consequence growing parts of the national publics will retreat into a backward looking and defensive preoccupation with their own interests and will thereby put the future of the European integration process at risk (Wolton 1993; Andersen/Eliassen 1996; Scharpf 1996, 1999; Puntscher Riekmann 1998; Bach 1999; Gusy 2000).

A constitutionalisation of the European Union is regarded by some as one remedy against this democratic deficit . The debate about a European constitution is at least twenty years old (comp. Schwarze/Bieber 1984)[2] and got a major boost by J. Fischer´s speech at the Humboldt University in Berlin in May 2000. Since Fischer´s intervention Europe´s leading politicians are outbidding each other with suggestions about such a constitution. This paper will ask if a constitution is capable to reduce the democratic shortcomings of the Union.

The paper proceeds as follows: in the first part we will sketch the basic features of the democratic deficit, which are often stated but seldom analysed. In the second chapter we ask heretically whether the Union really needs a constitution Giving a first tentative answer leads to part three which deals with the role of parties in the European Union. In a concluding section we want to present some modest suggestion of how to avoid the pitfalls of European democracy.

I. Basic Features of the Democratic Deficit

A prominent feature of the established complex multi-level system of governance is the fusion of national and supranational institutions, especially executives (Wessels 1992), which are at best legitimated only indirectly. A basic democratic principle says that citizens as subjects of rule should also be the authors of the rules. State power derives from the people and is exercised on their behalf by special agencies who are accountable to the people for that exercise. In European constitutional thinking a predominant consensus has emerged that political representation refers

to the process by which the parliament represents the entire nation (Lehmbruch 1997).[3] While the ideal democratic principle (by and large) applies in the member states, their decisional powers are dwindling with the constant shift of competences towards the European level (Andersen/Burns 1996). The volume, complexity and timing of the Community decisional process makes national parliamentary control more an illusion than a reality. The situation is deteriorating since the introduction of majority-voting by the SEA. In a majority decision environment the power of national parliaments to affect outcomes in the Council of the European Union is further reduced (Dinan 1994: 289). Even the existing far-reaching participation rights of the national parliaments in some member-states (e.g. Austria, Denmark) prove to be a limited success story only. Member state ministers reconstituted in the Community as the principal decision-making body with, as noted above, an ever widening legislative competence over increasing areas of public policy are hardly controlled. Political scrutiny and political control cannot be effective at a lower level than decision-making. Moreover an *ex post* control of the decisions in the Council of the European Union is hardly possible because decisions are taken behind a veil of secrecy resembling more a privy council than a democratic body. The European Parliament does not offer an effective substitution. Even after Nice, the powers of the EP in the legislative process leave formal and formidable gaps in parliamentary control. So, Union governance results in a net empowerment of the executive branch of the member-states. This dominance of the executive comes at the expense of the representative institutions, not only of the EP but also of national parliaments.

Thus the democratic deficit of the EU consists in the dominance of the executive which has established itself as an irreplaceable force in the development of the Union but which operates from a democratic point of view in the "underworld" (Weiler 1998: 9).

II. Taming the Prince

Our premise is that the domination of the executive over parliaments on both, the national and the European level (Rometsch/Wessels 1996) may lead to a crisis of representation and thus erode

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[2] 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).

legimitacy. An argument which can 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. But what is a constitution really good for?

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.[4] Questions of political power mainly concern the relationship of decision and participation. For most policy-makers (i.e. the executive), decision, latently or overtly, appears to be more important than direct participation of the citizens, but also more important than their indirect particpation through parliamentary representation. However, public demands for efficiency and effectiveness also tend to favour the executive against the legislative, whereas the independence of the judiciary remains largely unchallenged. Analyses of the European integration process show that this tendency has been widely enhanced by the emerging supranational order. Indeed, political scientists speak of a *deparliamentarisation* of European politics (Rometsch/Wessels 1996) that poses a serious threat for democratic representation, which cannot be replaced by national governments in the Council of the EU. This can also be viewed as the heritage of the technocratic approach towards European integration which was almost always sold to the public as a "Zweckverband" (Ipsen 1972) merely serving the economic *telos*.

However, if the basic democratic principle (government *by* the people) were to be transferred onto the European level as well it becomes important to define who this *prince* really is. This is all but easy given the multi-layered decision-making process in the European Union where national executives merge with supranational organs and where the supranational parliament, although directly elected, has co-decision powers in a limited but growing field of policies only. In spite of the difficulty to disentangle the maze of European politics it is argued here that the modern prince is to be found in the Council of the EU as well as in the European Council, the

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[3] However, this is only one point of view. E. Burke and e.g. J. H. Kaiser (1978) and W.A. Patzelt (1993) as well as liberal pluralists use representation as a feature of mass-elite relations (Parry 1995; Scigliano 1995).
[4] This struggle may be traced back to the Magna Carta at least.

Commission being considered mainly as an instrument for integration.[5] Taming the European *Prince* 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.

A further difficulty in analysing the relationship between the political powers at the European level results from the absence of a European sovereign. In the context of most European constitutions the sovereign is the people.[6] Most observers agree that a European demos, hence a European sovereign, is hard to discern. By affirming this we do not favour the so-called *"No-demos"* thesis of the German Federal Supreme Court[7] with all its ethno-cultural connotations. Nor do we argue that the lack of a *European people* means that the EU does not need a constitution (Grimm 1995).[8] We define the collectivity of European citizens as the potential European demos, although an individual consciousness of the belonging to this collectivity is still to be developed.

If one were to consider the European elections as a moment in which such a demos might emerge, he or she would be utterly disillusioned: Turnouts are very low particularly when compared to national results, campaigns are almost exclusively fought about national issues, most of the citizens being highly convinced of the irrelevance of the European Parliament. At the same time citizens fancy the Commission as being the most powerful organ of the Union, whereas the importance of national actors in the supranational decision-making process remains largely unrecognised. The member states´ executives have successfully told their citizens that the real political power is located in "Brussels". Thus the Commission as the proto-executive is forced to assume the role of a veil behind which the real executive can hide (e.g. in the comitology; see *inter alia* Joerges/Vos 1999).

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[5] This argument does not aim at minimising the role of the Commission whose power has been considerable in certain periods of integration. But repreated cut-backs of power by governments demonstrate the Commission´s instrumental character.

[6] The big exception is – of course – UK with its parliamentary sovereignty.

[7] BVerfGE 89, 155 (Maastricht-decision) and the harsh criticism by Weiler (1995).

[8] The question whether the Union is a state or not, a debate usually led by German legal scholars (e.g. Kirchhof 1994), is misleading, because its main premises is still routed in the conceptual framework of the sovereign territorial nation-state. Therefore the debate on the necessity of a European constitution must not be blocked by the controversy on its statehood.

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. As noted above, the reading does not bode well for this institution. At the national level 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 weakend by the process of European integration.

III. European parties – the missing link?

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: 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: 2f.).

While the impact of political parties has been acknowledged by Article 191 TEC their functions are severely eroded by European integration at the same time. The traditional policy-cycle is split into two interdependent levels: the European Union and the nation-state. While the definition of socio-economic problems and the implementation of policies largely remain at the national level, the agenda-setting and the policy initiatives have to a considerable extent been shifted to the supranational level. This leads to an ever-growing cleavage between the agenda-setting power

and the vote-/office- and policy-seeking strategies of parties. Due to the inadequate adaptation of national political parties to the new course of the policy cycle as well as to the structures of European policy-making, they are increasingly unable to fulfil the role of aggregation and articulation of interests. Elections to the EP are still fought on national themes and may be dubbed "second-order national-elections" (Reif/Schmitt 1980; Franklin 1996). The decreasing turnouts at the European level (and in particular the differences with national turnouts) point to the inability of the parties to mobilize voters. Reasons for this deficit are that the consequences of these elections seem to be close to zero for national parties as well as for the individual voter mainly because they do not lead to the formation of a government. To date European parliamentary elections have dramatically failed to produce a debate about genuine or coherent EU-wide issues.

But only where elections are allowed to function as an instrument of representation will they confer legitimacy on the elected assembly, even if it is not very powerful. For elections to be means of representation "the party system in the parliamentary arena must reflect the party system in the electoral arena" (Andeweg 1995: 60). This is clearly not the case in EP-elections. Though the representatives from the national parties join forces with their ideological counterpartss within the respective *famille spirituelle* none of these families stands for vote.

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 1996:17). 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.[9] 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[10] starts from the assumption that voters have political preferences. Are this preferences in line with the policies parties follow?[11] By comparing European citizens´ perceptions of their national parties´ positions on the EU and their own attitudes towards European integration Andeweg (1995: 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."

IV. The proof of the pudding...

In order to assess our thesis that only parties are able to serve as the relevant intermediate organisations we want to draw the attention to a recently finished research project[12] carried out at the Austrian Academy of Sciences. In this study we went a step back and asked: Do political parties recognize their decreasing ability to influence European policies? And if yes, how are parties adapting to the changing political environment? The results shall be briefly presented here. This study is based on the idea that democracy needs organization (Michels 1952). The normative frame of our research can be summarized by the finding of Schattschneider: *Modern democracy is unthinkable save in terms of parties"* (1942: I) and J. Bryce (1921: 119) who stated: "parties are inevitable. No one has shown how representative government could be worked without them". The project was carried out in Austria; it should serve a methodical pre-study for a comparative project in several member states. In contrast to traditional comparative party research which has mainly focused on the comparison of e.g. structure and organization of parties, electoral turnout, volatility, partisanship (i.e. quantitative comparisons) etc. it focused on the interdependence of European policy-making and changes in party activity and organization.

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[9] 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.

[10] As developed by Schmitter/Thomassen (1999a). The view presented here is much more minimalistic and less sophisticated than their model.

[11] 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.

The Austrian party system cannot easily serve as a role model for the other member states due to some special features: Until very recently the Austrian party system was exceptionally stable (Luther 1999) and Austria was considered as an almost archetypical case of a consociational democracy (Lijphart 1968, 1969; Luther 1992). This fact can partly be explained by the long tradition of the Austrian party system and its three main parties (Socialist, Christian-conservative, Pan-German) which go back to the year 1880. (Pelinka 1998:74) The Second Republic linked up with this party system: For nearly five decades after the end of World War II the party system was dominated by the Austrian People´s Party (ÖVP) and the Social-democratic Party (SPÖ). The general features of the Austrian party system are: Parties as membership organizations are the largest in western Europe in relative terms and among the largest in absolute terms; post-war politics has been party politics par excellence, in which the two major parties - SPÖ and ÖVP - have established a substantial grip on political institutions and civil society; the four parties (SPÖ, ÖVP, Austrian freedom Party, Green Party) evidence a wide rangeing structural variation (Müller 1994: 51). In the 1980s, new political mobility and the concurrent erosion of the extreme party state changed the party system and transformed its characteristics: The Greens emerged as a fourth party in 1986 when they gained access to parliament; the FPÖ repositioned itself as a "right-wing populist" party, a move that has increased its share of votes at the cost of the two major parties; the Liberal Forum split from the FPÖ in protest over the latter´s right wing populist tendencies. After the general elections in 1999 – the Liberal Forum loosing her seats - only four parties were represented in the parliament.

The first elections to the European Parliament in Austria took place in October 1996. The election was perceived as a "second order election" resulting in a high number of protest votes (comp. Dimitrias et al. 1994; Van der Eijk/Franklin/Marsh 1996) against the government parties[13], especially the SPÖ. In 1999 the situation changed. Compared to European elections in other member states the first election in Austria was characterized by a high effort of all parties and intensive mass media coverage. This may be due to the proximity of the elections to the Austrian parliament which took place only three months later. Additionally the pro-Europe

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[12] Project title: Institutional Change and Problems of Democracy. State of the Art and Future Perspectives, (GZ 28.101/1-III/A/3/99).

[13] This is in line with the results of the European elections in 1994: in eleven of twelve member countries the government parties suffered considerable losses (Hickersberger/Lutter 1996: 387)

sentiment was much higher than in 1996: 64% of those surveyed took a favourable view of Austria´s membership of the EU - this is 10% more than 1996.

The first part of the empirical work consisted in the evaluation of written sources, i. e. governmental programmes, party programmes, strategy papers, election campaign brochures etc. in order to find out if parties perceive the importance of the European political arena. The core of our empirical work, however, was based on interviews with party representatives, among them for each party members of the national parliament and of the European parliament as well as people familiar with the party structure. The potential Europeanization of the Austrian parties which is understood as an "incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (Ladrech 1994: 69) has been analyzed in four dimensions.[14]

Generally there are at least three possibilities for parties to react to a changing political environment. They can refer to symbolic politics, i.e. preach national politics at national level and act at European level instrumentalising European policy-making either as an excuse for unpopular measures or claiming success for popular policies devised without their input, thus trying to maximise votes and office at the national level. They may relinquish certain policy areas where their influence has been dramatically reduced through European integration and concentrate on the remaining "national" agenda, while opposing latently or overtly any further integration. Or they can apply an offensive strategy either demanding a strengthening of the national political arena, e.g. through an upgrading of national parliaments, insist on a strict interpretation of the principle of subsidiarity or favour a strong European Parliament and intensify the role of trans-national party federations.[15]

A detailed account of the research findings would be beyond the scope of this paper. However, a rough sketch of the main results will help to underline our argument. If we were to find a

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[14] 1) internal structure and organization of parties; 2) communication flows within the parties and with their voters; 3) competition and collaboration with other intermediary organisations; and 4) changing policy options for parties The analyzed policy areas were corporate taxation, community-wide minimum wages, and taxation on energy products.

[15] Which option they might choose will depend on the following factors: their position in the national context (government/opposition), the nature of specific or diffuse interests they claim to represent, their normative and their policy core, the policy field concerned, the respective political culture and party history.

differentiation of Austrian political parties along the category Europeanization one could get to the following conclusions:

- The FPÖ is basically an anti-EU and anti-European Integration party. This is probably why they do not manage to instrumentalize the European level as effectively as other Austrian parties. Their strategy to nominate independent experts for the European Parliament was successful insofar as election results (in 1996) went well but they did not succeed (or did not try to) to bind those independent MEPs closely to the party in Vienna so that their work in Brussels is mainly coined by personal political interests.

- The ÖVP, on the other hand, is *the* Austrian integration party looking back on a tradition of active European politics. However, out of the interviews the impression arose that this European perspective is not further developed at the moment. This has probably two reasons: 1. the ÖVP is the party of farmers and has therefore to deal with the EU-scepticism of its clientele (the ÖVP´s orientation towards Europe has always rather been an elitist project within the party), and 2. the coalition with the EU-critical FPÖ and the so-called "sanctions" of the EU-14 against this government do certainly not enhance the European engagement of the ÖVP.

- The SPÖ did not show much interest in the EU until the mid-80s but is unanimously supporting European Integration since then. As one social democratic representative put it: "We are just as the ÖVP good Europeans, not very initiative, but we both marched into the existing European structures at full blast." (I 7) If the SPÖ does not seem very active in their European policy this may be due to the shock of the last national elections than to specific European considerations.

- The Green Party campaigned against Austria´s accession to the European Union with the slogan "Yes to Europe, No to European Union" (I 12) expressing thus their basic support of European integration and their critic towards the deficits of the European Union. After the referendum they immediately started to develop a pro-active European policy. The acceptance of their European policy became obvious by the results of the second EP elections in Austria in 1999 when the Green Party was the only one gaining votes in spite of the extremely low voting turnout.

Organizations change due to some kind of misfit. Two types of misfit can arouse with respect to parties and party systems, namely policy misfit and institutional misfit (Börzel/Risse 2000). Both types of misfit have been perceived by some of our interviewees but usually only in a superficial way without noticing the deeper consequences European Integration has had and will have in the future on national policy making. Members of the European Parliament and members of the national government[16] were most sensitive to these changes and to their consequences. This result corresponds with the view that parties are oligarchic and elitist as well as with the perception that governments are privileged by the EU vis à vis the national parliaments. For the internal party structure the interviews also make clear that party members in the government further deprive their own parliamentary group of power. Generally, most Austrian politicians seem to concentrate on symbolic politics as defined above. Thus, we have to draw a rather pessimistic picture of the role of the political parties operating as *the* relevant intermediate organisation. The link between them and the electorate has considerably weakened but they still fulfill important functions in the political system: All political parties try to some extent to make their electorate understand European issues. Moreover, they train their elites. But this is done against the background of domestic politics which still remains the focus of their attention since votes and offices are traded here.

V. Modest Ideas

If we take these sometimes casual remarks into account we have to subscribe to the opinion that the democratic deficit 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. Again: it is not size which matter but the quality of representation. 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

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[16] While we did not intentionally include members of the government in our sample one of the interlocutors was a former minister.

governance.[17] 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.[18] 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 transantional 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.

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 arrrangement 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

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[17] Furthermore, it must not be overlooked that the act of constitutionalisation can provide a boost for emerging europeanized identies.
[18] In 1999 proportional representation was used in all member states.

fundamental changes in social, economic, and educational conditions – matters that have proved to depend on a very slow process of structural transformation.

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