

Less Bargaining – More Deliberation The Convention Method for Enhancing EU Democracy

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The Laeken European Council of December 2001 agreed on a set of questions with regard to the future design of the EU's institutions and their democratic legitimacy. According to the Laeken declaration on the future of the European Union, »the European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses [and ...] from democratic, transparent and efficient institutions.« (European Council 2001) Although this statement suggests a broad normative consensus about the state of democracy and legitimacy in the EU, the heads of state and government mandated the recent Convention to deliberate on some of the most traditional questions to be answered when establishing any political system. Overall, the Laeken mandate mirrors an unequivocal picture of the EU: the Union remains designed as a political system in process. Although it is based on some of the most traditional concepts of representative democracy, the system requires improvement. However, the very nature of the mandate and its context – the failure of the Treaty of Nice, the perspective of an enlarged Union of 25 and more member states, and the effects of a globalized economy and trans-national risk production – show that these concepts are not fully implemented. In other words: The European Union faces serious problems with regard to the relationship between its governing bodies and its citizens. The very question of the Convention therefore is: Does, and if yes, how does the EU provide opportunity structures for establishing a democratic system? Are there any means to reconstruct and to visualise a concept of democracy, which allows the Union to further build on its differentiated set of institutions, and to gain a positive feedback by its citizens?

This paper attempts to explore the Convention method along the major outlines of the theoretical concept of deliberative democracy. My argument is that the Convention method can be seen as an alternative way for steering system change and fundamental reform of the European Union, because it features participative and inclusive forms of open de-

liberation, it respects and integrates the relative importance of minority positions, it offers open fora for parliamentary discourse and helps to include national parliaments at an early stage of system building, and it is conditioned by the method of consensus-building. Overall thus, the Convention method might become a future model for a more democratic set up of the EU.

The De-nationalized, European Demos: Outcome, not Prerequisite of European Integration

Contributions to the debate on the EU's legitimacy crisis focus on the deficiencies of input legitimacy, and the democratic deficit. By democracy, I understand the »institutionalization of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions« (Jachtenfuchs 1998, 47). Of course, this definition does not automatically induce democracy to be synonymous with parliamentary majority vs. minority government. At least theoretically, there are many ways to secure the participation of the citizenry in governing a given polity. But if we turn to the evolution of the EU over the last decades, we observe a trend: the search for establishing some kind of representative governance structures, in which institutions aggregate participation needs and try to fulfil their general function as arenas and rules for making binding decisions and for structuring the relationship between individuals in various units of the polity and economy. By legitimacy, I understand a generalized degree of trust of the addressees of the EU's institutional and policy outcomes towards the emerging political system. A political system which is entitled to limit national sovereignty and which is enabled to take decisions directly binding the residents of its constituent Member States without the prior and individual assent of each national government requires more than the formal approval of founding treaties and their subsequent amendments (Weiler 1993): it necessitates the willingness of minorities to accept the decisions of the majority within the boundaries of the EU's polity. In other words, social legitimacy supposes that decisions have to be based on a broad acceptance of the overall system. Even if the citizenry of the EU polity is not fully aware of or interested in the way binding decisions about their way of life are taken, the system and its institutions must be aware of the risk that the public attitude towards it can shift from some

kind of a permissive consensus or benevolent indifference to fundamental skepticism. The legitimacy of governance can be derived from historically and geographically contingent sources. With regard to the analysis of the governance in the European Union, Scharpf's (1970) distinction of output (government for the people or effective performance) and input legitimization (government by the people or representativeness) has been widely used, irrespective of some terminological variations. In the context of European governance a third legitimating factor is often highlighted: the requirement for communitarian cohesion or civic identity.

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In this regard, the heart of the democratic deficit features the argument of a growing mismatch between the powers exercised in and through EU institutions, fora and procedures, and the channels, structures and sanctions to influence and control the formulation and implementation of policy. The EU's institutional design thus faces a multitude of questions as to how representative this system of multi-level governance is, in which way its quasi-executive branches – the Council and the Commission – are accountable to the citizens and how democratic the decision-making procedures between the Union's authorities are. The presumed lack of linkage and control applies not only to European but also to national actors, most notably governments, which are seen as removed from parliamentary or public scrutiny. In this sense, the lack of control over government-like institutions firstly at the national and secondly at the European level – the Council of the EU – generates a »double democratic deficit«.

Some even see a triple deficit, arguing that current (or future) levels of integration presuppose the existence of a European »demos«. True, the evidence for a transnational identity within the Union is weak and the chance of creating one in the near future seems bleak because of the lack of intermediary structures and agents (transnational parties, media, common language etc.). The EU system takes binding decisions, which influence the citizens' ways of living and constrains their individual freedom.

The EU system affects national legislatures and their linkage with the citizens. Of course, arguing about parliaments and their potential to provide for the European »demos« – functionally, nationally or ideologically different realms of identity and interest formation, mediation and communication – a set of representative voices in the Union’s policy cycle does not mean that parliamentarism is the only way of bridging the gap between the citizens and the Union. One can easily assume that even after the Nice Treaty has come to force, many scholars and practitioners of European integration will continue to argue that focusing on the »input« structures of the Union is only one of several ways how governance »beyond the state« (Jachtenfuchs/Kohler-Koch 1996) might gain legitimacy. In this respect, one could also imagine a renaissance of the German Constitutional Court’s 1993 Maastricht ruling, which led to a general critique of the EU’s parliamentary model. The basic assumption of the Court and later on its protagonist commentators was that a polity presupposes a »demos« in ethno-national or ethno-cultural terms (the »Volk« instead of the »Gesellschaft«). Thus, without a single European people sharing heritage, language, culture and ethnic background, and without a European public space of communication that could shape the wills and opinion of the population, no European statehood could be founded. For those who adopt this view (Kielmansegg 1996, 47–72; Grimm 1995, 282–302), it is apparent to simply deny the pre-constitutional conditions for further integration and therefore to conclude that in the absence of a single European demos there cannot be »real« democracy at the European level (Weiler 1993, 11–41; Weiler/Halter/Mayer 1995, 24–33). Assume that a socio-political entity, which is willing to produce democratic forms of governance, can not simply dictate structural prerequisites and pre-constitutional elements of the future polity. One could then develop these arguments further to conclude that any attempt of institutional and procedural reform is unreasonable unless the different European demoi are identifying themselves as part of an emerging European demos.

Against this line of analysis, I argue that the missing »demos« is not a prerequisite, but an ideal product of successful integration and institutional design. I refer to Habermas’ analysis on the relationship between institution building and citizenship formation. He argues that »the ethical-political self-understanding of citizens in a democratic community must not be taken as a historical-cultural *a priori* that makes democratic will-formation possible, but rather as the flowing contents of a circular process that is generated through the legal institutionalisation of

citizens' communication. This is precisely how national identities were formed in modern Europe. Therefore it is to be expected that the political institutions to be created by a European constitution would have an inducing effect.« (Habermas 1995, 306–307) In other terms, the »demos is constructed via democratic ›praxis‹. [...] Instead of ›no EU democracy without a European demos‹, we have ›no European demos without EU democracy‹.« (Hix 1998, 38–65) Taking this perspective seriously, I consider the very process of European integration as an ongoing search for opportunity structures, which allow the institutions of the EU's multi-level system to combine several demands for democracy-building beyond, but still with, the nation state. Whether this process leads to the self-identification and further stabilization of various »demoi« or of one single European »demos« remains an open question.

The Concept of Deliberative Democracy

An essential element of the democratic ideal is discussion, persuasion and compromise, the majority ought not to push unilaterally for its own preferences since it has an obligation to discuss everything with the minority and should be ever ready to compromise – even when a simple majority is easily obtained. The basic principle is to continue debate until there is no other way forward or alternative than to take a vote. The debate should be fair and equal, the participants must assume that they are all equal and be prepared to hear all the arguments. Thus the democratic dialogue is believed to have an intrinsic value, creating democratic individuals who will allow and respect a different opinion, consequently reducing the tension between the different interests in society. (Ross 1967, 112) More pragmatic arguments have been made in favor of more consensual decision-making in a democratic society, especially by those underlining the importance of the links between the decision-making process and the implementation/ratification process.

What is understood by deliberative democracy? Some see it as a special form of communication between the people and the rulers while others stress the communicative aspect as such. As expressed by Eriksen and Fossum with regard to the difference between a deliberative procedure and a traditional bargaining process: »The problem of bargaining and voting procedures is that they encourage a process of give-and-take, pork barrelling, log-rolling etc. that does not change opinions, necessitates

learning or enlargement or refinements of perspectives – there is moulding of a common rational will. In a way it signals that the discussion has come to a standstill – a deadlock. It also indicates that the parties have accepted an outcome, but not because it is an optimal outcome. They accepted it because of the resources and power relations involved. Each participant would ideally like another and better outcome for themselves, but can live with the agreement that has been obtained.« (Eriksen 2000, 60) However, when it comes to arguing and deliberative processes, ultimately someone has to change position or at least change her/his view during the discussion in order to reach an agreement. And if there is a common problem which needs to be solved it is of vital importance that the actors agree on what action to take, i.e. a moulding of the common will is required. (Eriksen 2000, 60–62) Seyla Benhabib and Joshua Cohen have been rather explicit about what characterizes a deliberative process. According to Cohen, there are four key concepts of such a process:

- ▶ First of all, the participants are free, they are only bound by the results of the deliberation and they supposedly can act on the results.
- ▶ Secondly, the deliberation is reasoned, no force is exercised except that of the better argument.
- ▶ Thirdly, parties are both formally and substantively equal – each person or party with deliberative capacities has equal standing at every stage of the deliberative process.
- ▶ Finally, deliberation aims to arrive at a rational, motivated consensus – »to find reasons that are persuasive to all who are committed to acting on the results of a free and reasoned assessment of alternatives by equals« (Cohen 1999, 74).

The theory thus assumes a close link between the procedure and the result of a given deliberative sequence. Legitimacy is established by means of free and open debate, but it is not the discussion as such which constitutes the essential element from which legitimacy is derived – the outcome of the discussion must also be accepted by the participants and the nature of it must belong to a particular category – it has to be rational and a solution to the problem.

This kind of linkage between process and legitimacy fits the democratic structure of the European Union, since the EU system lacks an independent decision-making structure, which is based on central and hierarchical authority, a collective identity derived from a common history, tradition or fate, a sovereign community based on fixed, contiguous and

clearly delimited territory, and a set of explicit principles established and sanctioned by international law. (Eriksen/Fossum 2000, 256) Effective and accepted integration in such a system is then rooted in the power sharing system of the EU as such and the role played by institutions which could be identified as arenas. In comparison to formalized means of participation, the first apparent advantage of deliberative democracy through a multiple-way process of free speech is the avoidance of institutionalizing veto power. None of the participants in the political process is provided with any additional rights to stall, procrastinate, or veto proposed decisions beyond the formal rules of procedure. In fact, theorists of deliberative democracy maintain that the promotion of arguing over bargaining encourages more effective decision-making. (Risse-Kappen 1996, 2000; Eriksen 2000, 59–61) Participants are more likely to reach optimal solutions, because they share not only information freely but also a common frame of reference, while lowest common denominator outcomes are more likely in negotiations in which strategic rationality and bargaining dominate. (Risse 2000) In addition, discursive approaches emphasize the gains in knowledge and policy know-how, if the arena of participants and the channels for feed-back are widened. This would help to recognize negative side-effects of decisions early on in the decision-making process, preventing costly procrastination, adjustment, or termination of policies during or after the implementation phase.

The majority ought not to push unilaterally for its own preferences since it has an obligation to discuss everything with the minority and should be ever ready to compromise – even when a simple majority is easily obtained. The basic principle is to continue debate until there is no other way forward or alternative than to take a vote.

At the same time, public discourse offers a means of overcoming the representativeness dilemma associated with formal electoral procedures. Indeed, voting is just one procedure of linking public preferences with governance, not its essence. As Dahl pointed out, »democracy cannot be justified merely as a system for translating the raw, uninformed will of a population majority into public policy«. (Dahl 1994, 30) He emphasizes that »each citizen ought to have adequate and equal opportunities for discovering and validating (within the time permitted by the need for a decision) the choice on the matter to be decided that would best serve the

citizen's interest«. (1989, 112) From this perspective, formal procedures of aggregating and projecting preferences into the political systems are little more than empty shells if citizens are not able to form an enlightened opinion about political affairs.

Turning the argument around, however, one may ask whether these deliberative elements alone can suffice? There are discernible differences between those who see the deliberative element as an essential part of a democratic society and those who want to stress that it is merely a supplement. Saward underlines: »Advocates often contrast deliberative and merely »aggregative« traditional democratic theory; in the former, citizen preferences are forged through a process of structured debate focused on the need to realise the common good, while in the latter, unrefined and perhaps uninformed preferences are merely counted up to produce public policy«. (Saward 1998, 64) However, the concerns of the »deliberationists« are in fact rather narrow. No matter how much deliberation takes place, heads mirroring positions have to be counted – »aggregatively« – at some point if a democratic decision is to be reached. Clearly, no adequate model of democracy can fail to be aggregative in the end. In other words, the deliberative model of democracy does not already physically exist; it needs to be activated, constructed and visualized by those who participate in one of the EU's arenas. Actors are not compelled to make an effort to increase public deliberation on policies within a larger »aggregative« framework of constitutional democratic provisions. (Saward 1998, 64–66)

The Role of Parliaments in EU Decision Making

The EU faces a permanent process of institutional change. The very system is structured by process – an ongoing oscillation between para-constitutional Treaty amendments and Treaty implementation. This kind of system change relates to the »extension to specific or general obligations that are beyond the boundaries of the original treaty commitments, either geographically or functionally«. (Laursen 1992, 242) At Intergovernmental Conferences (IGCs), »it typically entails a major change in the scope of the Community or in its institutions, that often requires *an entirely new constitutive bargaining process* among the Member States, entailing substantial goal redefinition among national political actors«. (Laursen 1992, 242; see also: Genco 1980, 55–80) How is the European Parliament (EP)

able to inject impetus into the process of system change? Of course, if we concentrate our view on the shorter phases of IGCs as »big bargain decisions« (Moravcsik 1993, 473–524; Hurrell/Menon 1996, 386–402; Moravcsik/Nicolaïdis 1999, 59–85), we could easily preclude that the direct impact of parliaments and citizens on the final outcome is symbolic and indirect or at best entirely dependent on Member State behavior. The European Parliament would be identified as an actor able to steer political debates, to create tension on some parts of the agenda, to make issues public, but that it would never perform as a decisive player. On the other hand, the EP has constantly been one of the most demanding actors for institutional changes and constitutional proposals. The puzzle emerges that despite the modest role of the EP three Intergovernmental Conferences – 1985, 1991, 1996 and 2000 – have shown a constant image of the system-development role of the European Parliament, with the EP being granted more and more powers transforming the EU's bilateral set up – Commission vs. Council and Member States – into a trilateral one.

During the negotiations of the Intergovernmental Conference 1985, the involvement of the EP was limited. Although it monitored negotiations intensely and its then president Pierre Pflimlin and MEP Altiero Spinelli were invited to some ministerial meetings, their involvement in the end was only restricted, which meant that the EP accepted the Single European Act with limited institutional proceedings for the Parliament. However, it was also the Parliament which pushed the governments to initiate a treaty revision. In the 1991/1992 IGC, the EP served as a supporting element to those governments and institutions pledging for substantial reforms. Neither the new policy areas, for example consumer protection, education and culture, nor the co-decision procedure would have come into force without the permanent pressure of the EP. The preparation of the 1996 and 2000 IGCs revealed considerable progress for the European Parliament. In order to gain support and to succeed in system developing, the EP benefited from a partnership with national parliaments which evolved since 1989 under different formats (Conference of the national parliaments' European Affairs Committees – COSAC, Joint Committee Meetings, Joint Parliamentary Hearings etc.). Second, it profited from alliances with certain national governments. Due to pressure from their national parliaments, the Belgian as well as the Italian government connected their signature of the Treaty amendments to the vote of the EP. Both governments proclaimed that they would not accept the results of the IGC until the European Parliament had approved it. This

proclamation put considerable pressure on the other European governments to take the view of the EP into account.

National Parliaments and the Development of the EU Decision-making System

Under Article 48 of the Treaty establishing the European Union (TEU), any amendment to the treaties on which the European Union is based shall only enter into force »after being ratified by all the Member States in accordance with their respective Constitutional requirements«. This also applies if a Treaty amendment is required for the conclusion of an international agreement (Article 300.5 of the Treaty establishing the European Community, ECT). Article 49 TEU stipulates that a European state's admission to the EU requires such ratification as well. Moreover, the Member States must also adopt a Council decision on police and judicial co-operation in accordance with their respective constitutional requirements (Article 42 TEU). The same is envisaged for the uniform electoral procedure (Article 190.4 ECT). Article 269 ECT states that without prejudice to other revenue, the budget of the European Community shall be financed wholly from own resources. Under Article 269 ECT, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. All these norms identify the Member States, and there the national parliaments, as the »masters« of the treaties. The concrete modalities by which national parliaments are involved into the ratification of treaty amendments and revisions, in transforming European Community (EC) directives or in dealing with other constraints like fiscal discipline are a matter of national constitutions and specific arrangements of Member States. This »blindness« of the EU treaties in view of national parliaments is the same for other constitutional bodies like regional states or second chambers and constitutional courts. It reflects the original approach of the EC founding fathers that the EC/EU treaties are agreements between states. Consequently, they leave the internal arrangements for coping with EC/EU politics to the sovereign decisions of Member States. In other words, the treaties manifest some kind of a »constitutional subsidiarity principle«. This principle had – at least for some decades – its domestic equivalent: EC policy was considered to be part of

»external« affairs and as such an indisputable prerogative of the »executive« – outside the legitimate claim for parliamentary participation.

The European Parliament could easily be identified as an actor able to steer political debates, to create tension on some parts of the agenda, to make issues public, but not as a decisive player. On the other hand, the EP has constantly been one of the most demanding actors for institutional changes and constitutional proposals.

However right from the beginning there was one exemption to this strict demarcation between these two games: a small group of national parliamentarians were delegated with a dual mandate to the European Parliament. Its powers were however minimal and its impact on national politics and policies marginal. (Fitzmaurice 1978; Herman/Lodge 1978, 226–251; Herman/Van Schendelen 1979; Wallace 1979, 433–443) National parliamentarians were offered opportunity structures to get access to the EC/EU institutions. The end of the »delegated parliament« in 1979 – the abolishment of a permanent structure of national MPs placed between two legislatures – did not result in a direct adaptation of interparliamentary contacts. Still after the Amsterdam Treaty, the overall record of their participation patterns within the Brussels/Strasbourg arena is bleak. Though several and different procedures were tested over the last forty years, none of them has led to a sufficiently intensive and efficient working relationship. The 1990's Conference of Parliaments in Rome remained a one-event institution. Instead, the Convention to draft the Charter of Fundamental Rights was generally assessed as a more successful link between parliamentarians of several levels. (Stechele 2001; Pernice 2001, 194–198) Other activities of national parliaments and the European Parliament – like the Conference of European Affairs Committees (COSAC), the regular meetings of their Speakers and joint sessions of specialized committees – now seem to attract greater interest. (Maurer/Wessels 2001, Maurer 2002)

Interparliamentary Deliberation

The Conference of Speakers of Parliaments of the European Union is due to an initiative by Gaetano Martino, a former President of the European Parliament. The first conference took place in January 1963. It was to be

1975, however, before arrangements could be made for these meetings to be held at regular (two-year) intervals. (Agence Europe, 2 October 1975, Thöne-Wille 1984, 184; Bieber 1974, 209) Formally, the conference may adopt resolutions. This has hitherto been done by consensus through the publication of a final communiqué at the end of the conference. (Pöhle 1992, 73–76) The regularization of these contacts resulted from the anticipated consequences of the first direct elections to the European Parliament and the separation of parliamentary mandates that became necessary in some Member States. The discussion of initiatives to maintain the indirect and visible involvement of national parliamentarians in EC policy cycles began at a rather early stage. The Conference of the national parliaments' European Affairs Committees (COSAC) as the only interparliamentary body mentioned in the Amsterdam treaty's protocol on the role of national parliaments in the EU (PNP) has developed into such an interparliamentary forum which enables both the EP and the national parliaments to deliberate on questions related to the EU's institutional set-up and its reform. (Maurer 2002, Maurer/Wessels 2001) Since the first COSAC was held in 1989, the meetings have been timed to coincide with those of the European Council.

The emphasis of COSAC concentrates on general political topics and some kind of an introspection with regard to the roles of national parliaments in the EC/EU system. The MPs are members of the »horizontal« EC/EU affairs committees, i.e. committees that consider general policy matters. COSAC performs as a »central« tool for communicating institutional issues in relation to the EU. »COSAC is seen as a channel for keeping [...] parliamentarians informed about Europe.« (Laffan 2001) The COSAC meetings provide an arena for members of EU Affairs Committees in national parliaments on the one hand and members of the European Parliament (MEPs) on the other to discuss general developments of the Union. Due to the regularity of the COSAC meetings, the involved members of national parliaments (MPs) develop a personal network which also involves the applicant countries. The size of the delegations at COSAC (six MPs per national parliament and six MEPs) ensures that different political views from each country are represented. However, the effects of COSAC meetings do not go beyond the core network of its constituent members. Yet, most of the national parliaments see the Amsterdam treaty's provisions on COSAC as a pragmatic approach to an exchange of opinions and experience. COSAC facilitates informal exchange, but the overall majority of parliaments oppose any further institutionalization (Hölscheidt 2001).

However, COSAC was and still is the main joint body, where national parliaments and the European Parliament articulate views with regard to the Convention process. Remember that it was the Stockholm COSAC meeting in May 2001 that agreed on the call for using the Convention method in order to prepare the IGC in 2004.

The Empirical Reality of Deliberative Democracy

The Convention on the Charter of Fundamental Rights

The idea of a European Union Bill of Rights has been discussed since the middle of 1970, mostly supported by the European Parliament. But it was not until 1999, on a German initiative, that the Charter process was launched with a decision of the European Council in Cologne. The purpose was to strengthen the protection of fundamental rights in the EU by making the already existing ones more visible to the EU citizens. Meetings of the Convention took place from December 1999 until the autumn of 2000. After agreement of a final text of the Charter, the Presidents of the European Parliament, the Council of the European Union and the European Commission proclaimed the Charter on December 2000 on the fringes of the Nice European Council.

The composition of the Convention and the working methods, as laid out in an annex to the Conclusions of the European Council in Tampere, in October 1999, were rather unique. The Convention was composed of 62 members representing the Heads of State and Government (15), the President of the European Commission, the European Parliament (16) and the national parliaments (30). The European Court of Justice and the Council of Europe, including the European Court of Human Rights, participated as observers. The Convention and its Presidium, comprising members from each of the four categories of representatives, was assisted by a secretariat staffed by the Legal Service of the Council.

The drafting process of the Charter was a compromise taken without a formal vote. Compared with Intergovernmental Conferences, it was open and participative in nature. It »brilliantly combined representative democracy with more participatory forms of democracy and unparalleled access to the process of European decision-making«. (Mc Crudden 2001, 10) However, this nature of the Charter's Convention was also due to the fact that the drafting of the Charter constituted a relatively narrow set of interests and arguments. Moreover, the secretariat clearly dominated the

drafting process and facilitated the early drafting of the Charter. As de Búrca concludes, »this was not to be a genuinely participative process but one which, albeit deliberative in nature, was to be composed only of institutional representatives from the national and European level«. (De Búrca 2001, 131) Moreover, »the secretariat to the convention body, which was drawn mainly from the General Secretariat of the Council [...] was one of the less obvious but nonetheless significant influences on the drafting of the Charter«. (De Búrca 2001, 134)

Members of the Convention submitted 205 written contributions and a total of 1406 amendments to the Charter's draft. As regards initial contributions, the most active group were the governments' representatives followed by the European Parliament and the national parliaments. MEPS and MPs arranged to submit two contributions jointly, whereas government representatives were able to agree three times on joint texts. The initial dominance of the government representatives is not confirmed when considering the relative proportion of amendments. Here, MEPS produced an overall of 405 documents against 400 by national parliamentarians and 356 by government representatives. Within these two last groups, the most active were MPs from Germany, Italy and Spain, and government representatives from the Netherlands, the United Kingdom, Italy and Spain. As regards the European Parliament, the Party of European Socialists delegation proved to be the most active. The larger European People's Party delegation did produce »only« 78 amendments, whereas the smaller groups of the European Liberal Democrats, the Greens, the Union for Europe of the Nations and the European United Left submitted between 26 and 45 amendments.

Compared with the MPs, the MEPS had some clear advantages in steering the Convention's process. They already work together in one single parliament and they were accustomed to a degree of parliamentary working and party discipline. Outside the Convention, they had many opportunities to meet – either within the framework of their delegation meetings or within the preparatory meetings of the political groups. Finally, they could act on their home ground, work on the basis of input given by a joint administration and their own legal service. The situation of the MPs differed largely. Firstly, they were not put on an equal footing with the European Parliament, the Council and the Commission, since the Cologne European Council conclusions only called the EU's institutions to proclaim the Charter. Moreover, MPs had to choose between their ongoing national obligations and their potential participation in the Con-

vention. But most importantly, the MPs were not accustomed to working together, they did not have any feeling of acting on home ground and they could not rely on a joint secretariat.

Overall thus, the Convention featured some disparities both with regard to the »standing« and the activity of its members. However, the Convention managed to agree on a final text without some kind of voting, but through a complex sequence of open debate and secretive steering. Hence, the Presidium and Secretariat played the key role in preparing the draft Charter. The European Council conclusions of Tampere mandated the Presidium to »elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body«. Indeed, the Presidium produced a series of papers which not only reflected the ongoing discussions and incoming proposals, but which also steered them by an authoritative process of anticipating large and convincing majorities. The absence of real voting clearly facilitated the deliberative method of the Convention, but it also hindered the transparency of the Charter's drafting process. The price of consensus-seeking had been fixed outside the Convention's plenary, where some kind of bargaining took place.

In this context, the European Parliament delegation was much more efficient than the MPs. The latter were more heterogeneous, and they needed to build larger alliances with either the EP or some government representatives in order to put their views across. The Socialist (PES) delegation of the European Parliament organized meetings in which MPs of the PES family did participate. Other national MPs, especially those from France and the United Kingdom, turned to their respective governments for support. The Charter was adopted without voting, thanks to the »iterative consensus-seeking« process (Deloche-Gaudez 2001, 23). Consensus-building instead of unanimity thus constitutes the fundamental difference between the Convention and the last Intergovernmental Conferences. If the IGCs' possibility to veto a position enables each delegation to threaten deadlock, the Convention's process of an ongoing deliberation among rather open-minded actors facilitated the agreement and – perhaps more important – the evolution of a system of mutual recognition of views and ideals. The Charter process thus constituted a challenge to the elite-oriented and secretive mode of fashioning system change through Intergovernmental Conferences. The process was deemed so successful that the Laeken European Summit in December 2001 decided to use the Charter model as the basis for subsequent treaty changes, through establishing a Convention.

However, there were some considerable limitations on the liberty of the actors and the deliberative nature of the Charter process. Firstly, the European Council fixed a deadline; the Charter had to be drafted in order to be pronounced at the Nice Summit in December 2000. Secondly, the mandate was formulated by the Heads of State and Government. And even if the Charter process was open, the drafting history of individual provisions (Stechele 2001) and the purpose of the incremental changes from draft to draft were far from transparent. »In some ways, tracking provisions of human rights conventions drawn up at diplomatic conferences under the auspices of the United Nations is easier«. (Liisberg 2001, 18) Insofar, the Charter process was probably not better suited than traditional diplomacy for bringing about legal certainty of the end-result – especially when the work takes place under the kind of time pressure the Convention was subject to. In sum, the Charter's process can be seen as an early trial-and-error-sequence for testing the method of consensus-seeking with some elements highlighted by the theoretical concept of deliberative democracy. However, the method was successful because the Heads of State and Government, the Presidium and the Secretariat acted as core catalysts and key aggregators of the actors involved.

The 2002/2003 Convention on the Future of the Union

Given the main reasoning behind the Convention on the Future of the EU – the relative failure of the Nice summit, the non-answered questions regarding institutional reform and the »EU-XXL« perspective –, its success will be measured by three criteria. First and foremost, the Convention must present innovative proposals to effectively overcome the deadlock on EU reform. It must prove to be more effective than IGCs. Secondly, the Convention's process and its substantial results need to incorporate broad societal support and to secure political legitimacy for some kind of a constitutional treaty. Thirdly, the Convention needs to adopt its result by consensus. Otherwise, the 2004 Intergovernmental Conference will by-pass the Convention's result.

The 2002 Convention is composed of fifteen representatives of the governments of the EU, plus thirteen of the accession candidate countries governments, thirty national parliamentarians (two per Member State) plus similarly 26 of the candidate countries, sixteen members of the European Parliament, and two members of the European Commission. Moreover, the European Ombudsman, social partners, the Committee of

the Regions and the Economic and Social Committee have official observers with speaking rights. On top of the 102 members and thirteen observers, the Laeken European Council appointed former French president Giscard d'Estaing as the chairman, and former prime ministers of Italy (Amato) and Belgium (Dehaene) as vice-chairmen to lead the Convention. These three form the Presidium of the Convention, together with the two Commissioners (Barnier and Vitorino), with two representatives of the European and two of the national parliaments, and with the three government representatives of the Member States that hold the presidency during the Convention (Spain, Denmark and Greece). Like during the Charter's Convention, the Presidium plays an important and rather dominant role in the proceedings.

The Conventions mark another step forward in the move of the EU from an economic problem-solving arena to an original polity.

The principle of consensus-building that was developed during the first Convention was written in the Convention's draft rules of procedure which state that representatives of the candidate states can not prevent such consensus. On the other hand, the draft rules give room for indicative votes. Compared to the Charter's Convention, the number and strength of the EP delegation shrunk considerably. Hence, the EP still provides for sixteen MEPS, whereas the total number of »Conventionels« has almost doubled. As MEP Ieke van den Burg notes, »in the Charter Convention the EP substitutes were more actively and independently involved than other substitutes that acted more often only as alternates if the full member was not present. It's to be seen whether the greater cohesion inside the EP section [...], will outweigh this numerical decline« (Van den Burg 2002, 2). The biggest difference with the Charter's Convention is the addition of the members of the candidate countries. They do not have a single observer per country, but a government representative and two parliamentarians, at an equal footing with the present Member States. Given the common disadvantages of MPs and representatives from the non-EU members, the latter may ally with the national parliamentarians. Consequently, national MPs may now choose between allying with MEPS, governments and/or with the large group of non-EU members. The tensions between the different groups might thus be more visible than during the Charter's Convention. During the Charter Con-

vention the MEPS brought together MPs along the lines of the political families. Given the positive outcome of this kind of alliance-building, both the Socialist (PES) and the European People's Party (EPP) groups of the EP started to steer political family discourse right from the start of the Convention. Both EP group delegations organized joint preparatory meetings before each Convention's plenary. Moreover, both the EPP and the PES organized summer seminars in 2002, bringing together their Convention delegates to discuss and draft some kind of constitutional draft text. Cooperation between MEPS and MPs along the lines of the political families demonstrate the importance attached to the Convention by national parties. However, it also entails the risk that leaders of national parties in government attempt to control the interparliamentary process, and try to make the MPs in the Convention work along their national government lines.

The 2002/2003 Convention and Interparliamentary Cooperation

The Convention also considers the role of national parliaments with regard to the further development of the EU's para-constitutional nature and the very process towards the Intergovernmental Conference in 2004. The participation of national parliaments and of the European Parliament in the body responsible for drawing up the Charter of Fundamental Rights of the Union was an original experience which opened the way for a true innovation with regard to the role of parliaments in the development of the EU. Hence, the Charter exercise symbolized the recognition of shared responsibility in the exercise of some kind of »para-constituent power«, which had hitherto been reserved to governments alone. The European Parliament and the COSAC meeting in Stockholm in May 2001 thus proposed the activation of the Convention process. The idea was not only to parliamentarize the classical way of Treaty reform through IGCs, but also to find an essential and visible forum for discussing the future roles of parliamentary democracy in the enlarged Union. Remember that already during the Amsterdam IGC negotiations the national delegations of France, the United Kingdom and Denmark tabled concrete proposals calling for a strengthened role of national parliaments in the EC/EU decision-making process. Given the strong reluctance of the majority of the Member States' parliaments and governments as well as of the EU institutions, the idea of institutionalizing COSAC seemed unlikely to perpetuate interparliamentary cooperation. The mainstream argument against

such an increased role held that the further institutionalization of COSAC would have had the contradictory effect of distorting the democratic foundations of parliamentary control and law-making activities in the Community.

The Convention method features participative and inclusive forms of open deliberation, it respects and integrates the relative importance of minority positions, it offers open fora for parliamentary discourse and helps to include national parliaments at an early stage of system building, and it is conditioned by the method of consensus-building.

The Amsterdam IGC then led to the insertion of the »Protocol on the role of National Parliaments in the European Union« (PNP) into the Treaty. Besides the provisions on the improvement of unilateral parliamentary scrutiny mechanisms, the PNP also recognized COSAC as the main contribution to a more effective participation of national parliaments in EC and EU Affairs. Given these early experiences of parliaments in creating their own fora for interparliamentary debate, the 2002 Convention can be seen as a move towards assigning to the national parliaments and the European Parliament a specific kind of joint »para-constituent power«, i.e. a power to be shared with the national governments. This development would mark a new chapter in the role of parliaments in European integration. Of course, to build on the Convention and to give national parliaments access to the policy process of the European Union level makes the process dependent on the veto of the single unit. However, the first six months of the Convention clearly mirror a rather cooperative working style of both the EP and the national parliaments' delegates.

Compared with the Charter's Convention, the national parliaments' group is by far the most active delegation among the four institutional »core groups«. Moreover, MEPs and MPs produce more multilateral contributions than during the first exercise. Whereas the government representatives are most active in the two working groups which consider substantial issues on the EU's future competencies, national parliamentarians focus on two themes: the principle of subsidiarity and the definition of an early-warning mechanism in order to ensure the respect of the principle, and the future role of national parliaments in the EU's institutional set-up. It might be too early to evaluate the deliberative sequences within these working groups. But according to the vast majority of working

group members, both the subsidiarity and the national parliaments themes attract the two levels of parliamentary democracy to a large extent. Hence, both groups consider themselves as open fora with a chance of clarifying and visualizing the relationship between parliaments on the national and the European levels. The idea of self-governance is thus emerging within the two working groups as well as within the parallel sequences of the COSAC working group on the future of the EU and the institutionalized contacts on the level of party families.

Hence, the very task of the Convention is the intensive debate about the right attribution of roles and functions of parliaments in the EU's multi-level set-up. The realization of a multi-dimensional net of interparliamentary contacts might thus help to effectively reduce the democratic deficit in institutional – parliamentary – terms. However, the Convention members should bear in mind that the new institutional mechanics are not self-evident for the end-users of public policy outcomes. To date, the Convention is not reflecting whether the improvements made to new forms of parliamentary participation will provide new ground for enhancing the legitimacy and proximity of European governance towards the citizens of the Union.

However, it remains in the hands of the actors involved to offer appropriate means for the involvement of the Union's »demoi« in shaping the conditions for their way of living. More precisely, the national parliaments are facing the difficult task of proving that they are able and willing to provide channels for communication across the boundaries of the EU Member States. Any greater, i.e. de facto institutionalized, involvement of national parliaments in the EU's policy cycles may help to render governments more accountable for what they decide in the Council of Ministers and its subordinated working mechanisms. However, the simple formalization of COSAC, the creation of a congress or any other joint body incorporating MEPs and MPs within the realm of a new Treaty or constitution also renders the EU more complex and less understandable.

Conclusions: System Change Beyond the Convention

The Conventions mark another step forward in the move of the EU from an economic problem-solving arena to an original polity. However, even after the 2002 Convention, the institutional and procedural arrangements of the EU are likely to remain complex, fragmented and opaque.

Thus, it will remain up to the implementation of the new Treaty or Constitution – the »valley« between the IGC summits – and up to the actors then involved to offer appropriate means for the involvement of the Union's »demos« in shaping the conditions for their way of living.

The Conventions can be seen as a new method that could strengthen the legitimacy of the European political system. Compared with Intergovernmental Conferences, the Convention method clearly features a much wider range of actors involved in identifying the common basis for transnational and supranational governance. The activation of the system-development function of national parliamentarians has positive effects. Instead of being restricted to simply rubberstamp results agreed upon on the level of governments, they are enabled to take ownership of the »Community process«. (Deloche-Gaudez 2001, 45) The Convention method could be used in future for other purposes, such as the investiture of the European Commission, the joint analysis of the Commission's draft legislative programmes, new enlargement rounds and other para-constitutional issues.

The theory of deliberative democracy highlights the equality and symmetry of actors as an underlying norm for participation; all participants should have the same chances to initiate speech acts, to question, to interrogate, and to open debate. Moreover, all participants should have the right to question the assigned topics of the conversation at any time; and all have the right to initiate reflexive arguments about the very rules of the discourse procedure and the way in which they are applied and carried out. »There are no *prima facie* rules limiting the agenda of the conversation, or the identity of the participants, as long as any excluded person or group can justifiably show that they are relevantly affected by the proposed norm under question.« (Mouffe 2000, p. 86)

Clearly, the Charter's Convention and the 2002 Convention do not fully meet these criteria. Hence, both exercises feature a predominance of the Presidium, a secretive steering by the Secretariat and some kind of open debate under the European Council's sword of Damocles. Of course, the Convention remains in the hands of the Heads of State and Government. However, if both the national parliaments and the European Parliament want to give the Convention method a more independent role, they do have all opportunities in their hands to draft the relevant Treaty of constitutional provisions.

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