The Impact of Constitutional Traditions on the EU-Reform Discourse in Austria, France, Germany and the UK

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1. Introduction

The literature on the constitutionalisation of the European Union has so far largely focused on questions of whether the EU can at all have a constitution (Grimm 1995, Kirchhof 1987, Zippelius 1999), whether it should have a formal constitution (Piris 1999, Müller-Graff/Lenk 2002) or whether it already has a constitution anyway (Weiler 2003, Hobe 2003). Various attempts have been made to characterise the particularities of the European constitutional arrangement (Pernice 1999, Menéndez 2003, Walker 2002) and different forms of constitutionalism have been distinguished (Bellamy 2003, Wessels 2003). At the same time there are a variety of (mostly legal) studies on the influence of the European constitutional order on national constitutions (Schwarze 2000, de la Rochere/Pernice 2003). This – in political science terminology – 'top-down-Europeanization' approach (Risse/ Green Cowles/ Caporaso 2001) is not at all matched by an equally careful analysis of the bottom-up impact of domestic constitutional arrangements on the constitutionalisation process on the European level. Political scientists who have been concerned with the impact of broader concepts such as 'normative polity ideas' (Jachtenfuchs 2002, Parsons 2002) or 'Leitbilder' (Schneider 1977) on constitutional preferences have not given priority either to the importance of national constitutional traditions.

Whereas the aim of this paper mainly is to contribute empirical findings to the described bottom up approach of European constitutionalism, it can also be placed in the political science literature on preference building (Katzenstein 1993, Legro 1996). More specifically the approach followed in the study can be regarded as a historical institutionalist interpretation of constructivist assumptions (Wagner 1999), presuming that preferences are not only determined by the search for influence, power, or economic welfare in the resulting institutional arrangement, but to a large extent by the cultural and traditional predispositions of the actors and

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the established ways of doing things within national constitutional arrangements (for a similar approach and further literature, see Waever 2004).

Starting from an analysis of the constitutional tradition of four selected EU countries the paper explores in how far these patterns have influenced the debates on the reform of the European Union. By constitutional tradition it is not only referred to the current constitutional arrangements. The historical evolution, the philosophical rationales and the way constitutions are interpreted in the political life of the respective countries have also been taken into account (for distinctions of various constitutional traditions, see Preuß 1994, Vorländer 1999). Therefore the analysis is not restrict to the instrumental character of constitutions but covers their symbolic functions in the constitutional cultures as well (Gebhard 1995).

The choice of cases was largely influenced by the 'most-different-system-design' focussing on countries with very different constitutional traditions, political systems and which differ as well in their size and attitude towards European Integration (Landman 2000). France was selected because of its enduring constitutional history and its Unitarian structure of political order that in the constitution of the 5th republic followed a distinct model of semi-presidentialism. Germany builds the major counter part to France and the UK adhering to the constitutional tradition of federalism and a coalition government dominated form of parliamentary democracy. The UK is an exceptional case in standing outside the continental European constitutional tradition with its long and accepted history of constitutionalism without having one single written constitution. Austria finally was chosen because it combines federal and Unitarian elements and provides an example for small states in the EU.

In order to centre on the genuine influence of these state traditions on the preferences voiced in the debate on the future of Europe and in the European Convention the period of analysis has been limited to the statements of national proponents before major compromises were strived for in the last phase of the European Convention's work. Thus the question of how far national traditions are 'bendable or transformable' in this extraordinary institutional framework has not been systematically explored. Instead the paper shall illustrate the heavy historical baggage of domestic constitutional traditions that to a great extent framed the reform options for the evolving European polity. The findings strongly suggest that domestic constitutional and institutional structures serve as a major point of reference in the debates on the future of the European Union. Thereby two distinct mechanisms can be distinguished, namely the attempt to 'upload' national constitutional arrangements to the European level. This is true for Germany in particular and for France to a limited extent. However, in the case of the UK where such an uploading would contradict the national conception of sovereignty and patterns of

democratic decision making the European reform options have been constructed in distinct 'contrast' to the domestic system. Generally the analysis of the reform-discourse suggests that symbolic 'resonance' or 'contrast' seems to be of higher importance then instrumental correspondence.

The paper will start by briefly highlighting the method of the comparative study and will then move to the main findings. Thereby it will concentrate on three aspects of national constitutional traditions and the way they have impacted on the European reform discourse, namely the question of national conceptions of sovereignty, the Executive-Legislative relationship and the issue of state organisation in terms of a unitary or federal government in the countries under study.

2. The Method: A Three Dimensional Research Design

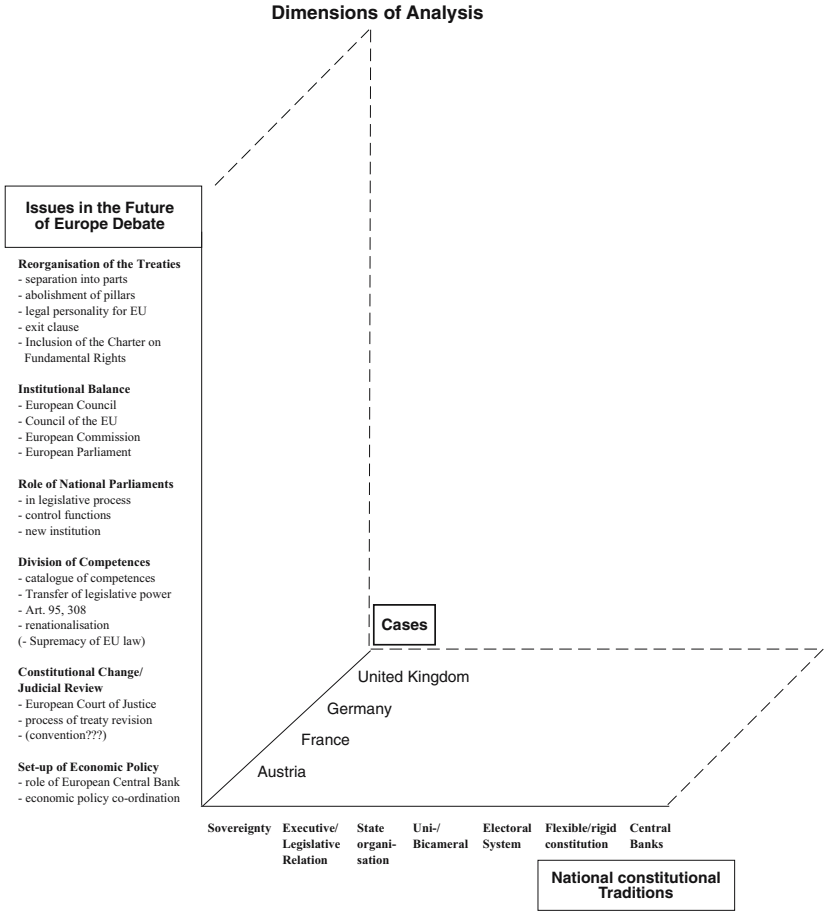
Building on the hypotheses that national constitutional traditions and practices do exercise some influence on the conception of reform options at the European level it was first necessary to review the respective national constitutional background of the four countries under study. In order to transcend pure black-letter law and to better grasp the constitutional tradition the historical and philosophical rationale behind the respective constitutional provisions is taken into consideration as well. Thus the analysis is not limited to a purely comparative constitutional analysis but puts emphasis on the historical background and political culture of the respective representative systems as well (for similar approaches, see Schwarze 2000, Rochere/Pernice 2003).

In order to structure the comparative analysis of the respective national constitutional backgrounds a scheme of altogether seven categories was applied in the comparative analyses to enhance the comparability of the results: (1) the national conception of the principle of sovereignty, (2) executive legislative relation, (3) organisation of the legislative, (4) state organisation (5) constitutional change and judicial review, (6) national electoral system, (7) system of Central Banks (before EMU).

Within each of the categories a number of more detailed questions was asked such as: 'is the notion of sovereignty explicitly mentioned in the constitutions?' or 'which role do the constituent units (if existent) play within the state organisation'? […]. In a second step this dimension of analysis of the national constitutional background was extended by a second dimension – the national contributions to the EU reform discourse. On the basis of the Laeken Declaration a number of contentious issues was selected which should be addressed when analysing the contributions of national participants in the European reform dis-

course. These issues have been grouped under six categories which are further detailed below: (1) Reorganisation of the treaties, (2) Institutional balance, (3) Role of National Parliaments, (4) Division of competences, (5) constitutional change / judicial review, (6) Set-up of economic policy.

This adds up to a three dimensional research design taking the respective national constitutional tradition and practices as the starting point or 'independent variable' of the study and the contributions to the European reform discourse as the 'dependent variable' that have been studied with regard to selected topics of the debate.



3. National Conceptions of Sovereignty and the Shape of a Future European Constitution

The question of sovereignty is at the core of any discussion about the reform of the European Union. Any re-arrangement of the institutional structure or the competences of the European level will have a direct impact on the powers and the status of the national level. At the same time issues of sovereignty touch the very heart of historically evolved national self-conception and identity, since sovereignty used to be regarded as the sole characteristic of the nation state in modern times (Peters 2001). It is therefore necessary to take into account the particular historical experiences of the countries under study, which resulted in completely different notions of national sovereignty.

In France the notion of sovereignty was theoretically developed in the 16th century by the royal legal expert Jean Bodin (1583). The pattern of a centralised independent state was later on even enhanced by the Jacobin tradition (Knapp/Wright 2001). Since the French revolution the notion of sovereignty was constitutionally linked with the idea of a single united people organised within the one and indivisible republic. The constitutional assurance of this principle has been a cornerstone of any French constitution ever since. The current constitution of the Fifth Republic states that national sovereignty belongs to the people, and that the people may exercise it by its representatives (legislative body) or by itself (with a referendum, one of the most important elements brought by this constitution of 1958). This understanding, however, conflicts with the very idea of constitutionally uniting various countries and sharing sovereignty rights. Therefore it has been very difficult under the French constitution to formally transfer sovereignty rights to another level of governance and the evolvement of the European Union – especially in the 90s already necessitated a range of constitutional adaptations (Rideau 1998).

In Britain national sovereignty has a similarly long, however less formalised tradition strongly associated with the insulated position of the country that has not seen formal foreign interference in domestic affairs for centuries (Beloff 1996). The most striking characteristic of the British notion of sovereignty is that in the absence of a written (codified) constitution, the Parliament is theoretically omnipotent and thus sovereign (Armstrong/Bulmer 2003). At the core this principle of 'Parliamentary Sovereignty' means that no other authority can pass laws for Great Britain or can overrule or alter laws, which Parliament has made (Dicey 1915, Craig 1999). Even though parliamentary sovereignty is an independent constitutional principle, it is definitely in full accordance with the general conception of national sovereignty in Britain. At the same time its im-

portance is highly symbolic since its material validity can be questioned not at least since British accession to the EC and the European communities Act of 1972. Still, an orthodox reading of this principle would thus result in a situation in which even a formalised European constitution could not finally bind any future British parliament.

Germany on the other hand has had a far less homogeneous tradition of sovereignty. Its history is characterised by sharp breaks and a very diverse shape of the country. The relationship between the concepts of 'nation' and 'state' is far less consolidated and the notion of national sovereignty had to be redefined several times (Schöllgen 1999). After World War II and the division of the German Reich, sovereignty was formally restricted by the allies and only gradually regained. Under these circumstances a notion of sovereignty was developed within the Federal Republic that allowed for the pooling of sovereignty rights on a supranational level as long as the basic democratic principles of the Grundgesetz were secured (Hesselberger 1996). Therefore the development of the European Union led to constitutional adaptations in order to guarantee the democratic control of German government's positions on the European level, as more and more competences were transferred to the European level (Müller-Graff/Lenk 2002).

In Austria a Provisional Government formally proclaimed the re-establishment of Austria as a democratic republic after the second world war. But the four occupying powers enacted a Control Agreement (*Kontrollabkommen*) whereby the Austrian government similar to Germany was only entitled to act under the instructions of the occupying powers concerned. Only since the State Treaty of 1955 Austria was re-established as a fully sovereign "democratic republic" with its legal order originating in the people" (see Art. 1 B-VG; Walter/Mayer 1996). For political debates about sovereignty the question of neutrality has played a key role since 1955. Neutrality was the precondition for Austria's re-establishment as a sovereign state (Walter/Mayer 1996). In the 50s and 60s, however, neutrality was frequently seen as an impediment for sovereign national decisions on participation in international communities (Weber 1999). During the 70s, the governing Social-Democrats developed a more positive understanding of neutrality framing it as an active role of mediator in international relations. Since the Austrian notion of 'Volkssouveränität' meant that all legislative acts applicable in Austria require, as their ultimate basis, the will of the Austrian people, the decision to accede to the EU was taken (indirectly) in a referendum.[2] The final 'opening of the Austrian

2 Formally the referendum was about the question whether the decision on the complex instrument, including the Treaties, the Act of Accession and the Final act with numerous Protocols and Declarations.

Constitution for the law of the EU and of the EC was then taken by the parliament's acceptance of the Accession Enabling Act.

These fundamentally different concepts of the principle of sovereignty, namely the French state sovereignty, the British parliamentary sovereignty and the notion of sovereignty of the people developed in Austria and Germany had a strong impact on the national contributions to the reform debates and led to sometimes very different conceptions of the nature and the institutional arrangements of a future European constitution. However, in the debate on the future of the European Union it was also possible to find common ground beyond the status quo of the current treaties.

3.1 The Creation of a Constitutional Document

On a rather abstract level consensus has been possible in terms of the common aim to create a European constitutional document that should consist of a fundamentally simplified text in which the complicated pillar structure should be abolished and in which the new European Union should be given one single legal personality (Ferrero-Waldner 2001, DSF 2002, Lenoir 2002a, Pleuger 2002, Dashwood 2002).

At least for the British government this has been a considerable shift (Dashwood 2002) from earlier positions that was strongly opposed by the Conservative Party (Heathcoat-Amory, plenary, 15.04.2002). However, the British government remained true to its constitutional tradition when emphasising that any European constitutional treaty must call upon the centrality of nation-state sovereignty which is 'self-authenticating' and which can only name competences delegated (derived) from the national level. Thereby it has to be stressed that from the perspective of the British constitutional tradition, the creation of a European constitution did not pose an obstacle in principle. Since the term 'constitution' within the British tradition is rather vaguely defined and does not have a straight connotation with the giving up of sovereignty in a state like entity (see for example Straw 2003). Only the material consequences of a possible EU constitution were regarded as threat to British sovereignty (Peters 2001).

Similarly the notion of sovereignty was at the core of the French debate on the EU. Although Euro-enthusiasts like the former Minister of European affairs Alain Lammassoure suggest that the notion of sovereignty should now be given up (Lamassoure 2001) the conservative 'souverainists' can still rely on a general orientation within the French discourse that is grounded in the constitutional tradition of one and indivisible republic.

In Germany the creation of one single text with the status of a constitution has been the object of a well established debate especially among constitutional lawyers. Whereas the constitutional quality of the treaties in a material sense is accepted even by the German Constitutional Court, the ability of the EU to have a formal constitution (Verfassungsfähigkeit) is hotly debated within scientific and judicial circles. The classical argument originating from the etatist German constitutional tradition in the 19th century (Peters 2001) is that only fully sovereign states, with its own people could have a formal constitution (Kirchhof 1987,§13 Rdnr. 1, Grimm 1995). This formalistic interpretation of sovereignty and statehood has been contested because of its negligence of the observable reality and on the basis of a changed concept of sovereignty (Schäuble 2000, Müller-Graff/Lenk 2002). Within the political debate in Germany, the question of a Constitution for Europe has not been contested at all. Politicians and officials of all parties have postulated the idea of a European constitution (SPD/Grüne 2002; Rau 2002, Schäuble/Bockelt 2001). Nevertheless the political enthusiasm for a 'European Constitution' remained a rhetorical shift within the debate since it was not contested that a 'European Constitution' would have to be designed as an international treaty signed and ratified by the member states, thus fully consistent with the traditional German interpretation (see constitutional drafts Brok 2002 and even Leinen 2002, Pleuger 2002).

Thus debate on the creation of the constitutional documents reveals some common ground on the basis of the respective national tradition. The core notion of sovereign nation states has still been preserved even in the two federalist countries. Despite all the talks of a European constitution it has been consensus in all countries under study that the European Constitution is to be constructed as a treaty among nation states as well as among the peoples.

3.2 The Incorporation of the 'Charter of Fundamental Rights'

As for the creation of a single Constitutional document the principal inclusion of the Charta of fundamental rights seemed to emerge as consensus as well in all countries under study (apart from the British Conservatives). According to the Austrian Foreign Minister the European Charter of Fundamental Rights should become "an integral, constitutional part of the EU Treaty arrangement." (Ferrero-Waldner 2001, 5). In France the Charter was considered by the government and the opposition as an additional guarantee for the protection of citizen's rights. Together with the European Convention of Human Rights should provide a common basis for the harmonisation of judiciary systems (Chirac 2002). Within the Ger-

man debate virtually all participants agreed that the Charter should be integrated into a Constitution as it stands (Schäuble/Bocklet 2001, Bundesrat 2002, SPD/Grüne 2002). It should thus gain binding quality associated with the right for individuals to appeal to the European Court of Justice as well (SPD/Grüne 2002, Bundesrat 2002). This full hearted welcome of the charter integrated into the constitutional document corresponds to the national or rather continental constitutional traditions in which formal declarations of human rights form a central part of the constitutional documents.

The situation within the UK is rather different since the notion of a document that has prerogative over Parliament has been alien to the British constitutional tradition. Although Britain with the 'Human Rights Act' of 1998 has transposed the basic human rights of the European Convention of Human Rights into national law reservations remain with regard to the Charta of Fundamental Rights – especially provisions on social and economic rights. Regarding the possible consequences of these provisions on the UK, MPs argue it could render illegal a number of dispositions in Britain. Thus the British Government not only feared the change of constitutional tradition that would subordinate Parliament to supranational law it also suspected that the Charter would have direct policy effect (Hain, plenary 03.10.2002). Therefore it has been difficult within the British debate to agree that the Charter should have a legal status at all. Still, the UK Government has supported the integration of the Charter of Fundamental Rights into the constitutional treaty – however with important limitations. Peter Hain, the former Minister for Europe stated that it would be possible on the condition that it would not be enforceable in UK courts. As he pointed out. "I think the problem with the incorporation of the Charter of Fundamental Rights as it is presently constituted, just wholesale into the Treaty, is that it could – in fact would in our view – start to influence domestic law in a way that was never intended. In that form it is completely unacceptable to us" (Euractive, 18, 2002).

3.3 The Exit Clause

Closely linked to the issue of national sovereignty, but less publicly debated has been the introduction of an exit clause in the Constitutional document. In the UK and France – consistent with their strong emphasis on national sovereignty – the exit clause has been regarded as the adequate assurance for the freedom of the member states. The UK government has therefore strongly supported the insertion of a provision for withdrawal from the EU in the Constitutional Treaty. The Draft Constitution presented by Alan Dashwood provided for a withdrawal procedure

(Article 27) by which the member state in question should address to the Council its notice of intention to withdrawal. This view was also shared by the conservative opposition and even the integrationist Liberal Democrats support the inclusion of an exit clause and a provision allowing for temporary suspension of member states rights (Duff 2002, Art. 2.5). The consensus in Britain on the inclusion of an exit clause could also be interpreted as a safeguard of parliamentary sovereignty, since it provides opportunities for a situation in which Union law strongly conflicts with the position of the British Parliament.

In France the question of an exit-clause in the EU treaty was debated, too. The socialist project has emphasises on the "voluntary" aspect of the EU (DSF, 2002). No Member State should have the right to stop the European process, or should be obliged to stay in the Union. However, the French government was less explicit with its support during the convention but supported in principle the article after it was introduced by the presidium of the Convention (Villepin, amendment to Art. 59).

In Germany and Austria, on the other hand, where such a provision is unknown in the own federal constitution the secession clause was rarely publicly debated nor was such a provision regarded as necessary (Brok 2002 draft treaty). Therefore the representatives of both of the countries made it clear in their amendments to the Convention that such an article should be fully deleted (Fischer, Farnleitner, amendments to Art. 59).

4. Executive – Legislative Relationships and the Introduction of a Bicameral System?

The organisation of checks and balances between the legislature and the executive in the countries under study differs to a great extent and the particular national patterns have substantially influenced the domestic debates on the institutional architecture of the future European Union. While Germany and the UK represent two models of a parliamentary system, France and Austria follow to a very different extent semi-presidential patterns in which one branch of the executive – the president – is directly elected by the people.

In Britain, Parliament symbolises the continuity of the state and the constitution, and it is the arena in which the political 'drama' of government versus opposition is acted out. In addition to this symbolic and ritualistic roles, Parliament is considered as the residue of legitimacy and sovereignty (Armstrong/Bulmer 2003). The political executive, the Prime Minister led Cabinet, is recruited from, and accountable to the lower chamber of the Parliament, the House of Commons.

It is the consent of the majority in Westminster that legitimises the government's authority and converts its policy into law. The House of Lords thereby plays a largely consultative role, although its influence in certain policy fields – such as European affairs – can be substantial. Nevertheless, in practice the British government has a high degree of autonomy from Parliament. In this so-called Whitehall model, Parliament may debate and criticise, but any realistic analysis of how Britain is governed acknowledges that initiative on legislation and policy lies with the Cabinet (Peele 1995).

In Germany the Bundestag represents the central democratic institution within the parliamentarian system of the Federal Republic. As the only federal institution which is directly elected by the people it claims an outstanding degree of democratic legitimacy and the executive is formally dependent on the consent of the House. However, as in other parliamentary democracies it is not fully adequate to make a clear cut separation between Government and Parliament. After the shift from a Presidential System of the Weimar Republic to a strictly Parliamentary Democracy one can rather detect a 'new dualism' between the Government formed by the majority 'fraction(s)' on the one hand and the parliamentary opposition on the other (Rudzio 2000). Still, the division is less clear cut than in the British parliamentary system because governments in the Federal Republic have most of the time been coalition governments. Additionally, the Bundesrat – which is formally not a second chamber within one parliament but consistent with the German federalist tradition the representation of the Länder-Governments on the federal level (Beyme 1999, Boldt 2003)- forces the government to a more co-operative style. Within the double headed executive only the Chancellor plays a powerful role while the functions of the indirectly elected President have been downgraded to largely symbolic and 'reserve' functions in the case of severe crises (Hesse/Ellwein 1997). The Government is led by the Federal Chancellor who has considerable power in relation to its Cabinet (Beyme 1999).

France in the constitution of the Fifth Republic has introduced a semi-presidential system of government. Here the executive plays a pivotal role leaving the bi-cameral parliament only with a minor position in the political process (Duhamel 2000). The system is characterised by the double-headed executive with the powerful directly elected President who is responsible for core policies such as foreign policy or institutional matters (Knapp/Wright 2001). Because of his dominant position the French President within the 5th republic was even described as a "republican monarch" (Mény 1999 quoting Michel Debré). The Prime Minister on the other hand, who is elected by the Assemblé National, is the central policy-maker in domestic affairs. He is in general in charge of the work of the government Art. 20), which includes the right to appoint and dismiss ministers, to make

appointments of certain top ranking military and civil servant posts. The most important of his/her tasks is to ensure the overall coordination of government policy.

Finally, the Austrian system of government takes up elements of different political systems and can also be regarded as a combination of parliamentary and presidential models. Similarly to the Weimar constitution and the constitution of the 5th French Republic the Austrian Federal President is directly elected for a period of six years and has considerable rights. Although he is the potentially powerful head of the state, the chief executive is the Federal Chancellor who leads the executive branch of government and dominates the political life. Furthermore the political system of Austria has been much more characterised by its particular party-politics arrangement and the so-called systems of 'Proporz' and 'Sozialpartnerschaft', than by the constitutional provisions (Pelinka 1997).

4.1 Design and Designation of the Executive

These constitutional arrangements and the very different political cultures have had a strong impact on the various models of institutional reform brought forward in the European debate. Although virtually all participants in the discourse of the Convention adhered to the mantra of the 'institutional balance' that should be upheld by strengthening all institutions at the same time the models brought forward showed how different the 'institutional balance' has apparently been perceived within various countries.

The French debate on the relationship between the European institutions has been inspired to a great extent by the institutional design of the 5th Republic, especially with regard to the two-tiered executive (Haenel, plenary, 20.01.2003). The strong domestic position of the French president is thereby matched in the European reform debates by the call for a strong President of the European Union heading the European Council for a multi-annual period (Chirac 2002, DSF 2002). This fits as well into the French emphasis of national sovereignty that on the European level should be safeguarded by a strong intergovernmental representation of the heads of state and governments in the European Council. Nevertheless the European Commission remains of central importance and should be strengthened, by keeping its right of initiative in the de-pillarised constitutional treaty structure and by facilitating a more effective decision making process through the reduction of Commissioners (Jérome 2002, Villepin, plenary 21.01.2003).

However, the French discourse is less homogenous on the role of the President of the Commission and the election of the double-headed executive. It is impor-

tant to emphasise that the direct election of a European President as an analogy of the French system is not envisaged in any of the contribution and the pure parliamentarian election of the president of the Commission is not proposed either. Only after the acceptance of the French patterned double executive the French government agreed in the Franco German paper on a strengthened role of the EP in the election of the Commission President – a position that it had refused before (Fischer/de Villepin 2003, Vernet 2002). This again reflects the still predominantly intergouvernmental conception of the EU which is cautious against a too strong empowerment of the European Parliament. Instead a strengthening of the national Parliaments in the election process has played an important role in the French discourse on the institutional set-up. Various possibilities where brought forward to elect the Presidents of the Commission and the European Council, by the nationally legitimised heads of states (Chirac 2002), or by a congress composed of European and National Parliamentarians (Giscard d'Estaing 2002, Haenel 2002) There have even been calls to unite both of the positions which demonstrates that the French debate by no means is monolithic (Lequiller 2002a).

The emphasis in the French debate on the creation of a European Council President found broad support in Britain as well. In the UK the politically most important position is clearly attributed to the President of the European Council who should be designated by the heads of states and governments (Hain, plenary, 20.02.2003). The British vision of the future institutional architecture dominated by the European Council not only reflects the very strong domestic position of the Prime minister who represents the Country in the institution. Government as well as the opposition aim at strengthening the national governments' weight in EU institutional balance. They both largely share that the primary sources of democratic legitimacy in Europe are the directly elected and representative institutions of the nations of Europe – national parliaments and governments. (Blair 2000, Heathcoat-Armory 2002, plenary, 21.01.2003). This also explains the British rejection to introduce a parliamentary system of government on the European level in which a strengthened European Parliament would elect the President of the Commission as the head of a European quasi government. Here again the British resistance towards the establishment of an institutional setup on the European level similar to the domestic nation state systems becomes apparent.[3] Such an option, which has dominated the German de-

3 The important exception in the institutional debate within Britain is the Liberal Democratic party which regardless the British tradition of parliamentary sovereignty and intergovernmental orientation has already for a long time supported a parliamentary institutional setup for the European Union – including an elected President of the Commission (most outspoken Duff 2002).

bate so far, is considered as in-compatible with British conceptions of national sovereignty, an intergovernmental reading of European integration and the (symbolic / traditional) status of the national Parliament within the domestic system.

The German political system, which approximates the current institutional arrangement on the European level the most, has served as the main point of reference in the German debate about the future institutional architecture of the EU (SPD/Grüne 2002, Schäuble/Bocklet 2001). Within the rather homogenous German debate it was Thus not surprising that the Commission should be headed by a President with similar competences to a German chancellor, and that it should be elected by a strengthened European Parliament (Rau 2002, Fischer, Teufel, plenary, 20.01.2003). The Council of the European Union on the other hand was imagined as simply devolving into a second Parliamentary chamber resembling in structure and competence the German Bundesrat (Bundesrat 2002, Clement 2001). It was supposed to merely represent the national interests of the constitutive units of a future European federation – a model that differs decisively from the bicameral systems of France and the UK. This simplified but principally valid model has only been modified within the German discourse after the Government in its ambition to revive the Franco-German axis accepted the idea of a permanent president of the European Council. (Fischer/de Villepin 2003). However, the oral explanations of this joint Franco-German paper by the two foreign ministers revealed how strongly the two proponents were still influenced by their domestic constitutional models. Whereas Fishers explained in length the advantages of a parliamentary elected president of the Commission, de Villepin nearly exclusively focused on the president of the European Council and his collaboration with the president of the Commission (Fischer, Villepin, plenary 21.012003).

Austria is in an ambivalent position. While the President has a strong position *de jure* he has renounced his power *de facto*. The sceptical Austrian position towards the German and French initiative for a strong president of the European Council (Bösch, plenary, 20.01.2003) is thus more influenced by constitutional reality than by black-letter law. The Austrian advocacy of an elected president of the Commission elected by the European Parliament (Bösch, plenary, 21.01.2003) could on the other hand be interpreted as the transfer of the Austrian system where an elected president plays a foremost symbolic role and the politically dominant figure is the parliamentary elected Chancellor.

4.2 Legislative and Executive Functions

In contrast to the diverging positions concerning the electoral powers of the European Parliament, a strengthening of the EP in the legislative and the budgetary process was rather consensual within the convention as such and the countries under study (Scholl 2003). However, the 'full parliamentarisation', regularly demanded by German politicians (e.g. SPD/Grüne 2002, Meyer, plenary 23.05.02; Teufel, plenary, 20.01.03) that would also include a right of initiative which was not even called for by the European Parliament itself (Maurer 2003). In the debate on the role of the Council of the European Union, the German system clearly served as reference point. Accordingly the Council was originally regarded simply in terms of a second chamber with purely legislative functions (Rau 2001, Clements 2001). Later on the German debate experienced some sophistications and from 2002 onwards a clear separation of the Council's legislative and executive tasks was demanded (SPD/Grüne 2002, Bundesrat 2002), which acknowledged the two functions of the institutions. Still, the German government demanded to lift the idea of a clearer separation of powers to the European level (Glotz, plenary, 12.09.2002).

A similar separation of power model was followed by the representative of the Austrian Parliament, who demanded a legislative Council formation which should be organised like the US Senate (Bösch, plenary, 12.09.2002). The Austrian government was less clear in its position. Although the Foreign Minister supported the idea of extending the co-decision procedure to all matters on which the Council decides by majority, the institution was still regarded as the 'best guarantor for safeguarding national identities' that should not be reduced in its functions into a purely second chamber (Ferrero-Waldner 2001). A role that especially within the political system of Austria is only of minor importance.

This position has been largely shared within the French debate. While the importance of the European Parliament as co-legislator in which EU citizens were represented was acknowledged (Chirac 2002), the role of the Council should not be reduced to a second chamber. However, the two functions of the Council should be more clearly distinguished. The socialist party therefore proposed to clarify this distinction by the creation of a legislative Council (DSF 2002). The introduction of such a council formation that should debate in public was supported as well within Germany since such a solution came close to the creation of a second chamber.

In Britain, such an option was not even debated. In all the comments the British position towards the institutional set-up remains clear that the Council of the European Union remains the main decision-making institution exercising legisla-

tive and executive functions at the same time (MacLennan of Rogart, plenary, 13.09.2002). Instead reform options, such as reducing the number of council formations or creating permanent presidencies for each of the council formations, have been much more in the centre of discussion (Straw 2002, Hain 2002, Hain, plenary, 15.05.03).

4.3 The Role of National Parliaments

The debate on the role of the national Parliaments can again be viewed to a large extent through the lens of domestic constitutional traditions. Although Parliaments in the UK and France are clearly dominated by the executive they are still regarded as the central location of democratic representation – be it of the one and undividable republic or the carrier of national sovereignty itself (Armstrong/Bulmer 2003, Duhamel 2000). Therefore it is not surprising that the debates on the role of national Parliaments were much more intense in France and the UK than in Germany and Austria, where parliaments on various political levels have been part of the constitutional tradition. Whereas even national Parliamentarians in Germany and Austria seemed content with the control powers granted to them by the constitutional changes of the 90^{s} (e.g. Roth 2002), a strengthening of the national parliament's roles was high on the agenda in France and even more in Britain. Originally the idea of creating an additional chamber for national Parliamentarians on the European level found broad support in Britain, in France (Haenel 2002, Hoeffel 2001) and even in Austria a mixed chamber of MPs and MEPs was proposed. During the debates of the Convention, however, this option lost momentum after the discussions in the working group on the role of national Parliaments only the President of the Convention seemed to further uphold the idea (Giscard d'Estaing 2002). Instead the debates shifted to the question of how to give each national Parliament a stronger say in controlling the principles of subsidiarity and proportionality. The consensus that emerged rather early in the respective working group of the European Convention, namely to introduce an early warning system for national Parliaments seemed to satisfy the pledges for a stronger say of Westminster and the Assemblée National (Vernet, 2002, Straw 2003) and was supported by the representative of the German Parliament as well (Meyer 2002).

Summarising the national debates on the future institutional set-up on the European level it seems that in France and Germany the debate has implicitly or explicitly concentrated on the question about how to create a European institutional architecture comparable to the domestic systems. In the British debate on the oth-

er hand the domestic model has – apart from the discussion on the role of national Parliaments – not at all served as a model for the European level as that would strongly conflict with the national conception of sovereignty and democracy. The Austrian position seems to oscillate between the transfer of national concepts and immediate political interests. It opts for continuing the community method without a president of the European Council and a Commission in which all countries are present with the same rights, while at the same time, increasing the democratic quality of the EU by accrediting more power to the parliament. The set of Austrian preferences can possibly be more plausibly explained as a result of the interests of a small member state than as a consequence of Austrian constitutional tradition.

5. National Constitutional Arrangements and the Division of Competences in the EU

The debate of whether the European Union is or should resemble a federal type of polity has been highly symbolic and politicised. While the principle that the EU consists of different levels on which competences are exercised is uncontested the proper term and the way of organising this division of competences has been hotly disputed with positions largely depending on the national and constitutional background.

In the sample Germany and Austria represent two federal types of state organisation that are characterised by a continuous process of centralisation. While Article 2 of the Austrian Constitution states, "(1) Austria is a federal state", the federal principle has been relatively weak in the constitution as well as in political reality. According to the Austrian constitution the provinces have a general competence, i.e. all competences not explicitly enumerated as federal ones are automatically within the authority of the provinces. But the enumerated competences of the republic, thus resembling a catalogue of competences, are numerous and of high impact. (Pelinka 1997, 480).

Consistent with the decentralised history of Germany, in which the sub-national entities have always preceded the federal structure (Boldt 2003), federalism is laid down in the Grundgesetz as one of the basic principles of the Federal republic. In this system the German Länder are not only territorial sub-units of the Federal Republic. They are endowed with autonomous statehood (Eigenstaatlichkeit) and thus have the competence to legislate within their own territory. However, during the post-war history the German federal system has quickly evolved into a rather centralised system in which the federal level regularly intervenes in originally Länder competences and the Länder governments progressively use

their power within the Bundesrat to influence federal legislation. The Federal Republic has therefore regularly been described as 'unitarian Federation' (Hesse 1978), although the formal competences of each level are enumerated in the constitution.

On the other hand the two formally Unitarian states of France and the UK have recently experienced a process of devolution or decentralisation. For the moment the article 1 of the French constitution still states that France is an indivisible republic, which prevents the country from a federalist evolution. This article is the legacy of an age-old political history, that originates in the will of the emerging French state of the 15th century to constitute and to consolidate a centralised state. Nevertheless, France currently seems to move towards the acknowledgement of specific regional entities with special attributes as the case of Corsica. (Schoettl 2002).

The UK as well is formally a unitary state and there is no defining written constitution limiting the powers of government or of the legislature. Instead of a written constitution, there exists a sovereign legislative body, which represents the ultimate law-making power in the state. Power is given to the Scottish Parliament and the regional assemblies and to local government, under Acts of the UK parliament, and to fulfil defined functions. Still regional parliaments, assemblies and local authorities are entirely creatures of Acts of Parliament, and any power given can subsequently be withdrawn (at least legally speaking) (Barnett 2000). Nevertheless in political practice the Scottish parliament can legislate within the competences conferred to it and politically it would be very difficult for Westminster to reallocate these competences.

5.1 The Debate on the Catalogue of Competences

As for the debate on the institutional architecture of the EU the structure of the own federal constitution dominated the discussions in Germany. It is striking that even after prominent representatives of the German Länder had given up to talk about a 'catalogue of competences' the German system that has evolved into a static Unitarian federation was still regarded as a model for dividing competences between the European and the national level (Teufel, plenary, 21.03.02). The same seems to be true in Austria where this time the formal federal Austrian constitution seems to influence the position of the representatives more than the constitutional reality in the country (Farnleitner/Tusek 2003, Bösch, plenary, 15.04.2002). Especially the representatives of the German and Austrian Länder seemed to fight for competences through the European level that they had lost domestically.

The question of 'who should do what' was of central importance in the British and French debate as well. Being traditionally unitary states they only recently experienced tendencies of devolution or decentralisation the concept of federalism and a constitutional division of competences for the European Union is therefore still met with considerable doubts. Especially in the UK the term 'federalism' is still semantically linked to notion of 'super state' (Blair 2000, Straw 2003) and is used by the opposition to steer the domestic fear of any further European integration. In France where the term federalism is not automatically linked with a European super state, politicians have still been sceptical towards a static catalogue of competences (Moscovici, plenary, 15.04.2002).

With regards to the division of competences the debate in Britain – instead of asking for a rather static list of competences – concentrated more on the procedural distribution of tasks (Hain 2002). Thus constitutional principles and political mechanisms should be formulated to define the respective responsibilities. This should be done on the basis of the understanding that powers not delegated to the EU remain the preserve of the member states (Straw 2002). In France the government as well supported the clarification of competences in order to limit excessive European regulation (Chirac 2002) and the socialist project even asked for an political a priori and a judicial a posteriori control of competences. How this could be exercised without a clear list of competences remains unclear.

One important difference in the national debate on the division of competences seems to be that in contrast to France, Germany, and Austria the British discussions focus much more on political rather then legalistic measures to ensure the constitutional principles. This corresponds to a large extend to the domestic experience where a constitutional document is not even needed but where the system relies much more on tradition and mutual agreements.

5.2 (Re-)allocation of Competences?

Consistent with the pledge that the Union should only exercise competences explicitly conferred upon it, re-nationalisation of some political sectors such as agricultural policy was intensively debated in Britain (Heathcoat-Amory, plenary, 15.04.2002). Whereas the option of re-nationalisation was at least considered within the German debate (Stoiber 2002, Glotz, Teufel, plenary 15.04.2002) the proposition was met with fierce opposition in France (Chirac 2002). Especially with regard to the CAP there was no room of manoeuvre neither for the French Government (De Villepin, plenary, 13.06.2003, Andreani, plenary, 04.07.2003). On the other hand further communitarisations such as in the area of tax harmoni-

sation have been rejected bluntly in Britain (Hain, plenary, 07.11.2003, MacCormick, plenary, 30.05.03). Instead, the UK was open to give up further competences in the area of internally Security and Justice. Germany, however, that principally supported further communitarisation strongly fought for unanimous decision making in the Council for questions of access to national labour markets (Teufel, plenary, 03.04.2003, Bury, plenary, 31.05.2003.

It seems to be difficult to detect within this debate clear and consistent country specific positions that are rooted in the national constitutional traditions. The preferences of the countries regarding the exact allocation of competences are of course to some extent influenced by the notions of sovereignty and a general approach to European Integration the exact distribution, however seems to be better explicable by their immediate perceived political interests.

6. Conclusion: The Impact of National Traditions – Two Pathways

The analysis of the national discourses on the future of Europe and the various reform options that have been put forward has shown that in order to understand these debates and the preferences expressed the appreciation of the various domestic constitutional background is of high importance. National practices and traditions do have a strong impact on nearly all of the discussed reform options. Two logical pathways can thereby be distinguished: the 'uploading' mechanism comes into play when domestic institutional arrangements serve as a concrete model for reform on the European level. The 'contrasting mechanism' gains salience when national constitutional traditions and conceptions of democratic decision making cannot simply be exported to the European level. Then European reform options are framed in contrast to domestic arrangements with the aim to preserve the essentials of the domestic system.

Especially in France and in Germany it seems that reform options are driven by the aspiration to 'upload' domestic institutional set-ups with more or less modifications to the European level. In Germany the debate is thereby far more homogeneous then in France, taking the German model of a federal parliamentary democracy with a second chamber of Länder governments and a strong Constitutional Court to be applied to the European level. The second federal country under study, Austria, is more cautious in bringing forth proposals for institutional settings but advocates within its federal tradition the competences of provinces, regions and municipalities in the European constitutional structure. In Britain on the other hand domestic institutional structures have not at all served as a model for

the European institutions, not at least because the establishment of a parliamentarian system on the European level is regarded as incompatible with the British notion of national and parliamentarian sovereignty and democracy. On the contrary British reform options have been constructed exactly in order to not resemble the domestic institutional arrangements on the European level and to preserve instead the powers of the domestic institutions.

In general the different concepts of sovereignty have left the UK and France in a far more intergouvernmentalist position still strongly emphasising the importance of the national level, the nationally elected authorities and the government's representation on the European level. Thus, deeply rooted constitutional traditions and established 'ways of doing things' do have a strong impact on the debates. This is true in procedural matters as well, where Britain regularly advocates a more political approach whereas French and German reform options are driven by the more legalistic traditions of these countries.

Nevertheless there is common ground and even convergent tendencies in the various national debates can be observed. The very aim to create a European constitution for example is meanwhile shared in all countries under study apart from a British minority of fierce Euro-sceptics. Whereas this represents a rhetorical shift in the British and French debate the core notion of sovereign nation states has still been preserved even in the two federalist countries. Despite all the talks of a European constitution it has been consensus in all countries under study that the European Constitution is to be constructed as a treaty among nation states.

German proponents in the national debate have– as a result of the discussions on the European level – not any longer focused with the same rigor on questions of dividing competences in the future constitution. The French debate as well has experienced some movements such as the shift towards a broader acceptance of a legal personality for the European Union that used to be regarded as incompatible with the sovereignty of the 'one and united French people' organised into an indivisible republic. Thus although constitutional traditions are of major importance indeed for the understanding of constitutional preferences they are by no means static.

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Political Elites and the Future of Europe: The Views of MPs and MEPs

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1. Introduction

Institutional questions range high on the European agenda since the beginning of the 1990s at the latest. A rapid series of intergovernmental conferences – Maastricht, Amsterdam, and Nice – kept the reform debate alive in the public. Inocously called "left-overs", the key questions touched on nothing less than a reorganisation of political power in the European system. The Union's enlargement from 15 to 25 members put additional pressure on the system which basically resembled the model drawn up for only the six founding members. One question which is jutting out in this reform process is the empowerment of the European Parliament. In addition, the Treaty of Maastricht, turned academic attention to the role of national parliaments either by focusing on their influence on European politics (Holzhacker 2002; Pollak/Slominski 2003) or by studying their loss of relative influence towards national executives (Andersen/Eliassen 1996; Goetz/Hix 2000; Green Cowles/Caporaso/Risse 2001; Katz/Wessels 1999; Maurer 1999, 2002; Maurer/Wessels 2001; Norton 1996; Raunio 1999; Raunio/Hix 2000; Raunio/Wiberg 2000; Wessels/Maurer/Mittag 2001). Thus, the parliamentary dimension of European politics is gaining ground amidst a considerable number of articles deploring the democratic quality of the European Union. As a corollary of this we witness a growing literature on party positions towards European integration and on the development of a party system in the European Parliament (Faas 2003; Gaffney 1996; Hix/Lord 1997; Hix 2003; Marks/Wilson 1999; Ray 1999; Scully/Farrell 2003; Thomassen/Schmitt 1999; Weßels 2003). The Convention on the Future of the European Union drew up a draft constitutional treaty which severely alters the relation between nation parliaments and the European Parliament. How do members of national parliaments (MPs) and members

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