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The Austrian understanding of democracy and the democratization of the EU

First Draft

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Paper prepared for the Workshop on “National traditions of democratic theory”
ECPR Joint Sessions of Workshops - Uppsala 13-18th April 2004
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## Introduction

This study explores the Austrian tradition of democratic thought and practice and its implications for the democratization of the European Union. It is based on the premise that the national assessment of the democratic quality of the EU and of options of democratic reform is to a certain extent determined by the respective national understanding of democracy. The national understanding of democracy is conceptualized as the resultant of three sets of factors: a) democratic frames, b) democratic practices; and c) democratic discourse.

a) By the notion of “democratic frames” we refer to those features of a political system that provide the context in which democratic institutions and actors operate. They consist of a territory, the structure of society, and certain characteristics of the state like the constitution and federalism. These elements determine how democracy is implemented and provide the context for its functioning. These frames normally are relatively stable, but not static. Therefore, one has to take their development into account. These frames will be grouped and analyzed from the perspective of state-building and nation-building as two interrelated but analytically distinguished processes (Flora, Kuhnle et al. 1999). In the European context sometimes it is argued that without a particular quality of these elements democracy cannot take hold. Hence, we will explore the question how the Austrian experience of state- and nation-building has influenced the development of Austrian democracy and what this may imply for the European Union.

b) The nature of a particular democratic system is not only characterized by formal rules and institutions but by the practice of political actors who make use of them. We start from the assumption that the understanding of democracy is also shaped by political culture and the constellation of social and political forces that translate into particular systems of representation, intermediation, and patterns of decision making. Given that national political actors identify with these elements as part of “good and normal democratic practice” these elements tend to frame their “democratic imagination” and form part of the “tacit knowledge of national democratic standards”. They provide a pool of ideas, attitudes, and standards that are (selectively) used to form opinions about the “democratic quality” of national political systems and the EU alike. Furthermore, it seems likely that political actors will find it easier to accept and adapt to democratic reforms at the EU level when they resemble institutions and practices that are in place at national level.

c) The discourse on national democratic reform provides another resource for the reconstruction of national understandings of democracy. In public debates – where political and academic discourses intersect – standards of democratic quality become visible at least ex negativo: by pointing out deficiencies and malpractices in the democratic workings of the political system norms and measures of “good” democratic practice are applied. Turning these norms and understandings into “explicit knowledge of national democratic standards” will help to relate the national reform debate to different schools of democratic theory and to delimit the pool of ideas that inform a particular national understanding of democracy.

Of course, barriers to the further democratization of the EU do not only consist in “cognitive dissonances” between national understandings of democracy but also in two other related aspects: First, the relative national costs and benefits of alternative options of democratic reform; and second, the assessment of the political nature of the EU and perceptions of its political (in)finality. These factors influence the government’s position concerning “how much” and “what kind” of democratic reform they feel is appropriate for the European level. Both factors can work in two directions: they can
either help to overcome some of the “cognitive dissonances” that exist or they may reinforce or even create more dissonances where they have not existed before. It is beyond the scope of this study to address these questions in any detail. We will restrict ourselves to give some hints of how such calculations may have influenced the Austrian position towards the further development and the democratization of the European Union.

The paper is divided in four parts. The first part addresses the development of the frames that have structured the Austrian “democratic imagination” in particular ways since the establishment of the First Republic, namely the territorial dimension, the social structure, federalism and national identity. The second part sketches the formal and informal elements of Austrian democratic practice as they developed since 1945. The Austrian model of democracy is characterized by very peculiar forms of political interaction and conventions that represent a mix of consensual and competitive patterns. The third part of the paper will give a short synopsis of the major democratic reform debates in Austria since 1955 in order to grasp the dynamic character of Austrian democracy and to identify influences from various strands of democratic theory. The last part of the paper brings the different lines of argument together by sketching reform options that seem to be either compatible or, to some extent, negotiable at the European level given the particular Austrian democratic tradition, its understanding of and its enduring interest in deepening European integration.

1. Framing the Austrian democratic imagination

Austrian democracy has until recently been characterized, first, as some form of consociational and, later on, of consensus democracy. This form of democracy had been the product of peculiar historical experiences, circumstances and contingent forces more than the result of democratic constitutional choice initiated and authorized by the people and prepared by intellectuals and politicians in public debate. These historical peculiarities were responsible for the fact that Austria’s democracy was founded not only on a “state that no one wanted” but also – and only with little exaggeration - on a “nation that no one wanted”. The first observation refers to the fact that the Austrian state was created from what was left after the break-up of the Habsburg Empire after WW I, with little confidence on behalf of elites and people alike in its political and economic viability. The latter observation refers to the widespread believe during the 1920ies that Austria forms part of the German nation with which it should unite. Austrian nationalism, therefore, had not been a major political force until in the 1930s it was used by the fascist dictatorship under the Christian-socialist chancellor Engelbert Dollfuß as a political ideology to veil the oppression of all left-wing parties and unions. Until today it is contested whether Dollfuß should be regarded as an Austrian patriot or someone who paved the way for Nazi-German occupation (Tálos 1988, ; Bischof 2003).

It was not until the establishment of the Second Republic after WW II that democracy took hold in Austria. Democratic aspirations had played a role in the politics of the Habsburg Empire since 1848. Nevertheless, democratic movements often were suppressed and were of minor political significance during the second half of the 19th century compared to the struggle for a liberal constitution, for holding the Empire together in face of strong tensions among the different nationalities, and the struggle between left- and rightwing political parties that, finally, escalated into civil war in the beginning of the 1930s. Given the importance of disuniting forces and authoritarian temptations in Austrian history it may come as a surprise that the establishment and incorporation of democracy in Austria after 1945 went rather smoothly. This was due to a number of social and political factors which will be discussed in the first part of the paper and which have conditioned the development of Austrian democracy for several
decades. What follows is a short characterization of these developments and their implications for the understanding of Austrian democracy.

1.1 The building of a state, after all

1.1.1 Territory and population

The Austrian state emerged after the disintegration of the Habsburg Monarchy after World War I. State boundaries did not result from any given jurisdictional or national boundaries but were negotiated in the peace talks at St. Germain. Against the Wilsonian doctrine of national self-determination strategic considerations dominated the determination of the Austrian territory. In the end, the Austrian territory did not encompass all German speaking inhabitants of the Habsburg Empire – even not those who lived in a contiguous area. Instead, territorial concessions had to be made in favor of Italy, Czechoslovakia, and what afterwards became Yugoslavia. While German speaking minorities were created in these countries rather small national minorities of Hungarian, Croatian, and Slovenian origin existed within Austria because the territory of what then became the eastern region of “Burgenland” was given to Austria and the majority of people of the southern province of Carinthia voted to stay with the new state in a referendum in 1920. In contrast, the most western province “Vorarlberg” voted in a referendum to join Switzerland in 1919 but stayed with Austria because of the resistance of the central government. Furthermore, in an unofficial referendum shortly after the end of the first World war more than 90 per cent of the population of Tyrol, a western province, voted to become part of Germany but without legal effect (Vocelka 2002, 273-6). As a consequence, not many believed in the viability of the Austrian state. All three governing parties – the Social Democrats having won 72 seats in the first elections in 1919, the Christian Socialists 69, and the German Nationalists 26 - were in favor of an ansschluss of Austria by Germany, although with differing intensity and for different reasons.

The lack of loyalty to the new state and its democratic institutions was reinforced by a lack of confidence among the different groups of society. Although Austrian society was rather homogeneous in terms of language and religion, society was split by class and political ideology. In 1934 nearly 98% of the population was able to use German as the colloquial language and more than 90% were Catholic. Nevertheless, attitudes towards the Catholic Church polarized the party system. While the Christian Socials entertained close relationships with the Church and the Catholic Church itself was directly involved in politics, the Social Democrats and the Greater German People’s Party (a rightwing German-national party) adopted an anti-clerical policy. Even more significant were the cleavages that resulted from Austria’s class structure. The upper classes comprised only about 2 per cent of the population, the middle classes about 13 per cent, and the lower classes about 86 per cent (Faßmann 1995, 19-20). The class structure of society translated into antagonistic politics. Two political camps, one of the left and one of the right, developed. The left adopted a radical political theory and language that has become known as “Austromarxism” while the ideologically rather inhomogeneous right formed a “bourgeois block” in order to keep the left from power (Dachs 1995, 151-3).

This became obvious when the coalition government broke apart in 1920. Throughout the 1920s the Social Democrats stayed in opposition while the Christian Socials formed several coalition governments of the right. Tensions between the left and the right wing parties intensified in the second half of the 1920s and resulted in violent confrontations between paramilitary forces of both sides. In 1927 a confrontation ended with the killing of two persons by the right-wing “Heimwehr”. When the suspects were acquitted from the charge of killing the Social Democrats organized a demonstration in the course of which the “Justizpalast” was set on fire. Police forces and the military
intervened and killed dozens of people (Vocelka 2002, 286-96). Since then radical right wing tendencies gained in power. In the beginning of the 1930s the “Heimwehr” adopted a fascist party manifesto and won several seats in parliament. In the local elections of 1932 the National Socialists gained massively reinforcing the conviction in the ruling Christian Socials that authoritarian leadership is needed to avoid a further loss of power. The Christian Socials government seized an opportunity in 1933 and hindered parliament to reassemble. In February 1934 the situation escalated into a short civil war between left- and right-wing forces which paved the way for a new authoritarian constitution and a four year “austrofascist” interregnum before the Nazis took over (Lehner 1995, 51-6).

In 1938, Austria became part of the German “Reich” after its invasion by Nazi Germany. The occupation was positively received by quite many Austrians not mainly because they sympathized with the Nazi regime but because they did not believe in the viability of Austria and hoped for economic improvement. After the Second World War Austria was reestablished within the borders of 1920 but remained under control of the four occupying powers (Russia, Great Britain, France, and the US) until 1955. The state-treaty of 1955 resurrected Austria’s sovereignty on the basis of the Moscow Declaration of 1943 which had declared Austria as the first victim of Nazi aggression and on the basis of the Moscow Memorandum of 1955 which obliged Austria “to practise in perpetuity a neutrality of the type maintained by Switzerland”. The state-treaty was signed on 15th May 1955 and contains, inter alia, provisions for the protection of the Croatian and Slovene minorities, the prohibition of an anschluss of Austria by Germany and of activities of Nazi or fascist organizations. On 26th of October 1955 a constitutional law about the perpetual neutrality of Austria was adopted by which Austria commits itself not to join any military alliances, not to allow foreign military basis on its territory, and to defend its independence by every available means (Vocelka 2002, 207-303, 24-29). By then, the Austrians had learned their lesson and made peace with a state they had not been able to identify with for long.

1.1.2. The constitution: provisional, but long lasting

As much as the territory of the new Austrian state corresponded to what was left after the break up of the Habsburg monarchy, the Austrian state as a legal entity came into being only after the secession of Hungary, Czechoslovakia, and what then became Yugoslavia at the end of WW I. In 1918, the German speaking members of the “Reichsrat” – the parliament of the monarchy – constituted the “Provisional National Assembly” (“Provisorische Nationalversammlung”). It proclaimed the formation of the new state “Deutschösterreich” (“German-Austria”) which was seen as part of the German republic and adopted a provisional constitution that was based on republican and democratic principles. The “Konstituierende Nationalversammlung” (“Constituting National Assembly”) gathered in early 1919 after the first general elections in which also women were allowed to vote. Its main task was the adoption of the peace treaty of St. Germain and the adoption of a new constitution. The peace treaty was perceived as unjust because it treated the new state as the successor state of the Habsburg Empire that had lost the war and which implied heavy reparation payments; because it prohibited the anschluss of Austria by Germany, which was seen as inhibiting Austria’s right of self-determination; because it forced Austria to rename itself into “Republik Österreich”, and because it set the seal on the above mentioned territorial losses (Brauneder 2001, 121-2).

Karl Renner, chancellor of the state, Hans Kelsen, legal advisor and well known professor of law, and state secretary Hans Mayr laid the foundations for the new Austrian constitution. After consultations with the provinces, that represented the only territorial and administrative element of continuity between the monarchy and the new state the constitution was negotiated between representatives of the two leading
parties, the Social Democrats under Otto Bauer, the leading figure and theoretician of Austromarxism, and the Christian Socialists under Ignaz Seipel, a former priest and professor of catholic theology, who had formed a grand coalition in 1919 which broke up soon after the new constitution entered into force in 1920. The constitution represented a compromise between two very different visions of state and government. Conflicting views concerned a) the federal structure and b) the form of government.

a) The Social Democrats favored a centralized and unified state structure while the conservative party insisted on a federal structure, granting the provinces called “Länder” autonomy and rights of participation at the national level. As a result, the Austrian state was given a formal weak federal structure: although the subsidiarity principle applied and the competences of the federal level were enumerated in the constitution, the competences granted to the provinces were of minor importance, and the division of powers between the national and the sub-national level could be altered without formal agreement of the provinces. Furthermore, the federal chamber of the national parliament was weak: it was composed of members of the parliaments of the “Länder” and its influence on national legislation was negligible.

b) Concerning the form of government the Christian Socialists favored a strong head of state while the Social Democrats favored a purely parliamentary democracy in which the president of the parliament would play the role of head of state and in which the government would be formed by a kind of parliamentary committee. The compromise reached instituted a parliamentary government and a relatively weak president. Nevertheless, in 1929 a constitutional compromise was reached that enhanced the role of the president: since then, amongst other things, he is directly elected and has the right to appoint and to dismiss the government (Pelinka and Rosenberger 2000, 23-4).

On certain issues concerning the distribution of competences between the regional and the national level no compromise could be reached. Questions concerning a bill of fundamental rights, the distribution of state finances between the “Länder” and the national level, and the organization of schools were excluded from the constitutional settlement. Their regulation depended on separate constitutional laws that had to be adopted by a two thirds majority in parliament which in fact meant that a compromise between the two biggest parties or “Lager”, as they were called, had to be reached in order to change the status quo. The new constitution did not reflect a broad consensus among the parties but a minimal compromise that was seen as a provisional arrangement. Consequently, no referendum on the constitution was held which did not contribute to its legitimacy and the legitimacy of democratic governance that was introduced for the first time.

Paradoxically, it was exactly this provisional constitutional arrangement that was made the basis of the Second Republic after World War II. Again, like in 1918, the newly founded political parties took the initiative and proclaimed in their declaration of independence of 27th April 1945 that the democratic republic is resurrected according to the constitution of 1920. In a separate law the constitutional state of March 1933 including the constitutional settlement of 1929 was put into force again while all laws and regulations were declared valid that entered into force after the incorporation of Austria into the German Reich except for those that were incompatible with an independent democratic Austrian state and reflected Nazi ideology (Öhlinger 2003, 39-45). Again, no referendum was held about the new constitution in order not to provoke a constitutional discussion that could endanger the unity of the state and which could reactivate the deep rifts between the left- and right-wing political parties concerning fundamental issues of institutional design and the vertical distribution of competences.

What really had changed in comparison to the first republic was the determination of the elites to work together and to uphold and develop Austria as an independent
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democratic state. What did not change rapidly was the sense of distrust between the two political camps on the left and on the right. Both parties had an interest to secure that no change of the status quo is possible without their consent. As a consequence, ever more political contested issues were regulated not by ordinary but by constitutional law. This situation had a number of problematic consequences concerning the normative quality of the constitution, the separation of powers between state institutions, and the democratic working of the political system as a whole:

First, Austrian constitutional law has become dispersed, confused and overly detailed because constitutional law consists not only of the formal constitution, but encompasses a number of constitutional laws and international treaties that regulate various topics covering Austria’s neutrality, state finances, principles of environmental policy, the independence of Austria’s public broadcasting or the rights of minorities, the European Convention on Human Rights and the incorporation of the European treaties, to name just a few, and specific articles within ordinary laws or even within “second order regulations” (“Verordnungen”) that have constitutional status. There are approximately 1000 such articles spread over more than 100 ordinary laws (Öhlinger 2003, 24). Given the complexity of Austrian constitutional law it is not only difficult to comprehend but tends to undermine its consistency and the certainty of the law. Even more serious is that the constitution is quite limited in its function to frame, limit and give direction to politics. On the contrary: constitutional law was instrumentalized to serve the political purposes of the two dominating parties. The formal understanding of constitutional law which originates from the positivistic approach championed by Hans Kelsen made such instrumentalization even easier since the Austrian constitution does not even has a preamble which formulates a particular consensus about norms and values and no bill of fundamental rights. This original void was subsequently filled by numerous constitutional laws which proclaim a number of “state objectives” (“Staatszielbestimmungen) to the effect that the constitutional court since the 1980s revised his “value free” approach and is now confronted with the difficulty to decide how these should be applied to particular cases and how their implementation can be controlled (Pelinka and Welan 2001, ; Welan 2001, 85-94).

Second, in a number of cases the legislature granted constitutional status to regulations that either very likely would have or definitely had been declared unconstitutional by the constitutional court. By doing so, contradictory elements have been inserted into Austrian constitutional law with disrupting effects on its unity. Furthermore, the authority of the constitutional court has been undermined in those instances in which the legislature and the executive either ignored the ruling of the court or sidestepped it by granting constitutional rank to certain problematic provisions. One example of such a move was the adoption of a constitutional law in 1991 (BGBl. 1991/627 and 1992/832) that explicitly allows for different age limits for the retirement of men and women when it was foreseeable that such a provision contained in an ordinary law will be declared unconstitutional by the constitutional court. Another example is the refusal of the governor of Carinthia, Jörg Haider, to conform to a revised provision of the “Volksgruppengesetz” (“law on national minorities”, BGBl. 35/2002) which had been declared unconstitutional by the constitutional court and which demands that topographical inscriptions have to be written in German and Slovene language in villages where at least 10 per cent of the inhabitants belong to the Slovene minority - instead of 25 per cent as had previously been the case. The ruling of the constitutional court had led to an open clash between the Carinthian governor, at the same time the leading figure of the rightwing populist Freedom Party (FPÖ), and the constitutional court.

Third, the democratic logic of parliamentary democracy is undermined in various ways. The quorum of a two thirds majority in parliament, that is needed to change constitutional laws, guarantees that laws that have been agreed by the two largest
parties cannot be changed even if one of the parties is in opposition. As a consequence, the scope for political decision-making for governments that command less than a two thirds majority in parliament is limited. Furthermore, the representative system becomes less responsive to changes in public attitudes because policies get "locked-in" after they have been regulated by constitutional laws and provisions. This in turn limits the performance and innovative capacity of the political system. By forcing the two largest political parties to cooperate and compromise beyond their cooperation in government suboptimal outcomes - representing the lowest common denominator - become more likely. This arrangement also has a self-sustaining effect because there is no incentive for the party that is not in government to agree to a compromise which would turn a constitutional provision into ordinary law. Another problematic consequence is that the constitutional court is drawn into political debates. Matters that otherwise would have been subject to political compromise in government and parliament become the object of judicial judgment and decision. This, on the one hand, reduces the legitimate role of the legislature and, on the other hand, risks the independence and political neutrality of the judiciary. Although this might be seen as an unavoidable consequence of judicial review it is the particular content of Austrian constitutional law and the political constellation that accounts for its frequency and broad application.

Since the beginning of the 1970s criticism of this situation led to attempts to remedy the "provisional constitutional arrangement" by complementing it with a bill of rights and by codifying and consolidating the constitutional texts. All these attempts failed mainly because of a lack of political will. Since the middle of the 1990s a new political constellation is emerging which has had and will have a major impact on the Austrian constitution. When Austria joined the EU in 1995 a referendum had to be held because the accession was qualified as a fundamental change ("Gesamtänderung") of the constitution. Such a fundamental change is given when some of the basic principles of the constitutional order ("leitende Prinzipien der verfassungsrechtlichen Grundordnung") are fundamentally affected and modified. Most of the basic principles are explicitly stated in the constitution but have been developed by Austrian constitutional theory and the rulings of the constitutional court. They consist of the principle of democracy, the principle of republican government, the rule of law, the principle of a federal order, the principle of the separation of powers and the liberal principle that limits the power of the state vis a vis the individual. These basic principles are of a higher normative status than conventional constitutional law and can even be used to declare unconstitutional particular constitutional laws and provisions. It was not before 2001 that the constitutional court made use of this option for the first time ever (Öhlinger 2003, 49-61).

By joining the EU nearly every basic principle of the Austrian constitution mentioned above was affected. The democratic principle that, according to the Austrian constitution, demands that law emanates from the Austrian people is undermined. Formally, these changes were legitimated by a referendum about the accession treaty and certain changes of the constitution itself. A new heading entitled "The European Union" was inserted into the constitution (chapter B, part I) which addresses the elections of the European Parliament, particular rules for civil servants, the nomination of Austrian members of EU organs, the participation of provinces, local communities and parliament in EU matters, it allows for the participation of Austria in the common foreign and security policy and in the so-called "Petersberg tasks", only to mention the most important ones. The principle of direct effect and supremacy of European law has altered the hierarchy of law ("Stufenbau der Rechtsordnung") which has a long standing tradition in Austria. Austria is the only country in which the constitutional court has unconditionally accepted the supremacy of even secondary Union law over national constitutional law. Reservations exist only in regard of the "basic principles" that may be touched by yet another round of treaty reform like the one that was
discussed in last year’s IGC. Possible conflicts between the basic principles and proposed treaty reforms would lead to a referendum in which the Austrian people would have to decide whether they accept such a change or not (Öhlinger 2002, 93-4). This means that Austrian constitutional law has lost its highest rank in the Austrian hierarchy of law.

From 1994 to 1995, for the first time in the Second Republic, and again in the national elections of 1999 the two biggest parties gained less than two thirds of the vote. At the same time, a period of 12 years of grand coalition governments (1987-1999) ended and with it the “constitutional partnership” (“Verfassungspartnerschaft”) that had lasted for 45 years. This created a situation in which the new government composed of the Peoples and the Freedom Party, which is in power since the year 2000, does not command a constitutional majority while many projects of political reform like an overhaul of the state’s administrative structure and even some that result from European law do not seem possible without changing a number of constitutional laws. It has become obvious that the ordinary legislator is quite limited in his room for maneuver. Furthermore, the European constitutional debate has started to question the mere formalistic understanding of the constitution in Austria. Questions of the democratic legitimacy of public power and its limits or about the adequate delimitation of competences between the different levels of government cannot be answered if one sticks to a formalistic understanding, they cannot even be posed (Öhlinger 2002, 234). Motivated by the need to make public administration more efficient and less expensive, to create a “lean state” and to consolidate the constitutional texts and their substance led the government to establish an Austrian constitutional convention (“Österreich-Konvent”) that began its work on 30th June 2003 and which was inspired by the European convention of 2002/03.

By the end of 2004 the Austrian convention shall propose a new draft constitution. It is composed of 70 members representing state organs (government, governors of the provinces, parliament including members of the Nationalrat and the Bundesrat, parliaments of the provinces, courts, local communities, and the ombudsman), the social partners, and legal experts. Its work is organized by a presidium, which is headed by Franz Fiedler, the president of the audit office. Ten working groups were established which discuss core responsibilities of the state and aims of the state; the structure of the constitution and how it can be codified and consolidated; the federal structure, the organization of elections, the relationship between legislation and execution under the principle of legality; a charter of fundamental rights; the distribution of competences between the local, regional and national level; the reform of public administration; the status and structure of independent offices, agencies and self-governed institutions; democratic control and accountability including the rights of parliaments and instruments of direct democracy; mechanisms of legal protection and the operation and structure of courts; and the structure of public finances. It seems that, unexpectedly, a window of opportunity has opened that could end the “provisional” status of the constitutional arrangement that had existed for more than 80 years.

1.1.3. Federalism, a domain of the executive

Against the apparent weak federal structure as laid down in the constitution Austrian federalism is nevertheless an important factor of political life. The “Länder” have a long historical tradition. They exist since the Middle Ages and are an element of continuity in the changing political life of Austria. The consent of the provinces has been an important precondition for the enactment of the constitution of 1920. The political influence of the provinces is not adequately reflected in the constitution because the most influential body is not the Bundesrat but the conference of the governors of the provinces (“Landeshauptleutekonferenz’’), several other conferences of representatives of the executives of the provinces and their secretariat (“Verbindungsstelle der
Bundesländer") that are more effective in making the voice of the provinces heard. These conferences operate on an informal and secretive level. They are used to coordinate the position of the provinces vis-à-vis the federal level and binding decisions have to be based on unanimity. It follows, that the provincial executive unlike the legislature, dominates not only at the provincial level but also in the intergovernmental arena.

If one looks at Lijphart’s index of federalism Austria scores 4.5 out of 5 points where 5 signifies the highest degree possible for a federal structure. Austria is categorized as a federal, yet centralized political system (Lijphart 1999, 189). An important indicator for the federal character is the amount of revenues that accrue to the national or provincial level. The federal level accounts for approx. 67 per cent of all state revenues in Austria which is somewhat in the middle between a portion of approx. 42 per cent in decentralized Switzerland and a high 96 per cent in centralized Netherlands (Lijphart 1999, 193). The provinces do have a dominant influence for instance in the job market for teachers at elementary level. They decide – in fact - who gets a job while the money comes from the federal level. They also play a significant role in regional policy, social and health policy and housing. By the use of legal instruments of private law the provinces are active in labor market policy, the promotion of the economy including subsidies, in cultural and environmental policy (Pernthaler and Weber 1997, 762).

Since the 1990s the provinces have expanded their influence in higher education by supporting and financing institutions of higher vocational training (“Fachhochschulen”).

The provinces do play an important role in party politics, particularly with regard to the ÖVP, which has a decentralized structure. The provincial party organizations enjoy a high degree of autonomy and play an important role in the recruitment of political personnel. Many provinces are strongholds for one or the other party. In most of the nine - mainly western - provinces the Peoples Party holds a strong and enduring majority, while in Vienna and Burgenland, and for the first 40 years of the Second Republic also in Carinthia the Social Democratic Party dominated. Party domination is related to different levels of socio-economic development and wealth, religion, and tradition which correspond to a West-East gap (Luther 1997, 822). In addition, also the chambers (of commerce, agriculture, and labor – to name just the most important ones) are constituted as autonomous organizations at provincial level although their umbrella organizations play an important role in the institution of “Sozialpartnerschaft”.

The post of governor is the most prestigious and influential office at provincial level. His role and his visibility in public give him and his party a competitive advantage in provincial politics. The governor and the government are elected by the provincial parliaments. The type of election is not determined by the federal but the provincial constitutions. Provincial governments had long been “concentrated” in the sense that their composition reflected roughly those of the provincial parliaments (“Landtage”). With the exception of Vorarlberg, and since 1998 also of Salzburg and Tirol, the executive is elected by proportional vote. Several provincial constitutions (of Vienna and Burgenland, for instance) have introduced mechanisms that ensure that the strongest party also commands a majority in government. Even in provinces where majority voting applies a consensual climate characterizes the operation of many
provincial governments. The rise of the FPÖ between 1987 and 2000 has introduced an element of conflict into the operation of government also at provincial level, particularly in Carinthia where Jörg Haider held the post of governor with the support of the Peoples Party from 1989 to 1991 and again since 1999 after a landslide victory in the provincial elections and a reconfirmation in the elections in March 2004.\textsuperscript{14}

Since the 1980s the provinces have been able to gain in importance through a number of reforms that increased their autonomy, their capacity to act and their influence on national policy. The provinces used their relative constitutional autonomy to reform and differentiate their constitutions since the 1980s. Following longstanding demands of the “Länder” federal reform in 1983 and 1988 led to a slight upgrading of the Bundesrat, and the provinces gained the right to conclude international treaties (Öhlinger 2003, 47).\textsuperscript{15} In the run-up to the accession to the EU, and particularly in connection with monetary union, the federal level was committed to consult the provinces when national laws are considered that may have important financial implications for the provinces. Furthermore, the provinces secured extensive rights of information about European legal initiatives and may even commit the Austrian representatives in the council to certain positions if they so decide. In practice, this instrument is rarely used because of information overload, strict timetables, and problems of coordination. Instead, informal contacts between provincial and federal governments and the inclusion of representatives from the “Länder” in working groups of the council and the commission have proved more effective (Fallend 2002, 211-5).

Nevertheless, European integration has put some stress on the Austrian federal system. Besides the loss of competences to the EU, that affect both the provincial and the federal level, a complex set of shared and interlocking competences in Austria makes the implementation of EU law quite burdensome. Often one federal framework law and nine parallel laws at provincial level are required to effectuate a European directive. This problem will play a prominent role in the negotiations of the Austrian constitutional convention. It seems likely that a streamlining of competences lies ahead that will further diminish the autonomous rights of legislation of the Länder in those areas that have been Europeanized. The provinces could be compensated for by expanding their autonomy in the implementation of national laws, by enhancing their room of maneuver in the field of implementing legislation, and by enhancing the control and participation rights of the provincial parliaments (Öhlinger 2002, 92). Such a form of “executive federalism” (“Vollzugsföderalismus”) would finalize a tendency that has characterized Austrian federalism from the very beginning and which the provinces accepted only reluctantly.

1.2. The building of a nation, notwithstanding

Austrian national identity is a rather recent phenomenon. It was not before 1945 that an specifically Austrian national consciousness began to take shape. In the first Republic both the political elite and the people did neither believe in an Austrian state nor in an independent Austrian nation, but perceived themselves as part of the German nation and of German culture. The strong emphasis on Austrian patriotism and the Austrian “fatherland” during the Austrofascist period (1933-1938) could not take hold since it was misused to legitimate an authoritarian regime that suppressed the working class and its political representatives. It was not until the German occupation, World War II and the common experience of the concentration camp that the political elites from the Socialist and the Christian Social Party became committed to an independent Austrian nation-state. It took some time until an Austrian national consciousness took hold in the population. While in 1956 more than 50% of the population did not believe that Austria is a separate nation in 2001 more than 90% agreed that Austria is a nation (79%) or is starting to become one (12%).
Two phases can be distinguished in which Austrian consciousness spread rapidly: the period between 1956 and 1966 in which the belief in an Austrian nation increased from 49% to 84% and the period between 1972 and 1989 in which this belief increased from 72% to 94% (Frölich-Steffen 2003, 106-7). The first period corresponds with the experience of national independence after 17 years of foreign occupation, a long phase of economic development and rapidly increasing prosperity, and the development of a consensual and peaceful political climate characterized by grand coalition government and the institution of “social partnership” (“Sozialpartnerschaft”). The slow but steady increase during the second period can be attributed to a gain in international reputation during the Kreisky era resulting from an active foreign policy that emphasized Austria’s role as a neutral arbitrator and mediator in international conflicts and as a “bridge” between East and West. Furthermore, an intensified public debate about Austria’s role during Nazi occupation provoked by the so-called “Waldheim affair” in 1986 and about joining the European communities resulted in a rise of national consciousness (Frölich-Steffen 2003, 83-4).

If we look at the objects of national identification we find a mixture of elements that primarily are non-political with two exceptions: a rather strong identification with Austria’s neutrality and an affectionate attachment to the institution of “social partnership” as a symbol for the peaceful resolution of conflicts between labor and capital and a guarantor of economic prosperity (Frölich-Steffen 2003, 99-105, 74-089). Both institutions are held in high esteem by the population despite an erosion of their political relevance because of globalization and European integration, attacks on both institutions from the freedom party since the 1990s, and governmental priorities and practices since 2000 that have undermined their meaning, content and impact (Strohmer and Lutzenberger 2000, ; Tálos and Fink 2003). Nevertheless, it seems very likely that with a certain time lag the reduced relevance of both institutions will also be reflected in public opinion. These trends will further diminish the political dimension of Austrian national identity. Then, Austrians will be inclined even more so to identify with the tradition of high culture on the one hand – as a source of international reputation – and a particular “Austrian way of live” that is characterized by Austrian kitchen and a particular form of sociability and snugness (“Gemütlichkeit”) on the other hand; with the successes of Austrians in (particularly winter-)sports; and with the beauty and richness of Austrian landscapes. After 1945 Austrian national identity was developed as an antithesis to German culture in order to distance oneself from the past. Particularly the two large parties, the Social Democrats and the People’s Party, became Austrian patriots while the Freedom Party gave home to the small and declining group of German-Nationalists. In the 1990s both big parties and the Greens, although skeptical in the beginning, endorsed European integration while the Freedom Party tried to fill the gap as defender of Austrian identity and interests (Frölich-Steffen 2003, 111-14).

Since joining the European Union in 1995 national identity has been supplemented by an emerging European consciousness that is not without ambiguities. On the positive side, Austrian membership in the EU was not questioned even during the time of the sanctions of the EU-14 against Austria in 2000-2001. Shortly after the lift of the sanctions nearly 70% were still in favor of membership while 20% were against (Frölich-Steffen 2003, 231). In addition, roughly 70% are proud of being a European citizen. 43% have a mixed identity although the national layer dominates the European one, 10% feel primarily European and 43% exclusively national which is more than on average in the EU. Membership in the EU seems to be appreciated primarily because of a lack of alternatives. Only 35% think that membership is a “good thing", 20% think it is bad, and 42% are indifferent. 45% of the population think that membership is disadvantageous, while 40% see advantages. 34% would be very sorry if the EU would dissolve, 36% feel indifferent and 18% would be very relieved. 45% are content with the working of democracy in the EU in comparison with 55% who are content with the
working of national democracy; a signal that both European and national democratic practices are perceived not to work satisfactorily. In comparison with other EU countries positive connotations with the EU are less pronounced in Austria (common currency; freedom of movement) while the general mood towards and the assessment of European integration have deteriorated in recent years. The European Union is associated by roughly one third of the population with waste of money, high unemployment, an increasing level of crime, and bureaucratization. This also effects the assessment of enlargement which is only endorsed by 19% of the population. 27% are against and 43% would welcome only some, but not all new entrants (Eurobarometer Austria2004, 3-4, 26-7).

It seems that the Austrian population views the EU with reserve since both the pro and the anti-European camp is only of moderate size while many feel indifferent or neutral. For Austrians, membership seems to have primarily instrumental value in conjunction with the feeling that one has to accept the new (European) reality. While positive, neutral and negative evaluations of the output of European politics are rather balanced within the Austrian population demands of setting priorities in certain areas are widespread: More than 80% of respondents believe that the EU should make the fight against unemployment, poverty, social exclusion, organized crime, terrorism, for peace and security and the protection of the environment a priority. Nearly 75% of respondents also want the EU to set priorities in securing individual rights and democratic principles throughout Europe; and nearly two thirds are in favor of a common foreign and security policy. In contrast, less Austrians (45%) are in favor of developing a genuine political union in comparison with their European neighbors (53% on average) (Eurobarometer Austria2004, 49-50). While fears that national identity might be in danger because of EU membership have dissipated over the years Austrians are keen on ensuring that the national interest is respected. A clear majority (62%) wants to keep the national veto to protect important national interests, 76% want to ensure that each member state is represented in the Commission on equal terms, and nearly 80% are in favor of keeping a rotating council presidency (Eurobarometer Austria2004, 4, 59-60). These attitudes clearly mirror the government’s priorities in the IGC 2003.

If we think of the nation as a community of communication, experience and memory (Kielmannsegg 1996, 55-8) we must conclude that the second and particularly the third dimension still pose problems for Austrian identity. Until the present day differences exist concerning how the development of the first republic, the period of “Austrofascism” and, to a lesser extent, Nazi annexation are interpreted and evaluated. The question, who is responsible for the failure of the first republic, the left who did not join forces with the conservatives in the beginning of the 1930s or the conservatives who established dictatorship, is such an example. A second point of difference concerns the question whether the dictatorial regime was “fascist” or merely “authoritarian”, and whether it paved the way for Nazi annexation or sincerely defended Austria’s independence (Dachs, Hanisch et al. 1995). In addition, the second republic was based on the lifelong illusion (“Lebenslüge”) that Austria fell victim to German expansionism by neglecting the positive reception of the German army by many Austrians and the active role of Austrians within the oppressive machinery of the state and in the extinction of the Jewish population. Only in the 1990s this “Opferthese” was replaced by a common understanding that Austria shares responsibility for what happened during National Socialism (Frölich-Steffen 2003, 138-57). Nevertheless, the cultural and political memory in Austria seems not very integrated but segregated and rather diffuse. This is attributed to a lack of a common reservoir of participatory experiences in the past and also during the first decades of the second republic (Bruckmüller 1996, 396-400). The shortage of such “social capital” partly explains the development of Austrian democracy after 1945.
2. The practice of Austrian democracy: entrenched, in the end

After 1945 Austria was re-established as a parliamentary democracy with presidential elements and elements of direct democracy. The parliamentary mode of governance dominates the other two. In regard of the role of the president the domination of parliament is reflected in the fact that the will of the majority prevails over the will of the president when a new government is installed which in turn is determined by parliamentary elections and not by presidential elections. Although the president appoints and dismisses the government he is bound by the majority in parliament who can topple any government by a vote of no-confidence. By convention the president asks the leader of the strongest party in parliament to form a government. Only rarely the president was able to influence the composition of government either by rejecting the participation of a particular party or by refusing to appoint particular ministers of a governmental coalition. In addition, the president in his role of highest organ of the executive is dependent on proposals and initiatives of the government. The weakness of the Austrian president is also manifest in his role as representative of state. He neither plays a part in the formulation of Austrian foreign policy nor does he represent Austria in political bodies like the European council. This can partly be explained by the fact that the post of president - out of historical reasons – is designed to guarantee the functioning of the state organs and not to interfere with daily politics.

Direct democratic instruments play some role in Austrian politics but they are rather weak, subordinated to parliamentary politics and often instrumentalized by political parties rather than the expression of citizen activism and preferences. The strongest instrument is the referendum that was only used twice in the second republic: first, when out of political tactics chancellor Bruno Kreisky on the basis of a majority in parliament put the question before the citizens in 1978 whether the first atomic power plant in Austria should be opened or not (optional referendum), and second in 1994 an obligatory referendum was held because the constitutional law enabling Austria’s accession to the EU implied a fundamental reform (“Gesamtänderung”) of the constitution. The instrument that has been used the most since the 1960s is the “Volksbegehren”, a kind of legislative initiative. If more than 100000 signatures are collected parliament is obliged to discuss, but not to adopt the legislative proposal. In the 1990s seven out of ten “Volksbegehren” were initiated by members of parliament and mainly by members of the opposition. The instrument of “Volksbefragung” introduced in 1989 enables a parliamentary majority to hold a referendum about a particular political question of nationwide importance. Yet, it has never been applied. The main function of these instruments is to mobilise political support for issues that are of particular importance for one or the other political group or political movement and to make the general public aware of issues that are neglected by parliamentary politics (Pelinka and Rosenberger 2000, 69-74).

2.1 From consociational to competitive democracy?

The development of Austrian democracy in the second republic can be described as a slow erosion of the system of consociational politics. The root of these developments lays in the 1960s and became ever more visible in the 1980s. This has led to a more dynamic and open system of political contestation. This change is characterized by the following developments:

a) A slow erosion of the segmented socio-cultural environment dominated by the two big political “Lager”: The left one, represented by the Socialist, then Social Democratic Party and the right one, represented by the People’s Party. Since the end of the 1960s party identification, party membership and ideological determination of voting behaviour
started to decrease (Plasser, Ulram et al. 1992). At the same time, the number of “floating voters” increased. Since the 1980s voter volatility has reached the European standard and has ended the stable pattern in voting behaviour (Haerpfer 1997). In parallel, the organizational penetration and hierarchical control of the parties’ auxiliary associations decreased and, since the middle of the 1970s, we have witnessed a decline in two-party concentration, party influence and the salience of the system of “Proporz”, according to which posts in state institutions and public enterprises, and public resources were distributed among the two big parties in relation to their relative strength (Plasser, Ulram et al. 1992).

Since the 1980s trust in the political parties and their ability to solve social problems declined significantly, particularly concerning full employment and social peace. Consequently, the dominant pattern of political activity within parties has been supplemented by alternative forms of political involvement like participation in demonstrations, giving signatures, or participation in grass-roots and social and ecological movements (Ulram 1997). Partly in reaction to party dominance, and partly as a result of modernization and the expansion of secondary and higher education since the 1960s, social movements developed with some delay in the 1970s. The most successful of these movements was the Women’s movement and the ecological movement. Both made an important impact on policies and on public discourse, but only the ecological movement led to the establishment of a new party, the Greens, that could establish itself as a permanent political force at communal, regional and national level (Gottweis 1997).

b) A shift from a system of two-party dominance towards a system of moderate party pluralism (Müller 1997). The ‘classic’ phase of Austrian consociationalism (1945-1966) coincided with ‘grand coalition’-governments based on the dominance of the two big parties. The next phase of single party governments, first by the People’s Party (1966-1970) and then by the then Socialist Party (1970-1983), already signalled that the competitive character of Austrian democracy increased because both parties moved closer to the middle of the political spectrum and presented themselves as moderate “modernizers” which was a precondition for winning an absolute majority in national elections. The development and extension of a system of public financing of political parties in the 1960s and 1970s reinforced this trend. Henceforth, the political strategies of the parties were geared towards an ever more volatile voter market instead of their declining membership. Nevertheless, the “constitutional partnership” and the importance of the pre-parliamentary phase of political opinion formation in the framework of social partnership were used as an instrument for minimising conflict and political conciliation.

The centripetal drift in party competition was replaced by a more adversarial style of competition when the FPÖ adopted a right-wing populist strategy after 1987 under the leadership of Jörg Haider and the establishment of green parties and their later fusion into the Greens. Since 1987 the green party is represented in the national parliament and achieved their best result in the elections in 2002 when they won 9,5% of the vote. The Freedom party increased its share from 9,7% in 1986 to 26,9 in 1999. After forming a government with the People’s party in 2000 and conflicts within the Freedom party chancellor Schüssel called early elections in 2002 which resulted in a landslide victory of the People’s party (42,3, up from 26,9% in 1999) and a devastating loss for the Freedom Party which dropped to 10% (Plasser and Ulram 2003, 195). These parties, for the first time after 1945, questioned elements of the consensus on which the second republic was based: the orientation on ever more economic growth (the Greens); the system of political institutions was heavily criticized by the Freedom party, and the principle of social partnership came under attack by both parties. While both parties have become more moderate in recent years it remains to be seen whether the
The Freedom Party will try to re-establish itself by adopting a more radical course or by improving its political performance both in national and provincial government.

c) The erosion of the system of “social partnership”. The Austrian model of neo-corporatism developed in the 1950s and early 1960s and survived — although with adaptations — until the end of the 1990s. Since the year 2000 the rightwing government of ÖVP and FPÖ tends to bypass the social partners ever more often, putting its relevance fundamentally in question. The Austrian model of social partnership is characterized by the privileged role of five umbrella organizations. Labour is represented by the Austrian Trade Union Federation (ÖGB), based on voluntary membership, and by the Chambers of Labour (BWK) where membership is obligatory for all employees. Capital is represented by the Federation of Austrian Industrialists (VÖI), based on voluntary membership and only indirectly represented in the cooperative institutions, the Chamber of Business, and the Chambers of Agriculture, both with obligatory membership. These organizations are distinguished by their near monopoly of representation, their high degree of internal centralization, (personal) interconnections with parties and parliament, and their incorporation in a dense but informal network of cooperation with government and administrative agencies. The system of social partnership denotes a pattern of cooperative behaviour that aims at reaching compromises among and between the social partners and government in various constellations. Its historic achievement was its contribution to economic crisis management and a long period of economic growth, the development of an expanding welfare state, and social peace (Tálos 1997, 444-47).

Nevertheless, the system of social partnership never outbalanced the role of government. Its influence was even in the 1950s and 1960s most pronounced in incomes, economic, and social policy. In the beginning, the cooperation between the social partners was instrumental to bridge ideological and political differences between the governing parties. In the 1970s, the delegation of tasks to the social partners was used by the governing Socialist Party to moderate opposition by the People’s Party and to tame the trade unions by making them responsible for the political outcome. A clear reduction in the role of the social partners resulted from the formation of the second “grand coalition” government in 1987. Since then the social partners lost their role as privileged decision makers and were reduced to privileged advisors. By joining the European Union central institutions of social partnership like the “Partite Commission for Prices and Income” lost their significance. When the rightwing government of ÖVP and FPÖ came into power the erosion of the system of social partnership accelerated. The capacity of the social partners to conclude agreements among themselves diminished and they are hardly involved in the decision making process. While the representative organizations of capital still have influence on governmental politics through their interconnection with the People’s Party the organizations of labour suffered most. Whether this implies that the concertation of interests will be replaced by a more particularistic mode of interest representation remains to be seen (Tálos and Kittel 2001, 232-9; Tálos and Fink 2003, 221-6).

The character of Austrian democracy is undergoing profound changes. Traditional institutions and practices of interest representation and conflict resolution are undermined by socio-economic, socio-cultural and political developments. The ultra-stability of the political system has given way to a new era of uncertainty about what will replace the traditional conventions and practices. The Austrian constitutional convention started its work without a clear vision of what kind of reform we can expect except for the orientation on a slim and effective state apparatus. So it is rather likely that it will only succeed in “tidying-up” of what has become a diffuse and incomprehensible constitutional text.
3. Democratic thought in the second republic

The debate about Austrian democracy and its reform is closely connected with developments and changes in the constellation of forces in Austrian politics but also within the academic community. What follows is a short survey of five different periods of critique and debate about options of reform of Austrian democracy.\(^{20}\)

3.1. Austrian democracy between (constitutional) norm and (political) fact

A first phase of debate (1955 to 1966) is related to the establishment of “grand coalition” government, the pervasive role of the parties, and the growing power of “social partnership”. The given practices were criticized mainly in the print media by a nascent political journalism that developed independently from the parties and by academic commentators from constitutional law. By that time social and political science had not yet been established in Austria.

The overall theme of the debate was whether the given practices of governance, in particular the system of “Proporz”, the growing influence of the governing parties in all social domains, and the informal delegation of decision-making power to the social partners were in line with the constitution. The “real constitution” (“Realverfassung”) was confronted with the “formal constitution” (“Formalverfassung”) and it was argued that the latter should have precedence over the former. This view was inspired by a liberal understanding of the constitutional state by which a representative democracy is established. The idea was that only those forms and institutions of political power are legitimate that are foreseen and regulated by the constitution. According to this understanding the parties and the organizations of capital and labour had surpassed their legitimate political functions and domains. They either should restrict themselves or their role should be formalized and regulated explicitly by the constitution. Moreover it was argued that the rule of law as expressed in the constitution limits the power of democratic institutions. In this reading of the (mainly conservative) constitutional lawyers there is a tension between the constitution, as the highest expression of the will of the people, and the democratic institutions of representative democracy, which are constituted by it. In cases of conflict the highest courts, neither government nor parliament should have the final word.\(^{21}\) In reality, it was the other way around.

Given the intensified conflicts and blockade in the grand coalition, the lack of transparency and control in the dealings within the coalition, and the dominance of government over parliament the debate also touched on possibilities of reform. Critiques demanded that parliament should be strengthened and that a first-past-the-post electoral system should be introduced in order to establish clear responsibilities, a powerful government and an empowered opposition (Schaller 1997, B 30-46). Liberal views of the rule of a representative, constitutional state that stands above the narrow interests and factions of society and that secures the common good, on the one hand, stood in contrast to conceptions that emphasized the positive role of parties and interest associations as central agents of a democratic state (“demokratischer Parteien- und Verbändestaat”).

3.2. The demand for comprehensive democratization

The period from 1966 and 1975 is characterized by single party governments of the People’s party (1966-1970) and of the Socialist Party (1970-1983). The monopole of definition and interpretation of democracy by the discipline of law ended. New impulses for the democratic reform debate came from the “student movement” of the late 1960s, from the “new left” and from newly established political science. The idea of
“fundamental democratization” implied also a critique of all forms of social power. The Socialist Party under the leadership of Bruno Kreisky picked up some of these ideas and created the slogan of the “democratization of all areas of life” (“Demokratisierung aller Lebensbereiche”). Democratic forms of legitimation and participation should be extended to the economy, the enterprises, education and the media (Schaller 1997, C 20).

The main bulk of democratic reform proposals, nevertheless, focussed on the political system in the narrow sense: on the reform of parliament and the electoral system and the role of parties and interest associations within the constitutional framework. The limited democratic quality within the parties and the big interest associations was addressed and a bigger role for direct democracy claimed. Demands for the democratization of the bureaucracy and a better system of individual rights and rights protection were also of importance. While a number of reform proposals were inspired by an understanding of democracy that emphasized the role of “representation” others preferred an understanding of democracy that took the identification of rulers and ruled as a starting point.

3.3. The quest for participation
The period from 1975 to 1997 is characterized by the emergence of “new social movements”. They took shape through conflicts with the established power structures and stood in opposition to the parties and/or the big interest associations. The social movements became active at the local level, but also at the national level. They organized in the fight against refuse disposal sites and power plants, against the purchase of military interceptors, or for more equality between men and women.

Accordingly, they criticized the exclusionary structures of the “party- and associational state” (“Parteien- und Verbändestaat”) and asked for the extension of participatory democratic structures beyond the instruments of direct democracy. They picked up the unredeemed promise to extend democracy into all areas of life; they demanded more individual rights for the citizens, and a more inclusive democracy that respects the rights of minorities and foreign citizens living in Austria.

The new social movements developed the vision of “grass-roots democracy” (“Basisdemokratie”) that should guarantee autonomy and participation in all areas of life as a basis for a multi-voiced and plural civil society (Schaller 2002, 80-1).

3.4. The plebiscitary and presidential temptation
Partly in parallel to the above mentioned debate and also as a kind of antidote to it, concepts of fundamental reform of the Austrian democratic system were developed by proponents of the People’s Party and later on also by the Freedom Party in the period from 1985 to 1997. Under the label of the “third republic” proposals were tabled that aimed at a departure from the representative and parliamentary type of democracy dominated by a network of parties and interest associations. In the eyes of the proponents of the “third republic” this model had exhausted its potential particularly in regard of long-term political reform projects and new social cleavages. Common to all concepts of a “third republic” was the old critique of the dominant role of parties and interest associations, a revaluation of instruments of direct democracy, a personalized electoral system, and the strengthening of the directly elected president.

The concept of the “third republic” that was proposed by provincial proponents of the People’s Party already in 1984 and 1985 sought to overcome the stalemate that characterized the conflicts between the new ecological movement and the established
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interest organizations on the one hand, and between left and right positions concerning the privatization of nationalized industry on the other hand. The aim was to reactivate political leadership by a concentration of all political forces within an "all Austrian government", which was inspired by the Swiss model, in combination with a strengthened role of the president, and more opportunities for the direct involvement of citizens (Schaller 1997, E 15-26).

Even more radical proposals were developed by the Freedom Party between 1993 and 1997 which was inspired by a fierce critique of the system of "Proporz" and the "old parties" that had divided up the country among themselves, excluded political opponents – like the FPÖ –, and endangered the freedom of the citizens. The concept of the "third republic" aims at the destruction of the "dictatorship of the apparatus" of parties and interest associations, and the empowerment of the citizens through the general retreat of the state, the abolition of obligatory membership in chambers, the extension of direct democratic instruments, direct elections of the executive including mayors and governors, the strengthening of communities and provinces, and the strengthening of the instruments of control oriented towards maintaining and promoting the rule of law (Schaller 1997, E 34-49).

The proposals provoked strong criticism and a broad debate about the implications and the guiding principles of the concept of the "third republic". In spite of different readings and interpretations it seems rather evident that the proposals aim at creating strong and personalized political leadership at various levels while at the same time the parliamentary and representative components of government would loose because of the intended weakening of the intermediate role of parties and interest associations.

It is interesting to note that in parallel to the debate about the "third republic" and in the wake of the presidential elections in 1986 that should become associated with the "Waldheim affair" a debate started that focused on the position of the Austrian president in the constitution. Those who want the president to play a bigger role in politics start from the assumption that an active and strong president would and could counterbalance the dominance of the parties in the parliamentary arena and could have integrative functions. In this context some commentators – situated mainly in the People’s Party - argued for the introduction of a presidential system in Austria but with little effect. The dominant opinion in this respect was that a presidential system would either promote populist and anti-democratic tendencies or would result in political impasse given the dual character of the executive (Schaller 1997, E 68-90).

3.5. Understandings of democracy in Austria: a resume

First, Austrian democracy did not result from an internal struggle over political participation from below but from external challenges and changes in the geo-political environment: the break-down of first, the monarchy after World War I, and of National Socialism after World War II, opened the opportunity to establish a democratic system in Austria. The main actors were the two big political groupings of the left and the right in Austria and the regional entities called the “Länder”, who represented elements of continuity and had the organizational capability to act. The so called “Lager mentality” provided the opportunity for the parties and their affiliated interest associations to dominate not only the political arena in the narrow sense, but also to channel political activity through their auxiliary associations. Only slowly the “permissive consensus” eroded that was the foundation of a rather closed system of cooperation by elites. This system in tandem with the tradition of an oversized and paternalistic bureaucracy inherited from the Habsburg empire accounts for the delayed development of an active civil society and a rather apolitical understanding of citizenship and national identity in Austria.
Second, democracy, even at the national level, is a dynamic concept. The understanding and practice of democracy change over time. Democratic theory is used in two ways: either to make sense of and to legitimate given practices, or to criticize them depending on the role and place of the speaker within the political field. While the official debate about democratic reform was determined by the interest to modify the status quo only modestly, more profound proposals were launched by those groups who geared towards changing the established order. What becomes evident is that democratic reforms are not only efforts to effectuate the ideal of popular sovereignty, but also to stabilize or change the balance of power between actors and groups in society by influencing their chances to get access to the resources of the state and to realize certain interests.

Third, there exists no single understanding of democracy but a plurality of interpretations that very often mix elements of various ideal typical concepts. If we look at the discourse about democratic and constitutional reform in Austria since 1955 we find that the dominant understanding of the established form of democracy in Austria is that of a “democracy of parties and interest associations” (“Parteien- und Verbändedemokratie”), which until the middle of the 1960s corresponded to the ideal type of a consociational democracy. Since then Austria became a more liberal and pluralist variant of a parliamentary democracy that only to a certain extent resembles a “consensus democracy” in Lijphart’s sense. Changes on the level of political culture and voting behaviour influenced the composition of the party system, the strategies of the parties to win elections and governmental practices, particularly in relation to the “social partners” who have lost significantly in influence. Visions of democratic reform were mainly inspired a) by theories of the rule of law with the intention to constitutionalize those practices not foreseen in the constitution, to curb the power of the parties to the advantage of parliament, and to strengthen the authority of the highest courts; b) by theories of majoritarian democracy in order to strengthen the influence of the voters on government formation, to confront the voters with clear alternatives, to enhance the role of the opposition in parliament, and to weaken the influence of populist parties like Haider’s Freedom Party; c) by theories of direct and participatory democracy that emanated from the new social movements; and d) by theories of presidentialism, which were inspired either by right-wing visions of the identity of rulers and ruled or by the hope that a strong president could curb the power of the parties and play an integrative role.

Fourth, adding to the political debate about Austrian democracy a perspective “from below” a survey was undertaken in 1997 that studied the understanding of democracy among the Austrian population. It found that the notion of democracy raises complex associations that mix elements of different theoretical models. Nevertheless, a cautious reading of the results allows us to identify several groups of respondents who lean to one or another understanding of democracy: 23% tend to identify with the model of “social democracy” that is characterized by the orientation on social justice, equality, and local political participation in parties and the work place; 19% tend to identify with a “pluralistic-representative” understanding of democracy that is characterized by the primacy of parliamentary elections, the representative role of parties and the free mandate of the members of parliament; 16% tend to identify with a “consociational” understanding of democracy that is characterized by a positive attitude to the given role of the parties, a positive evaluation of the institution of “social partnership”, and an appreciation of consensual decision-making in politics in general; 15% tend to identify with the mainly right-wing interpretation of democracy as the identity between rulers and ruled, which is characterized by a preference for a “strong leader”, the wish of stronger control of representatives, more use of referendums and other forms of direct democracy instead of decisions by parliament; 13% tend to identify with a conception of “participatory democracy” that is characterized by the wish to make more use of direct democratic means and other forms of direct political activity by citizens but not to
the detriment of parliament, and by rejecting the idea of a “strong leader”; and 8% tend to identify with an understanding of democracy that focuses on “competitive elitism” that is characterized by the importance of mechanisms of control of political representatives, regular changes of power holders, a more important role for government and an exclusive focus on traditional forms of political participation like general elections (Delpos and Haller 2001, 109-10; Ogris 2001).

Fifth, democratic reforms have been implemented since the 1960s as a response to demands for more political participation, a more open system of government, and increasing dissatisfaction with the dominant role of the so called “party state” (“Parteienstaat”). These demands were articulated mainly by new social movements and found support among an ever better educated and self-conscious citizenry. Democratic reforms consisted of the introduction and expansion of rather weak direct democratic instruments at national and at regional level, electoral reforms that made it easier for small parties to win seats in parliament and that only slightly enhanced the influence of voters on who represents him or her in parliament, parliamentary reforms that gave the opposition slightly more rights of control; the introduction of an ombudsman who helps to solve conflicts between citizens and the bureaucracy; and the expansion of rights of citizens to stand as a party in proceedings concerning major public works with environmental implications, to name just the most important ones. Nevertheless, the reforms introduced were very moderate and did not change the overall character of Austrian democracy. On the other hand, reforms that have been implemented since the 1970s and which aimed at the “democratization” of public institutions and enterprises have been reversed like the obligatory participation of students and scientific personnel in the decision-making structures of universities or the influence of works committees in the newly privatized industries. This exemplifies that democratization is not a one way street but an achievement that may fall victim to changes in ideological orientation and political constellations at the national level and beyond.

4. Conclusion

This study is based on the presupposition that European projects of democratization depend on three factors: first, the relative fit of national and European institutional structures and practices that frame the respective democratic imagination, second, the implicit and explicit understandings of democracy that can be derived from democratic practice and national debates about democratic reform; and third, the calculation of costs and benefits in terms of political power on behalf of the national actors that are involved in the reform process at European level. Based on these perspectives we will try to sketch the scope for democratic reform at European level from an Austrian perspective.

4.1. Austrian and European frames of democracy: constitutionalism, federalism and identity

a) As we have seen in the beginning Austrian politics has long been characterized by a rather instrumental use of constitutional law for the purpose of common party interests. In the second republic the constitution has been modified in particular points more than 80 times. The difference between ordinary and constitutional law had nearly been eliminated and until recently the two big parties could be regarded as the “masters of the constitution” – to use a quotation that normally is used to characterize the status of the Member states in relation to the European treaties. As a consequence the normative quality of the constitution was undermined and the Austrian constitution had almost completely lost its function to regulate and limit the political process. In defence of the constitution the constitutional court and Austrian jurisprudence developed the
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doctrine that a core of “constitutional principles” exist that are out of reach of the constitutional legislator. When these principles are altered in a way that is classified as a “comprehensive change” (“Gesamtänderung”) of the constitution a referendum has to be held. Besides this limitation Austrian jurisprudence has accepted the superiority of European law without reservation.

Two conclusions can be derived from these observations for the development of the European constitution: first, it is very likely that in the view of Austrian governmental actors it makes little difference whether the future framework for European cooperation is couched in treaty or constitutional terms as long as it fulfils its political purpose and as long as the Member states remain its “masters”, and secondly, that the Austrian constitution does not limit the development of the European constitution in any substantive sense. The only limit is given by the fact that fundamental changes of the Austrian constitution that might accrue from European developments have to be legitimated by a referendum. Another lesson can also be drawn from the Austrian experience: that one does not need a lean and short constitution in order to integrate a segmented society. On the contrary: the constitution became long, complex, and confusing by the attempt to fix politically negotiated compromises between rival interests. Yet, there may come a point in time, when the societal cleavages have been overcome and the complex constitutional settlements have fulfilled their purpose, that even a several decade long provisional arrangement may be replaced by something definite, perhaps.

b) Austria, along with several other countries in the EU, is a federation. It has one of the most stringent systems in place – taking the German design as a model and guaranteed by the constitution - that shall ensure that the “Länder” can make their voice heard on topics of European and national regulation that impinges on their interests and competences particularly in the areas of structural and regional policy and fiscal discipline. In general, Europeanization has intensified cooperation between the sub-national and the national level. This cooperation is characterized by a high degree of informality and the dominance of the executive. The cooperation runs rather smoothly not least because normally the interests of the provinces do not conflict with the national interest when European matters are concerned, and because the provinces often lack time, personnel and resources to keep up with the day to day business of European decision making. Nevertheless, the Austrian national government is not without ambivalence concerning the promotion of the interests of the provinces. When it was given the mandate to represent the interests of the provinces in the IGC that led to the Amsterdam treaty they did so but without pushing the issue very hard, trusting that the proposals would not find great support anyway.

The Austrian experience of federalism seems to imply the following: first, that one does not need to fear the “f-word” in the European context because integration so far has worked rather to increase than to decrease the political relevance of the national level in Austria: internally, the provinces depend to a large extent on the national government if they want to act effectively at the European level, and the Europeanization of competences also seems to lead to the centralization of the respective competences at the national level in order to facilitate implementation. Externally, the government shares the conviction with most of the Member states – irrespective of whether they are integrationists or not - that the EU shall not develop into a centralized “superstate” but should respect and guarantee the existence of the Member states and their pivotal role in decision-making. Secondly, Austrian federalism and European integration both have worked to increase the power of the executive at the expense of parliaments. Austrian federalism is an outstanding example of executive dominance in a parliamentary context and could serve as a warning for those who tend to identify federalization and democratization without qualifications. It is not federalism per se that brings the Union closer to the citizens but it depends on the quality of
democracy that is implemented at all levels and on the design of the linkages between the different levels of government.

c) It has often been argued that a European democracy can not develop unless there is a strong feeling of national identity. The Austrian case may help to qualify this presupposition in three respects: First, Austria is a very late nation. Austria became a democracy before the feeling of national identity took hold. Citizens did learn to identify with the Austrian nation only after being forced to stay independent after two World Wars, common authoritarian experiences, and years of foreign occupation. While the lack of national identity in the first republic may have contributed to the breakdown of democracy, it was not the prime reason, and it became a stabilizing factor in the beginning of the second. The conditions for the successful development of Austrian identity were the firm political will of the Austrian elite to accept the status quo and to work together in the future; the establishment of a consociational type of democracy that helped to integrate the rival socio-cultural and socio-economic segments of society; and the challenge of economic recovery that helped to formulate a common, national project. Until today, Austrian identity is still more determined by a common fate, then by common memories of the past.

Secondly, the Austrian example illustrates that even supposedly “thick” ties of a common language and religion may not suffice for national identification to evolve. Three quarters of Austrians believe that a nation is constituted by the identification with the state in which one lives. Those who believe that a nation is characterized by a community of language tend also to reject the idea that Austria is a nation (Frölich-Steffen 2003, 108-9). The Austrian example shows that it is most important whether and how socio-cultural patterns are articulated politically and how they interact with a given constellation of political opportunities and interests. In the first republic socio-economic and ideological cleavages on the one hand, and an alternative offer for national identification, namely the German republic, on the other hand, prevented the development of an Austrian national consciousness in the first place. Even in the second republic the lack of common political symbols and a common understanding of the past hindered the development of an open and integrated public space for some time. Instead, this void has been filled with new objects of identification like sport champions, the landscape or economic and social achievements. These elements have become associated with the Austrian state which functions as a frame of reference rather than a particular constitutional or historical entity.

Thirdly, Austrians have learned to live with a multilayered identity. After World War I identification with the region was so dominant that some “Länder” even wanted to secede from Austria. Even by the end of the 1980s more people in the western and southern provinces (Vorarlberg, Tyrol, Carinthia, and Styria) had a feeling of belonging to their province rather than to the national level (Bruckmüller 1996, 67-8). Nevertheless, Austrians tend to think of themselves as inhabitants of a city or village, of one of the provinces, and of the Austrian nation at the same time, albeit with different intensities and for different reasons. Adding a fourth, European layer of identification seems to fit a given pattern. One should not expect that one layer of identification replaces the other and that successful integration depends on such displacement.25

The Austrian experience of nation-building may offer some hope for the European Union. It seems possible to start building democracy and identity at the same time if one is determined to do so, if one is able to define a convincing project why it makes sense to do so, and if the type of democracy implemented secures that the interests of all are respected.
4.2. The Austrian understanding of democracy from a European perspective: fit or misfit?

Austrian democracy is far-off any ideal-type of democracy. It mixes elements of representative and direct democracy, of parliamentary and presidential models of democracy, and elements of consensus and competition. Nevertheless, there is a clear ranking of these elements: the representative, parliamentary, and consensual elements dominate their respective counterparts, although adversarial politics is on the rise since the coalition government of ÖVP and FPÖ took power in 2000. The two outstanding features of Austrian democracy, the dominance of two big parties and the related system of “Proporz” together with the privileged position of the social partners, have given way to more standard forms of western style party politics (Bischof and Pelinka 2003). If we take Austrian democratic practice and thought as a model projecting it onto the European level several conclusions spring to mind:

a) Austria’s democratic imagination is centred on parliamentary forms of democracy. Democratization of the EU, from such a perspective, should focus on a reform of the relationship between the European parliament and the Commission making the latter more directly dependent on the former. Such a conception is clearly at odds with the working of the European system that is based on two parallel, but separated channels of legitimation by the citizens and by the states. The European commission functions as a more or less neutral mediator between the two – and very deliberately so. Recent institutional reforms that bind the Commission closer to the EP can be interpreted as moving into the direction of parliamentary democracy at the EU level. The functioning of a parliamentary democracy is conditioned not only by institutional arrangements but by particular orientations of political actors that would allow the voters to make meaningful choices between European parties, programmes, and personalities. Yet, these conditions are hardly met at the European level (Hix 2003, 152-4).

b) It is even harder to imagine that the role played by the political parties in Austria could be transferred to the European level. For decades, the Austrian parties and the related interest associations had almost monopolized the political arena. Although their pervasive presence diminished over the years it is very difficult for an autonomous civil society to develop in Austria for several reasons: public finance is available for parties, but not for autonomous general interest groups who depend primarily on membership fees and donations. Furthermore, there is relatively little room for NGOs to be heard in public because of a highly centralized and oligopolistic media system that entertains close relationships with the political establishment. As a consequence, the democratic institutions, particularly parliament, had completely lost its autonomy and became an instrument of the governing parties. At the European level, the situation is rather different: There is no European party system, but only a weak system of horizontally linked parties that are, not only financially, dependent on their national counterparts, although some public finance for European parties will be available in the future. There exists neither a European media system that could provide the infrastructure for a genuine public space. This opens the opportunity for the formal representative institutions like the European parliament partly to fill the void. It has continually increased its power and influence in European decision-making, but it hardly was able to establish itself as the much needed transmission belt between the European citizens and the European Union.

c) If one looks beyond the policy fields which were dominated by “social partnership” one finds a dense network of interests groups and governmental agencies and departments which cooperate in the phase of policy formulation. This network is differentiated according to the number of actors and the modes of interaction (Tálos and Kittel 2001, 74-7, 227-39). The importance of this arena together with the relatively high rate of unanimously adopted laws in the parliamentary arena indicates a rather
inclusive style of policy-making that takes the interests of those affected by a certain measure into account. Laws often result from negotiated compromises between governmental departments and affected interests in the pre-parliamentary phase of decision-making and between the parties in the parliamentary arena. The consensual character of Austrian politics is rooted in these inclusive strategies as much as it is the result of “grand bargains” between the two largest parties, of constitutional arrangements at provincial level that oblige all parties represented in parliament to cooperate in government, and the practice of “constitutional partnership” (“Verfassungspartnerschaft”). Austria is an example of a “negotiating democracy” (“Verhandlungsdemokratie”) (Czada 2003). The same is true for the European Union albeit the institutional configuration and political context of European negotiation systems and of “network governance” differ (Kohler-Koch 1999, ; Tömmel 2003, 272-7).

d) One striking parallel between the functioning of Austrian democracy and the EU is that both were rather successful in providing output legitimacy. The poor democratic quality of the organization of Austrian parties and interest organizations had always been justified by their effectiveness in providing wealth and social security. Citizens were ready to trade the closed and non-transparent system of pre-parliamentary negotiations and decision-making for welfare and social peace, but they are less and less inclined to do so. In a similar manner, European integration was until the 1980s based on a “permissive consensus”, which presupposed that everybody would benefit from economic integration. Even after the breakdown of the “permissive consensus” the Member states are primarily concerned with enhancing output legitimacy. The slogan of “bringing the citizens closer to the EU”, which guided the reform process that led to the Amsterdam treaty, was clearly inspired by the search for output legitimacy (Melchior 1999).

while at the national level output legitimacy is based on and informed by input legitimacy the latter is underdeveloped at the European level.

e) The Austrian constitutions (at national and provincial level) provide a number of instruments of direct democracy. Direct democratic practice in Austria suggests that the stronger the instrument the less often it is used and the tighter is the control over its application by the majority within the representative institutions. The instrument that has been used most often is the legislative initiative that does not lead to a decision by the citizens but, at best, permits to influence the political agenda. It has been argued that such an instrument may also be appropriate at the European level together with the stronger instrument of the optional referendum that allows protecting minority interests in a segmented and multi-dimensional polity (Abromeit 2002, 184-7, 203). Since Austria is a small country that fears to find itself ever more often in a minority position in the future such a broadening of direct democratic means at the European level may seem acceptable.

4.3. Austria’s integration policy and European democracy – the experience so far

The objective of becoming a member of the European Union was one of the unifying elements of the grand coalition (1987-1999) of the Social Democratic Party (SPÖ) and the conservative party (ÖVP) in the 1990s. Austria adopted an integrationalist strategy after the broad approval (nearly 66 per cent voted in favor) of membership in the 1994 referendum. As part of a reorientation of foreign policy Austria decided to be in the forefront of deepening European integration with the exception of the common foreign and security policy. In this field of policy the coalition was split with the conservative party being willing to abandon neutrality and to join NATO whereas the Social Democrats were not (Melchior 2002). With the formation of the coalition of ÖVP and FPÖ in 2000 a party entered the governmental arena that never believed in Austria’s
neutrality but belongs to the camp of the Eurosceptics. The People’s Party was eager to secure that the government keeps its integrationist course by writing it down in the governmental agreement and by keeping the most important posts and ministries that deal with fundamental questions of European integration within its influence. One may doubt how tenable this strategy is, in particular, if one considers the cooling down of European enthusiasm within the People’s Party and the widening gap between an integrationist elite and a rather sceptic population (Pelinka 2003, 34-5).

However, if we look at the basic positions of the government on European institutional reform we find a relatively stable pattern since Austria participates in intergovernmental conferences – that is since 1996. It is characterized by a positive attitude concerning the communitarization of the second and third pillars, more qualified majority voting in the Council, an enhanced role for the European Parliament, the extension of the co-decision procedure, the strengthening of the Commission and of the European Court of Justice. Likewise, Austria insisted from the very beginning on particular exceptions to the qualified majority rule on sensitive issues and on those institutional arrangements that guarantee the influence of small countries like the right of each Member state to nominate one commissioner and balanced voting rights in the council that favour small countries.28 Most of these positions were not primarily justified by the need to democratize the European Union but to improve its efficiency and effectiveness. A direct connection between institutional reform and democracy is drawn in regard of the role of the EP and the principle that the EP should have the right of co-decision whenever the Council decides by qualified majority. In addition to that only during the IGC 1996 the government actively pushed for reforms that aimed at improving the democratic quality of the EU system. As a move to upgrade Union citizenship it made the proposal to allow 10% of the population of at least three member states to formulate a petition that must lead to a legal act. Furthermore, the Austrian government – on the initiative of the legal advisors within the Federal Chancellery and the Ministry for Foreign Affairs - emphasized the need to enhance the protection of citizen’s rights by including in the treaty a comprehensive non-discrimination clause and by opening the possibility for the EU to join the European Convention on Human Rights (Melchior 1998, 371-5). In a similar vein Austria welcomed the development of the Charter on Fundamental Rights of the European Union and its inclusion in the constitutional treaty.

If we fit the pieces together a divided picture emerges. On the one hand, Austria’s integration policy favored all moves that enhanced the role of the EP, the democratic content of citizenship of the Union, and the representative quality of decisions. The institutional development of the EU could easily be interpreted as proceeding in accordance with basic principles of liberal representative democracy: securing individual fundamental rights and freedoms, the rule of law, and a certain degree of participation through representative institutions. On the other hand, the Austrian government is keen to defend the Member states’ rights, the power of the representatives of government and in particular the privileged position of the small countries within the European institutions. The powers of the representatives of government mark the limits for the empowerment of any directly elected representative institution. This example illustrates that, until now, a possible loss of influence in the intergovernmental arena of European politics restricts the Austrian choice of reform options to a much larger degree than possible frictions because of competing understandings of democracy.
Bibliography


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Endnotes

1 This is the title of an often cited book about the development of the Austrian state in the first half of the 20th century (Andics 1968).
2 The “Schutzbund” was the paramilitary organization of the left and the “Heimwehr” the one of the right.
3 The “Justizpalast” was the seat of the highest court and of the ministry of justice.
4 It is the French prime minister Georges Clemenceau to whom the following phrase is attributed: “L’Autriche, c’est ce qui reste” (Breuss, Liebhart et al. 1995, 249).
5 Its full name was „Sozialdemokratische Arbeiterpartei“ („Social-democratic Worker’s Party“).
6 Already the first amendment of the constitution in 1925 broadened the competences of the national level together with a streamlining of the administrative structures; see (Öhlinger 2003, 41).
7 A recent collection of Austrian constitutional law consists of nearly 900 pages; (w.A. 2003).
8 Among them are the prohibition of any Nazi propaganda, the obligation to defend nationally and internationally its democratic order, the principle of perpetual neutrality, the doctrine of “comprehensive national defence” (“umfassende Landesverteidigung”), the plurality of political parties, the principle of non-discrimination of handicapped people, the principle of equal treatment of men and women and of comprehensive environmental protection, the commitment to renounce the use of atomic power and to protect linguistic and cultural diversity.
In fact, the Austrian Constitutional Court declared this provision unconstitutional in its ruling of 17th December 1992, G 120/92-9 ua.

A typical example is Austria’s policy on the organization of schooling. Unable to compromise on how elementary education should be organized the matter was left out from the constitutional bargain in 1920. Only in 1962 under the grand coalition government of ÖVP and SPÖ a compromise was reached and given constitutional status. The status quo survived even 13 years of Socialist government between 1970 and 1983.

It has become frequent practice that the political opposition that commands more than one third of the mandates in parliament asks the constitutional court to examine the constitutionality of laws with which they disagree. In recent years these litigations have been quite successful and some of the intended reforms proposed by government had been (partly) rejected.

Since some of these principles overlap a reduced list enumerates at least the democratic, the federal and the principle of the rule of law.

Reports, protocols, and documents of the Austrian convention are available online at www.konvent.gv.at

The victory of Jörg Haider (42, 1%) contrasts to severe losses of the FPÖ in all elections since taking part in federal government in 2000. It also contrasts to the provincial elections in Salzburg, held at the same day, where the FPÖ lost more than 50% of its vote and was reduced to 8,7% (newspaper Die Presse, 8.03.2004).

Nevertheless, the federal government has to agree to the conclusion of state treaties of the provinces.

Bruno Kreisky, the socialist chancellor during the 1970s, coined the quotation: “Where there is a national bank and a national team there also exists a nation”, cit. in: (Breuss, Liebhart et al. 1995, 152)

This term in itself is contested and mainly used by the left in Austria while the right prefers to talk about the “Ständestaat” (“the state of the estates”) or the Christian state.

In 2000 for instance, president Kleton rejected two ministers from the FPÖ who were then replaced by other nominees from the same party. On the other hand, he could not prevent that the People’s Party formed a coalition with the Freedom Party against the preferences of the president.

A reform in 1999 added the requirement that approximately 8000 signatures have to be collected in order to initiate a “Volksbegehren”.

The following presentation is based on an in-depth study of the debate about the reform of Austrian democracy and the constitution covering the period of 1918 to 1997 (Schaller 1997).

A political crises occurred in 1963 after the highest administrative court who controls the legality of administrative acts had declared invalid a decree of the government that did not allow Otto Habsburg to enter Austrian territory although he had declared his abdication (Mommsen 1976).

Mr. Waldheim, candidate for president, was accused of hiding details about his role in the military under Nazi occupation. Although no evidence could be presented that he had been involved in war crimes a major controversy about Austria’s role during the Second World War and its relationship to the past started, that led to a change in the official position acknowledging a certain degree of responsibility for what happened during that time.

In contrast to the consensus model broad coalition governments were in place roughly half of the time since 1945; the executive outweighs parliament to a large extent; the party system is still one of only modest pluralism; there is only a weak bicameral system in place; and the constitution is highly flexible; compared to the characteristic features of the model of consensus democracy (Lijphart 1999, 31-47).

A typical example for the importance of the principle of informality and disrespect for the constitution is that the body that is authorized by the constitution to represent regional interests and to formulate binding mandates for national representatives at EU level – the “integration conference of the regions” (“Integrationskonferenz der Länder”) in which governors and presidents of regional parliaments would have made the decisions together – is not operational. It is passed over by the “conference of governors” (“Landeshausmännerkonferen”) that has taken over its function (Fallend 2002, 211-4).

Classic neo-functionalism seems to think of collective identity as a zero-sum game and as a hierarchical order by implying that successful integration would lead to a shift in loyalty from the national to the supranational level.

It is not by chance that the most visible and active NGO that has the capacity also to play an oppositional role in certain areas like social and migration policy is “Caritas”, an autonomous organization of the Austrian catholic church.
The strategy that was chosen to reach the aim of developing a “citizen friendly” Europe focused on more efficient policies and the provision of certain public goods and services that were perceived as most important to the European citizens.

The scope of issues, which should be excepted from majority decisions has increased since 2001. For an analysis of the Austrian position during the IGC that prepared the Amsterdam Treaty see (Melchior 1998). The official position for the negotiations leading to the Nice Treaty is documented in CONFER 4712/00 from 15th February 2000, and the position of the Austrian government in the IGC 2003 is summarized in (Puntscher Riekmann 2003).