

GLOBAL-EMILE NOEL FELLOWS FORUM

DEMOCRACY, LEGITIMACY AND EFFICIENCY: DOES THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE GET IT RIGHT?

Sanem Baykal, PhD, Ankara University Law School

Hauser Research Scholar and Emile Noel Fellow

ABSTRACT

European integration, which is so far a success story both in its achievements and its uniqueness as a political entity, stands at a historical turning point. The overarching importance of the enlargement process urged the Union to contemplate its future in a comprehensive manner. The prospects of enlargement and further integration provide challenges as well as opportunities for the European Union. How those challenges are met, and opportunities are taken advantage of, will determine the future prospects of the European integration.

Hence, various aspects of these future prospects have recently been under discussion in the framework of a Convention on the Future of Europe and the Intergovernmental Conference process. This dual process aimed at providing coherent and efficient solutions or answers for the numerous questions surrounding the European Union in the first decade of the 21st century; questions and answers that are entwined and interlinked. Neither the questions as regards the limits and the identity, nor the aims and objectives of the European Union can convincingly be answered without taking into consideration the current structure of the Union together with its strengths and weaknesses or the alternatives relating to its final destination and vice versa. What is the European Union, and what is it evolving into? More importantly, what ought to be the direction of that process?

One of the pivotal issues the EU is trying to solve right now is the link between the identity, legitimacy and political order in Europe. The enlargement will increase the divergences in the European Union and will deteriorate the problems of democratic deficit and belonging, as the increased diversity and varying arrangements of governance, i.e. the differentiated integration model, will intensify the problems of legitimacy and lack of a European public sphere or a *demos*/collective political identity.

The relative lack of support from the peoples of Europe emanates from the foundations of the integration process. The European integration has been designed as a technocratic and elitist project- on the basis of the Community method and incrementalism- where the support and participation of the masses were deemed to be ancillary. It was presumed that such support would automatically follow once the benefits and achievements of the European integration started to affect the everyday lives of the European peoples. The days of 'permissive consensus' and 'indirect legitimacy' for the European Union, however, are certainly over, especially in the aftermath of the Maastricht. For European citizens to support the further expansion of such a mechanism in territory, size and subject matter is not very likely as they have difficulty in seeing its merits or in identifying with its grand design. Moreover, the Union is tainted also with a political deficit mainly due to the lack of concrete political alternatives either in the context of the day-to-day decision making or of long-term policy definition.

As is pointed out in the Commission's White Paper on Governance, the problem of disillusionment with democracy is not only a malaise at the European level; on the contrary "it affects politics and political institutions around the globe." Yet, the Commission states that "...for the Union, it reflects particular tensions and uncertainty about what the Union is and what it aspires to become, about its geographical boundaries, its political objectives and the way these powers are shared with the Member States."

After a brief introduction to the legitimacy theories of the European Union and demonstrating the roots of the democratic and/or legitimacy deficit problem, this paper will seek to answer a crucial question in this respect: "How to strike the right balance between democracy, legitimacy and efficiency in the European Union?"

This paper argues that the Union has to strike a balance between democracy and efficiency while reshaping its institutional structure, as it can only secure the allegiances of European peoples if it is deemed to be useful and successful by its citizens, while accomplishments would only be regarded as satisfactory when the process is legitimate and democratic. There can never be a meaningful discussion of means in a polity, without taking into account the ends, and vice versa. In that context, both the process and the outcome should serve to realise the shared aims and objectives of the integration process; those shared objectives which would form the normative underpinnings of the unique, multi-level multi-dimensional European collective political identity. It is argued here that at the beginning of the 21st century, the quest for such normative values must focus in the aims and objectives and in the common future of the European peoples.

Thus, this paper aims at demonstrating the fact that the priority of the European policy makers and decision takers, during the Convention and IGC processes, was twofold: first, to find the right and delicate balance between efficiency and legitimacy/democracy in a *sui-generis*, non-state polity like the European Union and second, to employ the current constitutionalisation process as an instrument for forging a collective political identity. Yet, it is argued that collective efforts for shared goals and interests may also be instrumental in forging collective identities, if broad consensus can be reached on what those aims and objectives should be, and especially if the institutional set up and the procedural structure are sufficiently efficient and democratic to realise those common objectives. Europe needs to redefine its *raison d'être*. Whether the Member States and their peoples can agree upon such common aims and objectives or on the overall redefinition of the *raison d'être* of the European integration at this moment in time, however, are questions worth putting forward.

In this wide context, the main axis of this paper is based on the assumption that the Treaty Establishing a Constitution for Europe falls short of proposing the necessary reforms to remedy the democratic deficit in the institutional structure, yet it is also contended that such an outcome was inevitable in the light of the nature and intrinsic attributes of the European integration process. Moreover, it will be argued that, as far as the drafting of the Constitutional Treaty was concerned, the process might have been deemed to be more significant than its final outcome.

With a view to illustrate this point, within confines of this paper, first the legitimacy theories of the European Union will be analysed and the roots of the legitimacy crisis will be elaborated together with their repercussions for today.

Secondly, an attempt will be made to provide an overview of different aspects or displays of democracy and legitimacy deficits together with their possible remedies.

Thirdly, a brief analysis of the Treaty Establishing a Constitution for Europe regarding the democracy and legitimacy aspects will be attempted with a focus on the institutional structure and in order to assess whether it is apt to deliver what it promises. In this context, it will be demonstrated that the measures which would bring the Union closer to its citizens without destroying the essence and merits of the existing institutional structure were given priority while designing the future of the European Union. As argued here, such measures might not be regarded as sufficient or satisfactory, yet they might be the only feasible and acceptable alternative to transforming the Union into a federal state-like polity at this moment in time. This prospective study will illustrate through various reasons that the Draft Constitutional Treaty adopts the option of maintaining the essence of the status quo, as neither

the time was ripe for the Union to embrace the political alternative, nor the intrinsic attributes of the EU system might be appropriate for politicisation. Political deficit of the Union needs to be bridged by innovative approaches and solutions which are compatible with the unique qualities of the supranational integration model which comprises incrementalism and the Community method.

Fourthly, the community/identity generative function of the current constitutionalisation process will be explored together with preconditions and alternative means of creating a European public sphere and a European collective political identity. In that context, it will be argued that the positive input of the current constitutional process might be limited due to the danger of creating yet another expectations/capabilities gap, since the rhetoric of constitution, compared to its substance, seems to have won the day. Hence, it will be analysed whether Europe is having a constitutional moment to achieve its objective of forging a collective political identity, or if incrementalism and the delicate balance of intergovernmentalism vs. federalism still rules.

Lastly, it will be argued that the European integration is in need of well defined and attainable aims and objectives to mobilize the European peoples around and for the idea of Europe, and thus for the creation of a *sui-generis* collective political identity.