

The roles of the commission law constitutional administrative essay

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So why is the commission considered as " democratically disconnected?"

One of the reasons highlighted in Mihail Milhev's article[2]" is the shift of control from democratic parliamentary systems of government at a national level to the executive centred government at the European level[3]. The commission is considered a component of the executive.[4]Mihail highlights that it is not accountable to national parliaments and take some of their decisions, often not looking at the interests of the European citizens.[5]Also highlighted in Brigitte Boyce's; article the commission is unelected and unaccountable,[6]Boyce characterises the commission as " highly deficient of democratic ingredients"[7]The reason for this is because there is no popular participation which leads to democratic unaccountability.

Furthermore there is a lack of democratic representation because commissioners are appointed rather than elected and as Boyce points out officials tend to come from academic or political elites.[8]Andreas Follesdal[9]states that there is not much opportunity for public scrutiny and that " vagueness may give rise to not unreasonable suspicions of abuse of power"[10]The European parliament is considered an important institution of the European Union and aided in improving the democratic deficit which is said to prevail within the Union. The parliament's power ranges from legislative to supervisory powers. The European Parliament has an important role in " tempering the democratic disconnect" of the commission. Juan Mayoral characterises the parliament as being the most democratic institution.[11]Mayoral highlights that over time treaties have developed in order to give the parliament more power over the commission as a way " to democratise the EU, transforming it from a mere consultative chamber into

an important co-decision institution for most EU legislation and for the adoption of the EU budget." [12] Mayoral's article presents the ways in which the parliament's powers have grown in order to accommodate for the democratic disconnect. The European Parliament has the power to elect the President of the commission, High Representative of the Union for Foreign Affairs and Security Policy as well as the other members of the Commission under article 17 of the TEU. [13] The Parliament elects the president of commission proposed to by the European council. If the candidate does not attain the required majority in the elections the European council must propose a new candidate to the parliament. Ben Crum also commented on the power of the parliament over the commission in making it more democratic. He states that " Over time the European Parliament has consistently expanded its powers. The foundation of the accountability of the European Commission lies in its responsibility". [14] Crum identified the treaties which have increased the commission's accountability to the parliament thereby formulating system of checks and balance. Under Article 297 of ECT the parliament can interrogate the commission and under Article 193 of the treaty it can create a Committee of Inquiry to investigate alleged faulty behaviour of the Commission or other matters it deems of particular concern. [15] Furthermore the European Parliament has budgetary authority over the commission as it has to approve the drafted budget of the Commission under Article 276 under the ECT. [16] The legislative powers of the parliament has expanded from consultation or merely assent as now under the co-decision procedure and now can amend legislative proposals in coordination with the council of ministers. [17] Andrew Moravcsik has

contributed an efficient argument on how the European parliament has improved democracy[18]. He proposes that direct democratic accountability via the European parliament has improved the democratic deficit[19]The European parliament is directly elected by proportional representation within nation states. Therefore its can said the European parliament is representing the people as it controls the commission. Comitology is based on the EC treaty article 202 which states that the council may impose certain requirements on the commission when delegating implementing powers. [20]The Council has used this provision to require the Commission to consult committees composed of Member States' representatives when adopting secondary rules in a number of policy areas.[21]Comitology is defined as " the existence and activity of special committees supervising the exercise of implementing powers conferred on the Commission." [22]Both the parliament and the council have roles in comitology. The parliament has a role in comitology through the creation of the regulatory role with scrutiny. According to Alan Hardacre and Mario Damen the powers reflected the powers given to the parliament in the co-decision legislative stage increasing the" democratic control over the commission." [23]Piotr Tosiek in his article identifies attributes of democracy within comitology. Tosiek states in his article that committees are channels of participation, it is noted that representatives of interests groups take part informally in committee meetings.[24]Accountability of comitology decision makers is described as " not any lower than the respective accountability in national systems." [25]The committee members are made accountable to their own governments and decisions are made publically[26]Comitology committees

are also controlled by the governments of member states and the European parliament.[27] Comitology is a form of checks and balances as it ensures that the commission is not abusing powers and as noted by Toseik "Comitology can be understood as a generally democratic phenomenon. Its decision-making process features the participation of representatives of member states (input legitimacy) who are experts in a given issue, while decisions are based on impartial information (output legitimacy). However, the most important factor is the maximization of efficiency: in promoting such, the main task is to seek solutions that are autonomous with respect to politics, since committees are composed of representatives of administration." [28] Comitology was identified as a means by which member states could scrutinize the commission in order to check that the powers delegated to it by the council of ministers are carried out efficiently by Gijs Jan Brandsma. Also identified in Gijs article is the fact that comitology committees are involved in 40-50% of all regulations directives and decisions adopted by the commission [29]. Alongside this Brandsma emphasized " The origin of comitology shows that the system is meant to be a control device for member states over the Commission. By inserting comitology clauses in new legislative acts, the Council subjects the Commission to scrutiny by committees of member state representatives that can vote on draft implementation measures" thus showing how that democratic disconnect is tempered through the member state participation in comitology. [30].

Court of Justice of the European Union (CJEU)

The CJEU has played a major role in upholding the democracy within the EU.

The CJEU has done this was by defending the parliaments right to be

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consulted before legislation is adopted and as highlighted above this is a way in which the commission is made more democratic. This was shown in the case of *Roquette FrPres v Council*.^[31] The council made a quota fixing the production of isoglucose. Roquette, a French company challenged this regulation and took the council to court. One of their arguments was that the council had failed to consult the parliament before the regulation was adopted. The court annulled the regulation and in the courts judgement it stated how important it was for parliament to be consulted in order to uphold democratic principles. The CJEU protected the parliament's important role within the legislative procedure which as identified above is an important way of tempering the democratic disconnect. The Judge in his speech highlighted the importance of the parliament's role." Treaty is the means which allows the Parliament to play a . . . part in the legislative process of the Community. Such power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly. Due consultation of the Parliament therefore constitutes an essential [procedural requirement] disregard of which means that the measure concerned is void" The fact that the court based its decision on the need to uphold " fundamental democratic principle" shows that the court plays in tempering the democratic deficit with the commission. The CJEU has also helped to temper the democratic disconnect with the commission with its version of judicial review called " Annulment of a community act". This power given to the CJEU is provided for in Article 263(1) of the Treaty on the

functioning of the European Union (TFEU). This states that the court of justice shall review the legality of acts adopted jointly by the European parliament and the council's, of acts of the council and of the commission..." Article 243(4) of the TFEU allows private individuals to initiate proceedings against a regulatory act. Article 265 also allows the CJEU to act when anyone of the institutions fail to act. This has helped to improve the democratic disconnect because individuals and member states can hold the commission accountable and scrutinize the institutions decisions. This form of accountability, which reinforces the doctrine of checks and balances within the EU, is a component of an effective democratic system.

Council of ministers

The council is viewed as " the second source of democratic legitimacy alongside the parliament." by Mihail.[32]The Council of ministers consists of an indirectly elected national representative of each member state at ministerial level who are authorized to commit to that government of the state.[33]The role of the councils of ministers is shown in Article 16(1) of the TEU which states " The council shall jointly with the European parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the treaties" A basic way in which the council tempers the democratic disconnect with the commission is by the fact that the council represents national interests.[34]The representatives within the council of ministers are under control of the national executives[35], they can be held accountable and they can be re-instructed or recalled at will. The TEU states that the Council has to meet in public when it deliberates and votes on a draft legislative act (art. 16. 8 TEU)

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therefore improving transparency in its legislative process and ensuring any legislative proposal of the commission corresponds with interests of the people. These features of the council together with the fact that the council "imposes the most important constraint on EU legislation"[36] as identified by Moravcsik, helps to temper the disconnect with the commission by ensuring all legislature initiated are considered by national representatives, The powers of the council over the commission has helped to temper the democratic disconnect. Article 241 of the TFEU states that the council may by simple majority request the commission to undertake any studies which the council consider desirable, and submit any appropriate proposals. The council's involvement in the legislative procedure is a contribution to tempering the democratic disconnect as the council needs give a vote of approval to all legislative initiatives of the commission. Thereby introducing a more democratic legislative procedure. Despite the attempts of the institution at tempering the democratic disconnect there has still been much dissatisfaction among scholars. Veron bognar expressed some of this dissatisfaction.[37]The first thing he points out is that the turnout rate for the European Parliament elections is relatively low. In 2004 the turnout rate was just 46%. Bognar claims that the parliament cannot claim popular mandate when only half the of Europe votes for it.[38]He also notes that there is no clear link between European parliament votes and political outcomes[39]. This casts some doubts on how representative the parliament is and consequently how well the parliament tempers the democratic disconnect. Bognar also comments on of the Council of Ministers. He states that too many people see the workings of the Council of Ministers as unclear and non-

transparent.[40]He states that " its meetings and decisions sometimes seem to be shrouded in secrecy until the announcement of the final political compromise between ministers which then forms part of European law."[41]A recommendation was made by Nicoleta Laşan[42]in regards to aiding the parliament temper to the commission. He mentioned making the majority in the European parliament the head of the commission as he believes this will ensure a higher turnout to elections as this would reduce the perception that European elections only partially determine where powers lies in the EU. Mark A. Pollack recommends a system called Constitutionalization. It would increase the public accountability of the legislative and especially the executive branch of government, by specifying procedures to which executive actions must conform, and by subjecting both legislative and executive actions to review by courts for conformity to the constitutional order and the law.[43]He suggests a system used in America called Administrative Procedure Act (APA), where citizens can submit comments on proposed rules, also giving individuals standing to challenge those rules in federal court, which may strike down rules that are arbitrary, capricious, an abuse of discretion, or in excess of statutory authority. He states that the EU's current system of judicial review is too restrictive as the European Parliament can bring cases only for the purpose of protecting their prerogatives. Mark also says the benefits would be " Such provisions could provide citizens with assurances that EU legislative and administrative action was both transparent and subject to judicial review for conformity to the law, and that legal proceeding were open to individual Europeans as well as to Brussels-based institutions"[44]In conclusion it seems that the democratic

deficit with the commission has been tempered through the control of the parliament most especially through the parliaments role in the legislative procedure. The Council of Minister has tempered the disconnect through its role in comitolgy and the importance of member state representative. The ECJ's power of annulment which give member states the ability to hold the commission accountable. The democratic deficit seems to be tempered most efficiently by the parliament. As this the only institution where it's ministers are directly elected.