

European governance and new constitutionalism essay

[Business](#), [Decision Making](#)



European governance and new constitutionalism The debate on the ongoing process of constitutionalism, democratic deficit, the lapses of the structures and strengths of the EU institutions, European identity, and competences as regards citizenship shall be the focus of this paper. New constitutionalism connotes an international governance framework; it lays emphasis on distinct economic policies and diverges from political accountability to allow governments pay more attention to market forces than democratic norms or ethos.[1] The aforementioned discloses a rapid and incessant phenomenon in Europe with the creation of a market citizenry, Directive 2004/38/EC discloses the conditionalities to freedom and citizenship, rendering the less privileged members alienated.

[2]This is a challenge to the principles of democracy and the concept of liberalism, freedom of movement is restricted to economic status for the EU citizenry and even aliens, what a paradox?[3] To move further in this debate, we need to pause a moment and look into the case of the EU as a supranational organisation without a supranational means of enforcement, the institutions however override the issue of enforcement, begging the question once again if we have democracy in practice , with no army , police or central government to enforce the policies.[4] However at this point, its crucial to use the theoretical positions to explain the cause of integration and the incessant superiority of the EU. First , the Intergovernmental theory believes that through bargains from different heads of states meet to deliberate on issues related to treaties, policies and integration, however this theory does not fully answer the question of the endurance of supranationalism.[5] The neo-functional school believes in integration efforts

as the main key of welfarism and gains from trade, that quite fits the picture, but again the question of superiority of the EU is not explained, this gives us a picture of how supranational governance and policy making is questioned by the EU citizenry, leading to rejections by member states and the debate on the democratic deficit.[6] The theories all together do not explain the reasons behind the superiority of the EU, mainly they are tied to the economic explanation for the need of integration, even the economic theories mainly support this fact. EUROPEAN CONSTITUTIONALISM: TREATIES OR CONSTITUTION? The much divide and confusion between treaties and constitution is still unsettled in the EU, however it would be crucial to draw a line of demarcation between the duo. This seems to put a full stop to the argument, constitutions are the legal basis of a state, while supranational institutions have international treaties as the basis of their existence and legitimacy.

[7]Taking the EU into consideration, this submission seems to be invalid, though it does not assume the status of a state, yet there is much talk about constitution, on the other hand the international treaties on which the Union gained its existence are referred to as its constitution,[8] then why the need for constitution as evidenced by the Lisbon Treaty? A change in the use of constitutionalism is evidenced by the continual process of denationalization, this consists of the transfer of public power to non-state actors and exercise of power in non-state procedures, the term constitution remained a novelty, it's even older than the much celebrated US and French constitutions.[9]The inflationary use of the word constitution or constitutionalism has remained

prevalent in International law and international relations, the centre of this inflationary use is in Europe, we already have a constitution of the global community, global constitutionalism, constitutions without a state, a global economic constitution, constitutionalism with global private regimes, a constitution of the internet, a constitution of specialized global subsystems, a European constitution?[10] The use of constitution today, implies a higher level of legal rules, if designed to include norms, specify fundamental rights or bring into coherence some form of increasing global norms. [11] The obscurity as regards the use of the term constitution seems to be unending, but let's consider the Kantian perspective; Kant believes in a democratic constitution, he posits that a constitution is not to limit the still existing power of an old political regime or state but to establish a political regime by the will of the people.[12] The people seems to be the major focus of a constitution as it is sustained and legitimized by the people, here we have the answer to our puzzle of constitutionalism in Europe, the people of Europe are not actively involved in the making of Treaties, just like the intergovernmental theory discloses a series of bargain, it makes it null and void to refer to the treaties as a constitution.

The so called "European constitution"(Treaties) might be referred to as hard law, yet they do not fulfil the requirement of an egalitarian constitution for the citizenry of Europe, in constitutional praxis, they are played out beyond the ruling class, which makes it no constitution.[13] The criticism of the draft constitution stems from the aforementioned arguments as they are bulky and impenetrable document by the layman.[14] THE GOVERNANCE OF THE

EUROPEAN UNION-AN INSTITUTIONAL CRITIQUE The crux of this thematic inquiry is to consider European governance as it relates to its institution, it should however be disclosed that the EU was an upshot of an economic agenda rather than a political agenda.[15]The Success of the European Union however obtains in the establishment of institutions and policies to regulate the activities of the member states, as well as a broad and clearly defined set of rules, which are hierarchically superior to domestic law and directly applicable to member states. [16] The success of the integration efforts are however due to , the institutions of governance and the instruments of governance, the former been the supranational/intergovernmental institutions, Inter-institutional relations, Internal institutional organisations, Internal institutional procedures, Institutional norms, the latter been Treaties (supranational or intergovernmental), Constituent agreements, International law, Secondary EC legislation and decisions, ECJ jurisprudence, ' Soft' EC or international law, Political agreements.[17]; The examination of governance structure questions the making of decisions and policies, rules and norms as they affect policies, the institutional approach of discuss therefore brings to fore , the three pillars of the EU, the first pillar, the Founding Treaties of the European Community as amended; the second pillar, the Common Foreign and Security Policy; and the third pillar, Justice and Home Affairs cooperation. The Maastricht treaty further depicts the necessary evil, that its not longer visible to separate member states competencies in the areas of foreign policy, monetary issues, which are encapsulated by the treaty.[18]; The principal legislative institutions are the Commission, the European

Parliament, the Council of Ministers (including COREPER), the Economic and Social Committee (Ecosoc) , informal meetings of these bodies are mainly critiques of analysts .

[19]; The ECJ, though a successful arm of the EU, the Van Gend Loos case provided another stage in the superiority of the EU is levelled with teleological reasoning, failing to interpret the laws according to the spirit of the treaties, one crucial point from the rulings of the ECJ is the application of the principles of direct effect and supremacy.[20]Democratic deficit as a term is linked to the British political scientist , David Marquand, it depicts the absolute executive , legislative, judicial powers of the EU institutions, it focuses on lack of democratic representativeness , participatory democracy, inclusion of the people in basic policies are the focal point of this argument. [21] From the economic point of view, a deficit is experienced in taxation, setting of fiscal priorities , social welfare provision, other regulatory policies where national governments are not regulated to mention but a few.[22]; A school of thought favours the democratic deficit as it obtains in the EU, but Moravcsik argues that the lack of citizens participation in policy making is subject to the issue of competencies, like health care provision, education, law and order, pension and social security policy and taxation. Moravcsik believes that checks and balances are in place as evidenced by the member states coordination and participation in affairs. [23]The concept of representation is also crucial in this respect; citizens must get what they want sometimes as they would be ready to support a system that provides public goods.

The measurement of support by the EU in the research by Rohrschneider. [24] Mass evaluation of the workings of the EU according to the research discloses that most Europeans do not believe that the EU represents them; one strong signal from these is that most Europeans do not know in what way the EU represents their needs and yearnings.[25]; The legitimization deficit in some competencies alongside the Commissions market enhancement policies that require only a negative coordination, which means that national governments would have to refrain from doing things, regulatory policies with distributive impacts require a positive coordination on both the output side and input side .[26] At present legitimization seems to flow from the intergovernmental negotiations and treaties and not from the people , which brings to fore the essence of a constitution from the Kantian perspective which takes the citizenry as a prominent player in legitimization , This legitimization falls short of what is needed for supranational decision making.[27]; It is estimated that European directives controls 70 percent of national governments activities,[28] but generally they lack the citizens approval or consent, the opacity and alienation in decision making at the level of European institutions cause a mutual distrust and illegitimation, which further supports the submission of analysts on the topic of democratic deficit in the European Union . The shift from the topic of legitimization to that of a European constitution proves the point that there is yet a European people, the missing link is in the absence of a collective singular people of defining itself as a democratic nation.[29]; A nation of citizens must not be confused with people interlinked by common cultures,

language, historical antecedent, signifying a historical cord rather than a cord bound by economic gains.

[30]; EUROPEAN CITIZENSHIP AND IDENTITY; European Citizenship and identity are basic issues that need to be addressed in the European Union, European Citizenship could further get enthralled in the enlargement process of the Union, the same produces the problem of identity which I still on hold. The accession of new member states into the Union could further question the path of enlargement as regards historical similarities of members as against the Introduction of market citizenry in Europe.; The definition of citizenship depends on the form of system been practiced in a polity, however from the federal system, we have a tiered, nested citizenship a citizenship status at the state and federal level, which separates the status of a unitary system.[31]Since the advent of the Maastricht treaty, the legal debates surrounding European citizenship has been prevalent.

Taking European Citizenship from the Federal perspective does not reduce it to a state, as we have experienced in history, the early federal unions like the American, German all started from confederation until they grew to federalism.[32]In federal states , citizenship obtains at two levels , from the state and federal, European citizenship is also from the state and equally been a national of one of the member states, Article 17 paragraph , 1 EC treaty, vividly states.[33]; The real surprise and element of alienation in European Citizenship, is the restriction of freedom on the basis of economic status, Directive 2004/38/EC discloses the conditionalities involved in enjoying freedom, which goes to show the economic undertone of the

Integration system, thereby limiting the right to free movement on the basis of your economic status.[34]The aforementioned states and limits the duration of residence of member states in another sister state, the basis of freedom of movement is hinged on the benefit the individual would be to a particular system in the long run, not even in the short run, the market citizenry thesis comes into view here.

This depicts a limitation as regards the civil and fundamental rights of European Citizenry. Little wonder why most citizens have not been able to travel to other states in the EU, which in a way restricts and confines the issue of identity to national identity and not European identity. The path to European identity and European civic citizenship lies in the realisation of a common constitution, that is people oriented in formulation and participation; this simplifies the issue of legitimacy.[35]The issue of identity in the European sense , should be handled more carefully as we have different states joining the union , with no particular shared historical antecedents, culture, language to mention but a few. I hereby submit that the accession of Turkey would further intensify and showcase the welfarism stand of the European project of integration, thereby creating another research into the compatibility of factors such as religion, geography, language when it comes to the theories of regional integration. The multi-lingual status of the EU makes it hard for a European identity unlike the United States of America with one official and national language, despite the heterogeneity of her citizenry; THE EUROPEAN UNION, FEDERALISM, PARLIAMENTARISM AND SEMI-CONSOCIATIONAL DEMOCRACY;; The question

of parliamentary democracy in the EU is always analysed with a dichotomous perspective, either the EU is perceived as a supranational institution deriving its legitimacy from the representatives of the member states or intergovernmental structure with legitimacy flowing from national parliaments, much emphasis however as shifted to the analysis of democratic parliamentarism and deficits in the institutions.[36]The role of “executive parliamentary” status in the EU is worthy of note, this is not only a general pattern linked to the EU but to all federal states, this implies that there exist an interwovenness in the structure of competencies; i. e making laws are in the domain of the federal or supranational level and the implementation rest on the states.

[37]The council as an institutional counterpart to the interwoven competencies and the consensus method in the council, the EU as a consensus democracy. The former been a recognition that the actors from the national and supranational level converge to legislate, negotiate and implement although at different levels of ministerial groups or field of responsibility, the latter refers to the heterogeneity in nationality and its influence on decision making.[38]; The European Union has assumed a great deal of distributive powers , exercising supremacy over national law and a shift of competences, as opposed to traditional international organizations, confederal structures , European structures policy strength are de jure and to a large extent , de facto independent of national governments.[39] This raises a question that has been prevalent in academic and political debates, how can the supremacy be checked to overcome undemocratic and

authoritarian practices?; The current transformations in the use of democracy in European Union stems from, the rise of the executive branch due to more denationalized regulation, the dominance of technical experts instead of elected executives in areas of legislation, para-legislation in forms of code of conducts , norms , soft law, top-down legislation, circumvention of the parliament by individuals and interest groups due to technologies of direct communication and transformation of democracies by globalization and global governance.[40]The European Parliament is not governed by the principle of “ one man one vote” and therefore a distortion in the form of representativeness is vivid.,[41]Thee treaty of Maastricht, however introduced another trend in the consensus or consociational democratic trend in the EU as evidenced by Article 251 EC , by this consultation , cooperation and assent qualifies the weakness of the parliament as it is responsible to other institutions.[42]; The EP is therefore not a sole legislative arm as it shares responsibility with the council, the national parliaments remain isolated in all this legislative duties, thereby making them at the receiving end and mercy end of the laws enacted. Creative powers in the European parliament are undeveloped as compared to the national parliaments, the European parliament as only a veto power against the commission as stated in Article 214, EC, the council is not responsible to the European parliament as it functions as part of the Institutions , such power constellations,[43] are issue undergoing debate in the academia .

;; THE LISBON TREATY: A FANTASY OR REALITY; The Lisbon treaty has been viewed by different people from different political and teleological positions,

the content and motive of this reform treaty paves way for different lines of thinking and beliefs.[44] The major content facilitating a rejection been, the common foreign and security policy. The reform treaty though criticised, has received a yes voting from some people, the treaty, given the complexity of its construction - " which Valéry Giscard d'Estaing has compared to a " tool box you have to rummage through to find what you're looking for" - represents a challenge to the member state governments and parliaments, which will have to approve and explain it"[45].

; The treaty thus brings changes to the Treaty establishing the European Community (Rome 1957), the Maastricht Treaty (1992) and the Treaty establishing the European Atomic Energy Community (Euratom, Rome 1957). The other criticism is the bulky nature of the treaty, it contains more than 350 primary legislation provisions, to which 13 protocols and 59 declarations are added, the document been 152 pages.[46]A good development is the meeting of the council in public, where journalist would be able to stand as intermediaries or watchdog between the citizens and politicians. The double majority vote to the parliament as against the single majority, further strengthening of the parliament which would counter the democratic deficit argument, in terms of legislation, budget, swearing in elected presidents of commission.[47]; The EU in outlook, is similar to a state, having currencies and other notable institutions, the need for a constitution as suggested by some people has sparked up debates. A look at the democratic deficit arguments, which depicts the institutional deficit, the question is still , can a European constitution solve the democratic deficit.

[48]EUROPE: A BETTER OUTLOOK AND FUTURE There is no doubt, despite the criticisms levelled against European institutions, democratic deficit; the EU has been able to forestall peace and economic development in the region. Much still needs to be done in some areas like the issue of identity, multilingual status, the enlargement project and other crucial issues. [49]; At this point I would like to submit ten cogent and crucial points, for the improvement of the EU.

; First, I start with a recent issue which is the enlargement case, the EU is getting larger, with the accession of new states, which some analyst have tagged a good move while some others refute the case of enlargement, a point to note is the morale behind the enlargement, which mostly is economic.[50] The question is should economics largely play a role in the consideration of accepting new members, here we have the phenomenon of the market citizenry in view. The choice of membership should take into consideration the problem m of European identity which is still prevalent, countries not having a strong historical bond or culture, should not be accepted.

The Turkish case is a good example, in terms of religion, culture and history; the Europeans have nothing in common.; Also, the EU, should focus much on the preservation and empowerment of political rights, freedom of movement, than a restrictive stand as earlier mentioned in the paper, the conditionalities that underline the movement to other member states are economic, rendering the poor or financially less privilege as an alienated personality in the polity.; Furthermore, their should be an improvement in

the area of Europe's lagging growth performance which is related to an innovation deficit problem illustrated by the lower contribution to overall productivity growth from ICT production and use in the EU. This ICT story reflects more generally EU's difficulty in re-orientating its economy towards newer, higher productivity, growth sectors.[51]; The EU should also participate heavily in the reduction of poverty in developing countries, as these would reduce the spate of illegal immigrants and stigmas associated with the plight of Third country nationals who see fortress Europe as a haven.

This would drastically reduce the flow of illegal migrants; this would be of benefit to Europe and the receiving countries. The EU should radically improve its accountability, particularly to developing countries and their citizens by: making monitoring and evaluation of aid truly independent; establishing a complaints mechanism open to aid recipients; supporting in-country mechanisms for holding donors to account.; The much more debated topics of legitimacy, policy making and democratic deficit should be focused on, the citizenry should get more involved, not just the power wielders doing whatever they want at the expense of the masses, another area that needs to be emphasised is the need to enlighten the masses more on the EU.

; The debate of constitutionalism and treaty should be made open to the public; the citizenry should be taken as a pinpoint of getting legitimacy, which would then pave way for a virile debate of the constitutional option or treaty. The treaties also should be made easy to access by the public.; The fiscal policy areas must also be considered , remove the deficit bias and

promote policies that ensure the sustainability of government finances avoid the conduct of pro-cyclical policies improve the quality of government expenditure, addressing the deficit bias at its roots: directly, by imposing constraints on the conduct of fiscal policy (unbiased inputs, strong fiscal rules, delegation of part of fiscal policy Indirectly, by increasing reputation costs for the conduct of unsound policies independent analysis in the area of fiscal policy.[52]; A move to a more democratic path, in terms of the structures and institution of the EU, the so called semi-parliamentary democracy, as the EU neither directly elects a president or parliamentary executive; this explains the reason for the interwoven competencies, which opposes accountability.

A move to a presidential system or parliamentary would be efficient.; Another point of emphasis is the relaxation of immigration laws, to bring skilled labour to fill the aging population in Europe, if a plan that is worthwhile and effective is not designed , there would be economic problem , even despite the enlargement, that goes to show the flexibility of the Swedish and Irish law as regards immigration.; Finally, I propose a standing EU standing military that is capable of responding to all sort of threats be it from the civil society, terrorist groups to mention but a few. A huge participation in peace efforts is much desired around the globe. This would further stem the place of the EU in the committee of states in the globe.

A successful programme of integration must be crowned by an exemplary offer to other parts of the globe, especially through peace operations.; CONCLUSION;; The paper has successfully highlighted

the project of the EU from its economic impetus to political integration, the issue of democratic deficit has also been examined, the constitutional debate for Europe and the alienation offered by citizenship rights have been fully exhausted.; The aspect of regional integration has been explored, giving birth to a discursive analysis of the impact on citizenship rights, making the EU more of promoting economic rights than political rights, which is evidenced in the conditionalities and participation of member state nationalities in municipal elections. There is more needed for a show of the democratic ethos and principle of Neo-liberalism. The paper has therefore been able to bring out the over riding issue of the economic integration regardless of identity and cultural issues. This brings to fore the example of the Turkish application for accession, which brings to focus the issue of shared historical precedents and religion, which are important criteria in integration. The papers quest for a human face of regional integration in Europe is therefore central in the paper.

; The other areas which address, the much debated democratic deficit, the paper submits the uniqueness of the EU, as a supranational organisation, practising the semi-parliamentary system of government; however the paper has suggested a clearer role for the parliament and the commission, as stated in the Lisbon draft treaty. The future of Europe and its progress depends on a well separated institution devoid of institutional deficits. The parliament, its composition and the neglect of the national parliaments in decision making was vividly depicted, a need for the inclusion of the national parliaments in law making is crucial, as they are directly affected by the

principles of direct effect and supremacy.; The issue of constitutionalism has also been thoroughly examined, going through the Kantian perspective which recognises the people as the instrument of legitimacy, personally I see no need for the constitutions if the treaties are working well, however just like the Israelites (Biblical era) asked for a king, ignoring the theocratic symbol of leadership, maybe the constitutional calls are also a move to another structure different from the supranational element that exist now. The fear of many is that the constitution would change the outlook of the EU, I submit that the EU has its uniqueness, it must not be confused for a confederation of states or like the United States America.; Also, the ECJ has remained an Institution that has come a long way with fair judgement, especially in the Notable cases of Van Gend en Loos, which strengthened the principles of direct effect and supremacy. The composition of the court must however be strictly defined in terms of expertise, not just any one from any profession should be allowed, the court should be filled with experts in the field of Law and European politics , to disallow the teleological reasoning in judgements, duplication of office as evidenced by the post of the advocate general should also be considered urgently.; European Union's outlook in the globe, should also relax immigration laws to curb transit migration, illegal migration and other trends associated with the migration to Fortress Europe, the strict conditionalities creating a market citizen should be dealt with has it embodies inequality.

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