Democratic Deficit in EU: Is there an institutional solution to over-institutionalization?

Hüsamettin Inanc* and Hayrettin Ozler**

Abstract

The question whether the European citizens are fully represented democratically in the institutional structure of the EU is a frequently asked one especially in the last decade in which a restructuring is underway towards a cultural union. The accusation of lacking democratic legitimacy leveled at the governance of Europe is not surprising as long as we conceive democratic legitimacy as a generalized degree of trust in the political system or in the institutionalized procedures which are designed to check and balance the powers and interests of those who govern and to ensure that collectively binding decisions are the result of mass participation of the people. This paper focuses on these accusations of democratic deficit in Europe. Yet the problem of democratic deficit is the byproduct of some peculiar aspect of the EU such as being a multi-cultural and multi-linguistic entity. Scholars therefore attempt to develop new concepts like transnational, global and regional democracy in search of constructive implemental suggestions. This paper is an attempt to contribute to the search for an appropriate model of governance particularly suitable to the EU and to examine the allegations of democratic deficiency leveled at the EU. The conclusion of this paper is that a cognitive and ideological emancipation from the restrictions set by nation-state paradigm is vital to foresee a pluralist multicultural European community. Only within a pluralist policy network can European demos be visible and can a European wide democracy be realized. Otherwise overcoming the democratic deficit in the EU and realization of a well-functioning system of governance takes much longer than the EU can sustain.

1. Theoretical Background

The link between internationalization, governance and democracy is a central problem for politics as well as for political science. Even if clear empirical evidence on the nature of this link is not yet available, the literature seems to support the view that internationalization both undermines the capacity for governance and puts into question the traditional forms of democracy. On one hand, there is a proceeding process in political reality which can be studied scientifically. On the other hand, this process constitutes serious challenges to a number of concepts and theories in the social sciences including law. These disciplines of science often assume the existence of an externally and internally sovereign democratic nation-state.

It is not easy to imagine a model of democratic governance apart from the familiar nation-state model unless we take a real case such as the EU. The European Union in recent decades has developed into a new type of political system with enormous consequences on the democracy and governance of its member states. In terms of its basic structure, the current system of governance in the EU is likely to persist for a foreseeable future and is less likely to develop into a federal state or to disintegrate into a classic international organization. The present state of democracy and governance in the EU deserves a thorough analysis as it is not a mere transitory phenomenon.[1]

The EU is the most scrupulous example of regional and political integration. It goes beyond traditional intergovernmentalism and has substantial elements of supranationality[2]. The EU is known not as a unitary entity but as the European communities in plural. However, it has evolved from an intergovernmental treaties (Maastricht treaty in 1991), to an increasingly unified entity with many features of a state: a common external tariff and trade policy with customs union, common agricultural policy, a common monetary system (one currency and central bank), a territory and flag, an executive (the Commission), a legislature (the Council of Ministers and partly the European Parliament), a supreme judiciary body with a constitutional role (the European Court of Justice), and may soon be one army. Much like the United States, the EU has been called a "regulatory state" in which extensive policy-making powers are delegated to non-majoritarian institutions that fulfill public functions but are not directly accountable to voters or to their elected representatives.[3] To sum up, the EU is poised to alter traditional conceptions of sovereignty and international organizations.

It is a confounding attempt to discuss about democracy in a non-state/non-unitary entity like the present EU system. The EU's *sui generis* nature currently represents a "half-way house" between the world of "federal state" (federation) and "federal union of states" (confederation). In fact, no less that twenty neologisms have been employed so far in order to define the EU's nebulous political and constitutional physiognomy: "concordance system", "condominio", "confederal consociation", "confederance", "consortio", "international state", "managed Gesellschaft", "market polity", "mixed commonwealth", "multilevel polity", "neo-republican system", "quasi-state", "proto-federation", "regional regime", "regulatory state", "system of governance", an so on. The above designations are the results of a complicated reality touching upon the dichotomies of sovereignty and integration, autonomy and interdependence, order and fragmentation, unity and diversity, management and control. Obviously the meaning of democracy in the EU is expected to be more contested and controversial than it is at the national level.[4]

Within this framework, according to Weiler, the EU has the capacity:

- To enact "directly effective" and "constitutionally supreme"[5] laws which create rights and obligations both for its member states and their nationals;

- To take decisions with major impact on the social and economic orientation of public life within the member states and within Europe as a whole;

- To engage the Community and consequently the member states by international agreements with third countries and international organizations; and

- To control significant amounts of public funds.[6]

The main concern of this article is about what many people call the Renaissance of the EU, an age in which many significant actors ambiguously ask the question, "Are the institutions sufficiently democratic to represent the collective interests[7] of European peoples. For a large number of policy-makers and opinion leaders, the EU suffers from a "democratic deficit" as they point at the lack of good and verifiable reasons to justify the EU institutions which hold legislative power over more than 360 million citizens. These accusations of lacking democratic legitimacy are understandable even if we take a standard dictionary definition of democracy and legitimacy.

A democracy is a form of government under which the power to alter the basic laws and forms of government lies with the voting citizenry, referred to as "the people", and all decisions are made by representatives who act by their consent, as enforced by elections and the rule of law[8].

And following Lipset's definition in *Political Man,* we can define *legitimacy* as:

The capacity of the political system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society creating a generalized degree of trust in the political system whose outputs are acceptable to its subjects.

The problem of democratic deficit is formulated on the assumption that the EU is lacking adequate means of legitimation from the citizens of the Union. Since the "European demos" or "the body of citizens" is unrecognizable in such a linguistically and culturally diversified environment, building a democratic union is rather a challenging task. Also transferring power to the European Parliament and other institutional bodies poses a challenge to the authority of the member states.

2. Main Parameters of Democratic Deficiency Arguments

Although there is little descriptive and systematic study on this area, we can simply bundle democratic deficit arguments in the political and social scientific debates into five sets:

- The EU is incapable of democracy because Europe consists of many *demoi* (multiple citizenships) as opposed to mainstream democracy theory which presupposes one unitary *demos* (national citizenship). Associated with this paradox, institutional channels for the transfer of legitimacy from the electorates of a number of nations to the EU level are too constricted to make European citizenship a significant muscle.
- The EU institutions, especially the Council of Ministers and its clandestine deliberations, suffer from a lack of transparency and the collusion of national, sub-national, or transnational actors.

- Policy-making in the EU is increasingly majoritarian, as epitomized by the rise of qualified majority voting in the Council. It is ruled by a tyranny of the majority that overwhelms the will of minorities.

- Governance in the EU is dominated by bureaus (the Commission, the European Central Bank, the European Court of Justice and other standardization bodies) which are unaccountable to the electorate. They are staffed with non-elected officials who have expanded their competencies away from public scrutiny. The European Parliament still plays a lesser role in terms of compensating the deficiencies of democracy.

- The EU is insufficiently democratic because negative integration[9] has led to regulatory competition and a "race to the bottom" where the most competitive member states are the ones with the lowest level of social policy. The EU is incapable of developing a common social policy that can replace the welfare-state failures at the national level.

2.1. No European Demos

Europe is far from being a unified society and it is a plurality of a multiple societies and cultures. There are 11 official European languages and additionally dozens of local and lesser used languages spoken by significant minorities, for example Mirandese in Portugal, Gaelic and Welsh in Britain, Occitan in France, Basque in Spain, Francoprovencal and Friulian in Italy. A use of classical vocabulary of citizenship in the discourse on the European integration is problematic since the Treaty of Rome set out to lay the foundations of an ever closer union among the peoples of Europe. The Treaty spoke not of one people (as in "the people of United States") but of a union of many peoples. Europe consists of "Demoi rather than Demos" and "if there is no demos, there can be no democracy".[10] From this angle, the EU is not democracy-capable because such a capability would require a community of communication, experience, and memory.

> To what degree is a construction such as the European Union "democracy capable"? It is communities of communication, of experience, and of memory in which collective identity builds itself, stabilizes, and is traded. Europe, also the narrower Western Europe, is hardly a memory community and, only in a limited sense, an experience community. Europe is not a communication community, because Europe is a multilingual continent -the most banal fact is simultaneously the most elemental.[11]

Without such a collective European identity, there is no shared-language in which a political discourse could take place.

> The conditions for the possibility of a civil society constitution will also in future be bound to the communication communities that we call nations...The public political discourse carried by mass media, which alone makes politics a cause of the general public and which alone makes democracy democracy, is naturally bound to language spaces. A European discourse, carried by European media, led before and with a European audience- that may be a vision, reality it is not ... A democratic constitution alone makes the European Union not yet a European democracy.[12]

This diversity of languages reflects diverse cultures of democracy as well. There is not a single understanding of democracy but many competing national understandings.

> Very rarely, if at all, is there more than cursory acknowledgment of the uneasy co-existence of competing visions and models of democracy which, in turn, should inform both diagnosis, prognosis and possible remedy of democratic shortcomings. Typically and endearingly there is an implicit projection onto Europe of a national self-understanding democratic governance. The task is rendered more complex by the need to juggle models of democracy with the union's permutations of governance.[13]

Even if the European Union institutions were democratized, the structural preconditions on which authentic democratic processes depend would be still lacking. There are no European-wide parties, political leaders and media of political communication to assemble Europe-wide controversies and debates on political issues and policy choices. Furthermore, no Europe-wide competition for government offices exists to assure democratic accountability.[14] In this argument, the European Union is democratically deficient because there is no institutionalized vote in which European voters can withhold their consent. Without these basic guarantees, European Union citizenship is a phony concept. Weiler accuses European Union "managers" of offering European citizenship as an empty package and exercising in brand development to placate dissatisfied shareholders.[15]

The dominant role of the Council of Ministers in the European Union means that European politics is about making compromises between particular interests of the member

states. A judicious European politics that releases itself from these interests cannot exist, according to Sbragia. It can only demonstrate itself as European politics if it is conceived from European perspective.[16] But parliamentary elections in member states out of which governments emerge are not European elections focusing on European issues, they are national. They are not elections in which competing programs of European politics are raced against each other. European issues play at most an occasional and marginal role in nation-wide election. This makes it difficult to draw authority from member states' governments to do the business of European legislation that they collectively face in the Council of Ministers. The democratic principle of keeping the rulers accountable to ruled through regularly held elections is largely suspended in the European Union political system. The dilemma is that the EU derives its legitimacy from the member states, but the possibilities of legitimacy transfer are increasingly narrow. If democracy means that governments derive their legitimate power from the consent of the governed, then this means not consent that is granted ones and for all, but consent that must be given again and again newly, and that can be withheld.[17]

Other critics argue that the European Union lacks a constitution built on a diffused consent. "A constitution capable of consent is surely not a sufficient condition for a sustainable foundation built upon diffused support, but in any case a necessary one."[18] And Europe lacks such a constitution, according to Sbragia, the constitution of the EU is not a true constitution but merely a system of contractual arrangements between states.[19]

Sharpf also stressed that further enlargement of Europe can make things only worse because the accession of new member states will compound its existing problems of heterogeneity without minimally necessary constitutional reforms. With the entrance of the Central and Eastern European states, the economic, institutional, cultural, and linguistic differences will further preclude a European collective identity and European-wide political discourses that could legitimize majority decisions on contested issues. This may exacerbate the perception of an "irremediable European democratic deficit".[20] The Nice Summit in December 2000 reflected the current fears of existing Western European member states about enlarging the Union to the East. Most of the twelve candidates (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia) for accession were former Eastern Block nations and lacked long-standing traditions of democratic regimes. Many wonder if their membership weakens the overall adherence to democracy in the European Union.

2.2. Lack of Transparency

The second argument denounces the lack of transparency in the European Union policy processes. The EU constitutes yet another layer of government, removing decision-making even further from concerned citizens than the national state already does. The committees, working groups, and agencies in the EU have grown to over a thousand, according to some estimates. Overlapping activities and divergent rules of governance create further problems associated with the lack of transparency.

A significant difference between a democratic legislature and the Council of Ministers (comparable to the Senate in the USA or to Standerat in Sweden) is that a democratic legislature is obligated to publicize the minutes of its deliberations. Usual parliaments vote publicly and openly. The act of voting and being seen to vote is a crucial identifier of the parliamentarian's role and performance. In the Council, in contrast, voting is more implicit than explicit, and decisions are reached mainly by persuading potential opponents to agree. Much like in a national cabinet, votes are not willingly made public. Compounding this opacity is the proliferation of procedures, especially those involving the Parliament. There are approximately twenty-three different combinations of procedures for decision-making and they are shared by the Council and the Parliament on legislation. Proceedings are concealed from scrutiny, which raises problems of trust. The Parliament is much more public, but its role in the European legislative process is not transparent to voters. This lack of transparency allows for collusion by particular interests. For example, some critics assert that major parties collude in European Parliament elections by avoiding discussion of divisive European issues.[21]

Another argument on democratic deficit is built on the lack of a clear separation of powers. Manin underlines an important distinction between the principles of "separation of powers" and "checks and balances": the systems based on the principle of "separation of powers" imply that the parliament is supposed to be the "unchecked checker" so that it can expresses the "popular will". The systems based on the principle of "checks and balances", on the other hand, imply that each function of government is performed by more than one branch. For example in the United States, the farmers devised checks and balances to rein in the supremacy of the legislature. The legislature does not have the last word. Its laws can be vetoed by the executive or

ruled unconstitutional by the Supreme Court. The executive's actions can be checked by the legislature, by independent agencies, or by courts. The courts are controlled through appointment by the Executive and the Legislature, and through the Legislature's censure procedures. The Central Bank is checked by appointment, censure procedures and the threat of legislation.[22] The EU is organized along similar checks and balances among the Parliament, the Council of Ministers, the Commission, and the Court of Justice. While such a system of checks and balances is designed for greater accountability of institutions, it can obscure responsibilities by making it difficult for citizens to hold rulers accountable.

2.3. Tyranny of the Majority

The enlargement of the EU increases the fears about heterogeneity and more *demoi*, which might weaken the unity and democratic fiber of Europe. But the member states may have a fear far less abstract about the accession of new member states; that it reduces the voting weight of each existing member and of its citizenry. The analogy that critics appeal to is "corporation", as the corporation issues new shares the voting value of each share shrinks.

This fear has become salient with the decline of the unanimity principle. The 1966 Luxembourg Compromise gave every single member state the power to vote policies by invoking their national interests. This was "the single the most legitimating element" of the Community's constitution. The threat of a tyrannical majority did not exist as long as all decisions required unanimity, but majoritarian voting rules offer insufficient protection for the minority.

> With the transition to majority decisions in the Council of Ministers, the conditions for the transfer of democratic legitimacy from the member states to the Community change fundamentally. If decisions are made unanimously, all governments bears responsibility collectively for the decision, and each can be held responsible by its parliament and its electorate - this may in some cases be difficult or improbable, but it is not impossible. If decisions are made under the majority rule, than governments would have to debate openly in the Council of Ministers and decide publicly, as parliaments do naturally when responsibility is to be attributed to governments. This condition is, however, not given.[23]

The Nice Summit confirmed fears among member governments of being outvoted. The heads of state in the European Union agreed to expand qualified majority voting (QMV) in the

Council of Ministers into 35 new policy areas. The decline of the unanimity rule and the rise of majority voting raise the specter of a tyranny by the majority, as minorities can no longer make their voice count. Powerful states by virtue of their greater voting weights such as Germany, France, the United Kingdom, Italy and Spain can impose decisions on the weaker member states. The Nice Treaty reinforced this trend by changing the voting weights in the Council. After Nice, 91 of the 345 Council votes will be a blocking minority; alternatively, countries constituting at least 38 percent of the European Union population can block a policy. The 38 percent rule gives Germany plus two other large member countries de facto power to block policies under QVM.

This majoritarian trend is bound to continue. "With the continuation of the integration process," writes one European Union critic, "majority rule will gain increasing significance for the Council of Ministers. Majority decisions in the Council of Ministers- this means nothing other than that a group of member states imposes its will on other member states." (Bernard Manin 1994)

2.4. Weak Parliament

The European Parliament was initially consisted of delegates from members' national parliaments and in 1979 the first direct EU-wide elections for the EP were held strengthening its link with voters. The Single European Act increased EP influence over budgetary process, developed its oversight powers with respect to the Commission, and made the EP a junior partner of the Council in the legislative process. Yet the EP still does not pass legislation, nor is either the Commission or the Council responsible to it.

The European Parliament is the only EU institution directly elected by European voters. The critics assert that the EP despite its growing powers is too weak to compensate for the democratic deficit of other EU institutions. Parliament's influence on European legislation is still quite limited, and its powers are weak relative to those of most national parliaments. Most importantly, the Parliament has no right of initiative in legal terms, although its committees can and do submit reports to the Commission for future legislation. Compounding the weakness of the Parliament is the absence of a European party system that would allow steering European politics through elections. The makeup of Parliament's groups is fairly fluid, and delegations (individual Members) are free to switch allegiances as they see fit. European Parliament party

groups are distinct from the corresponding political parties, although they are intimately linked. Usually, the European parties also have member parties from European countries which are not members of the European Union.

2.5. Unaccountable Agencies with Excessive Powers

The weak Parliament is unable to check another key actor: European agencies. The argument that an unaccountable bureaucracy rules the EU comes in several versions. EU bureaus are independent of national-level control. What is more, they are guilty of inappropriate intrusion into areas of national sovereignty. Finally, as a regulatory state, the EU poses problems of oversight and accountability not posed by the traditional tax-and-spend state, not least the problem of multiple functions. "That this non-elective bureaucracy executes, legislates, adjudicates raises questions of excessive power and accountability."[24]

The European Commission embodies the claim of unaccountable bureaus with excessive competencies. Some EU critics argue that the Commission usurps power and springs decisions on member states. With its initiative monopoly, the Commission has unquestionably a significant part in the European "ruling power" but it is far remote from any electoral votes. Though the President and the College of Commissioners are vetted and approved by the Parliament, the Commission is not directly elected. Nevertheless, the Commission is more political than other bureaus. The major fields of Commission activity-proposing legislation and supervising the implementation of decisions- are highly politicized tasks. The Commission has been called a "politicized bureaucracy".[25]

Another agency that is being accused of excessive power is the European Central Bank. The Maastricht Treaty authorized the ECB, not a Community institution within the meaning of Article 4 of the Treaty of Rome, to make regulations that become European and member states' law without the involvement of national parliaments, the European Parliament or other Community institution. With minor exceptions, the status of the Bank can be modified only through Treaty amendments, which require unanimous consent of all member states. Elected officials can override the Bank's decisions only through a very arduous procedure. The only formal accountability requirement for the Bank is to present an annual report on the activities of the European Systems of Central Banks and on the monetary policy of the previous and current

years to the European Council, the Parliament, the Council of Ministers and the Commission. The Bank's income and expenditures do not fall under the Community budget, which give it yet another dimension of independence.[26] The Bank has the power to determine the livelihoods of EU citizens form Sicily to Ulster unconstrained by sufficient structure of accountability.

2.6. Excessive Court Authority

Another decisive actor is the European Court of Justice (EJC), whose caseload is growing at more than ten percent per year with over 1.000 cases pending.[27] The limits of EU jurisdiction are unclear, and the Court's constantly expanding authority raises the danger of excessive power that threatens to curtail the powers of member states.

Over time, the Court has quietly transformed the Treaty of Rome into a European Community constitution and steadily increased the impact and scope of EC law. Until 1963 the enforcement of the Rome Treaty depended entirely on national legislatures of member states. By 1965, a member state citizen could ask a national court to invalidate any provision of domestic law found to conflict with directly applicable provisions of the Treaty. By 1975, this right of EU citizens was extended to secondary legislation or "directives" passed by the Council of Ministers. And by 1990, community citizens could ask their national courts to interpret national law consistently with community legislation in case of undue delay in application by national legislatures. The Court is even authorized to impose penalties on member states that violate their Treaty commitments, and to rule at the request of ordinary member-state courts on the authoritative interpretation of Community law.[28] Already in the 1960s, in series of landmark decisions, the Court succeeded in moving the review of member-state acts from the sphere of international law to that of constitutional law.

The Court transformed the Treaty of Rome into supranational law with direct effect on member states. This decision liberated European law from the control of national governments, parliaments, and courts over the domestic implementation of international agreements. It was a decision not taken by the people or their elected representatives. [29]

2.7. Race to the Bottom

Sharpf argues that globalization and regulatory competition are forcing a reduction of social services in EU member states but this loss of national competencies is not balanced by a corresponding built-up of EU competencies. As economic integration deepens globally and even more so in the EU, national capacities to regulate and to tax mobile capital and firms are reduced, whereas governance at European or international levels is constrained by conflicts of interest among the governments involved. The result can be a "race to the bottom" or a "Delaware Effect" named after the American state which attracted companies by offering the least demanding regulatory standards for corporations. The nation state can no longer and the EU can not yet protect the interests of European citizens. In this view, the EU lacks legitimacy because it is a "welfare laggard" failing to provide social justice and economic redistribution.[30]

Another critic has even warned that this type of "regime erosion" in countries with high standards, unless kept in check within those countries themselves, will lead to further regime erosion in countries with lower standards. Scharpf suggests that the purposes originally served by national regulations would be better protected if what is lost in national problem-solving capacity is regained through re-regulation at the European or international level. National governments are loosing democratic legitimacy not in the input dimension but in the output or effectiveness dimension. If effective self-determination is to be maintained, the responsibility for redistribution must be shifted from the national to the European level.

But this would move political responsibility to a level where legitimacy is not yet available and where decisions could not be taken by majority vote in the Parliament or by a democratically legitimate EU government. The freedom of choice at the national level is massively constrained, while at the European level, where action might be effective, democratic legitimacy is weaker or non-existent.[31]

3. EU and the Transformation of Democracy Concept during the Age of Globalization

After the end of the cold war, democracy, human rights, and fundamental freedoms have become the basic standards of political legitimacy; and democratic processes and procedures were strengthened in the world's major developed regions. However, the democratic political

community has increasingly been challenged by regional and global pressures and problems simultaneously. One of the most determinant factors of democracy, people's right to self determination, has become questionable. Therefore, academic discussions have focused on this issue to search if democracy and its institutions will be capable of coping with the problems emerged in economic, social and cultural upheavals of our contemporary era.

Declining transaction costs and cost of organizational connections across national boundaries have increased the flow of information, capital, service, goods and people around the globe. This so-called globalization phenomenon is expected to close the gap between cultural, economic and political differences. Yet globalization does not always mean association between national political and economic societies or the emergence of a global society. The fact seems to be rather a process of 'de-bordering the world of states' in which the governments or the nation states diffuse to or 'share' their exclusive policy-making power with some international and sub-national actors. This conception signals the emergence of a novice political order beyond so-called the Westphalian system[32].

It is obvious that the dynamic link between globalization and democratic governance is very confusing and constitutes a substantial problem for world politics. It can be observed that globalization puts traditional forms of democracy into question because so far, democratic theory was based on the existence of an externally and internally sovereign nation state. Imagining a model of democratic governance different from our deep-rooted conception of democratic nation state is a highly intricate attempt. The global age does not correspond to the terms; state, territory, society and *demos* because the notions of national sovereignty and self-government are challenged by the increasing level of global interaction and transaction. The transnational character of contemporary life has, thus, been requiring a new form of democratic regulation and formulation which would be different from the experiences of the nation state.

Several normative theories have been suggested such as liberal internationalism, pluralist democracy, cosmopolitan democracy, and deliberative democracy to regulate transnational governance. All these theories have one thing in common: to bestow a meaning on the notion of transnational democracy and to determine normative principles and institutional structures essential for its effective realization. In order to make world order more democratic, these accounts share a belief that 'transnational democracy' is a necessary and desirable project under conditions of globalization. For nationalist concerns, on the other hand, democratic legitimacy is

only possible within the framework of a *demos* as it was expressed in the concept of the modern nation. The nation is a political community of connected individuals through some traditional, cultural and historical ties and democratic self-governance can only be possible with such a community. In this conception, the absence of transnational demos poses a problem that cannot be easily overcome. There is a structural dilemma that cannot be solved by only democratizing transnational environment because the social prerequisites for a democratic political community beyond the nation state are missing.

The phenomenon of globalization and the inadequacy of the nation state model have consequences for the EU which undermined the self-governance capabilities of the member states and created a new type of political system[33]. As the single market, single currency, common defense, political and cultural policies demonstrate, most western European laws and regulations, covering commercial, financial and social matters, are now made in Brussels rather than in national capitals. The discretionary power, depending on the policy field, is disseminated between national, supranational and sometimes sub-national levels. European institutions, such as the European Court of Justice and the European Commission, are indeed supranational that they employ their own staff independent from national governments and they enact rules which directly affect national governments and their constituents. It has neither a totally federal nor a confederal structure, and as many authors assert, it has a *sui generis* nature. Therefore, the European Union represents a special case on which the arguments concerning global or transnational democracy can specifically be applied.

It is a fact that, although the main reason behind European integration was economic and associated with market unification, its authority and scope have expanded significantly over time. The Single European Act, the Maastricht, the Amsterdam, and the Nice Treaties and finally the so-called Constitutional Treaty have consolidated Union authority over social, economic, cultural and political realms. Very naturally, this expansion of competences of the EU into such areas where the classical nation states were exclusively authoritative has caused the Union to be questioned in terms of democracy, legitimacy and democratic governance. This questioning has led to a considerable variety of multi-dimensional democratic deficit arguments. These arguments have basically inquired whether the EU itself and its institutions are sufficiently democratic to represent the interests of member states citizens. Policy-makers and scholars have sought the

democratic bases of legislative and executive power of the EU over around four hundred millions of citizens.

Democratic deficit, in this context, implies broadly a gap between democratic practices in theory and in reality in the EU[34]. The term originated during the debates come up after the Maastricht referenda in Denmark and France and has become more popular by the Maastricht judgment of Germany's Constitutional Court. According to this judgment, the EU is not capable of democratic governance because democracy requires a *demos*, that is a community of communication, of experience, history, common identity and memory. Being *demos* requires subjective dimensions like a sense of social cohesion, shared destiny and collective self-identity, all of which, in turn, result in loyalty of the individuals to the system. These are, however, based on objective dimensions like common language, common history, common cultural habits and sensibilities, common ethnic origin and common religion.

A democratic community, therefore, is communities of communication, tradition, experience, culture and of memory those which create collective identity. European people, however, do not feature such characteristics that are the inevitable elements of being *demos*; it does not have a common culture, common history and common tradition and most basically it is not a communication community because Europe is composed of multilingual people. If these factors are taken into account, it can be said that Europe consists of *demoi* rather than *demos* and simply if there is no *demos*, there can be no democracy. 'No *Demos*' thesis has been very influential among European academicians and governing elites. Furthermore, there are also some other structural deficits those which curb the functioning of democratic processes like a strong European party structure, European political leaders and European-wide media.

Obviously, various challenges have been put forward against this thesis. The first objection suggests that the 'No *demos*' thesis misreads Europe. In fact, there is a European sense of social cohesion, a shared European identity and a European collective consciousness that can yield a 'Euro-loyalty'[35]. There are already shared European political traditions such as Roman law, political democracy, parliamentary institutions, and Judeo-Christian ethics. In terms of cultural values, Renaissance humanism and empiricism, and romanticism and classicism influenced Europe and created a common European system of values. A European language or the absence of it has little to do with the creation of a democratic European society as it is the case of multi-lingual democratic states like Belgium, Switzerland and Canada.

The second, and, at the same time, the more contemporary challenge to the 'No *demos*' thesis argues that in recent decades citizenship and national identity is in transition. These concepts were, anyway, quite artificial and emerged as a result of social constructionism and even social engineering. The concept *of demos*, based on national identity, has taken shape under specific historical conditions through the state formation process of the 19th century. Therefore, they are subjective, unstable and capable of change. As a matter of fact, even the internal heterogeneity of the European states, not to mention the national diversity of the European Union as a whole, necessitate a universal source of cohesion and solidarity transcending nationalist cultural particularism.

Therefore, in our contemporary era, as a general view, *demos* must be separated from ethnos and a civic approach would involve constructing a European identity around freely chosen values, rather than common characteristics that people either possess or lack from birth. Democracy, human rights, rule of law and a commitment to peace, in this sense, have become the universally accepted values to create a common consciousness among people. Moreover these civic values are not only necessary for a European identity but also required for a transnational democracy with a global function. If a *demos*, based on nationalist or ethno-cultural terms is stipulated for democratic rule making and administration, the current internationalized world order can never be democratized.

4. Possible Solutions

To create a European *demos* based on civic values the citizenship concept is to be stripped of its nationalist conceptualization. Citizenship provides the individual, with full political/civil rights and duties as a member of particular *demos* whereby it creates a reciprocal relationship between the individual and the state. It is obvious that multicultural societies, like the societies of the Union member states, can be held together by a political culture and this can only be embedded if democratic citizenship guarantees the liberal individual, social and cultural rights and political participation of the people to the policy-making concerning their future. In this framework, the Union citizenship that was laid down in the Maastricht Treaty has significant democratic potentialities for the European people[36] It creates a transnational system of political rights to the citizens of the member states; it motivates for further integration by accelerating civic

participation to the EU policies; and thus, it strengthens the sense of belonging to a European polity creating an EU consciousness. In conclusion, the process of transnational *demos* formation through the EU citizenship seeks to transform the plurality of *demoi* to a pluralistic *demos* by enlarging political participation capabilities of the citizens and empowering them with various individual rights.

To create a European *demos* and a European civil society, however, is not adequate alone for a democracy to function properly in the Union[37]. The actions of European institutions, including their law-making and policy-development authorities, affect the everyday lives of EU citizens and they are required to be more democratically accountable to the people as well. In the language of good governance, the power of these institutions necessitates a rethinking of participation, accountability, transparency and fairness. It is also the fact that, it was the intention of the EU's founders to create a democratic, autonomous political body that would be directly responsible to the European people. Perhaps the most outstanding feature of the EU-system is its multi-layer structure and the combination of national, supranational and intergovernmental elements in decision-making. While agenda-setting and policy-formulation are EU affairs, implementation is under the responsibility of the member states. Depending on the subject-matter, decision-making powers are allocated between Community organs in different ways. Such a system of European governance is too complex to be understood by ordinary citizens and therefore calls for the democratic deficits arguments among people.

The most basic democratic deficit argument, relating to the institutions, implies that as the only directly elected institution at the European level, the European Parliament has not enough power to control decision-making and executive authority of the EU institutions[38]. Democratic deficit, in this context, generally demonstrates that the flow of influence from the people to the governing mechanism of the EU has been prevented and the basic premise of democracy (rule by the people) is not carried out in its ideal form. The Parliament's lack of power can be related to its representation incapability and lack of adequate influence over the legislative process. Although the power of the EP has been substantially increased over the past fifteen years, it is still weak in its ability to represent European people.

One reason of this shortcoming is that the Euro-elections do not perform the functions and results of general elections because they do not allow people to choose a government or to determine the direction of general policies. As a consequence, European voters have not been

paying close attention to these policy issues and thus, absenteeism has been the general mood in these elections as the turnout in the supranational polls is relatively low and in decline. Moreover, the Parliament's influence on European legislation is still quite limited, relative to those of the most national parliaments. Most importantly, the Parliament has no right of policy initiative in legal terms; although its committees can submit reports to the Commission for future legislation, it is under the authority of the Commission to initiate the proposals.

The European Commission, like a state's executive, consists of a group of politicians at the top and an administrative bureaucracy under them. It functions in a quite similar way of a national government; that is why its power over the EU affairs is a highly contentious issue in terms of democracy of the EU. The European Commission, meanwhile, comprising around 24.000 bureaucrats and staffs headed by 20 national commissioners is the most powerful unelected body in the world[39]. It has the unique authority to initiate European legislation which is superior to national law in member states, and a considerable amount of economic and social legislation in Europe has been initiated by this institution. EU committees, working groups, and agencies, under the control of the Commission have grown to over a thousand. The overlap of their activities and the divergence of the rules governing them create, in that sense, not only unaccountable bureaucracy but also a real lack of transparency as well. Some thinkers even call the administration of the EU as 'bureaucratic absolutism' due to such a strong position of the Commission. Nonetheless, in democracies, the transfer of authority to unelected regulatory bodies is only acceptable if these authorities can be held responsible before the people or their representative parliament in one way or another. The Commission, however, does not have a parliamentary or public basis; it is appointed by the Council, and not elected but only approved by the Parliament. Therefore, such a huge authority without public control creates one of the major democratic deficits arguments towards the Commission and its power has been heavily criticized in terms of the future democracy of the Union.

Nevertheless, the issue of transparency has become the central theme in these debates about European Union governance in recent years; it is because a necessary precondition of legitimate and accountable government is that its structure must be transparent to the citizens. Thus the lacking of transparency of the present political system of the European Union creates various doubts about its legitimacy and, in this issue, much of the claims concern the Council. The first reason is that, though the power of the Parliament has increased to some extent, it is the

fact that the Council of Ministers is still the main legislative power in the EU, and it meets behind closed doors with limited public access to its documents and discussions. However, in contemporary democracies, open government is the part and parcel of democratic and participatory government. As the government becomes more transparent to hold governing elite and officials accountable would be easier; and therefore citizen participation in governance and decision making will be more meaningful.

5. Conclusion

In the EU, however, the dense layers of European decision making, the lack of transparency in the decision-making and the absence of opportunity for European citizens to get involved in that process cause mistrust towards the system among the people. The arguments advocating secret decision and policy making in the Council for the sake of progress in European integration, however, are diametrically opposed to the founding Treaties as well. The Maastricht Treaty, stated in its first article that, 'This Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen'[40]. The Maastricht considered in this way that transparency of the decision-making process strengthens the democratic nature of the institutions and the public confidence towards the administration of the Union.

As it can be seen from the above discussions, Europe's democratic deficits are structural and institutional, and emerged due to *sui generis* nature of the EU. It is also apparent that these deficits can not be remedied easily by correcting the institutions individually through various democratizing measures. As a matter of fact, the democratic reforms and the evolution of the EU as a democratic polity via IGCs (Inter-governmental Conference), Treaties and through other measures have not solved the deficits and met the expectations of European people. It is well known that the EU governing system has been strongly based on cooperation between the Council, the Parliament and the Commission and there is a very thin power balance on this cooperation. Therefore within this power structure it seems impossible to create a totally democratic institutional base and obviously the EU's democracy problems can merely be overcome by structural solutions.

It is a fact that, the 'Constitutionalization' process of the EU after the Nice Treaty has been expected to bring some structural remedies to these deficits. However, the Draft Treaty

Establishing a Constitution for Europe seems quite far away from matching the democratic needs of the Union for the long term. Although this Treaty clarifies the respective roles of the EP, the Council and the Commission and strengthens the role of the EP by extending the scope of the co-decision procedure, and attempts to make the Council more transparent, it does not propose any radical and structural reform to the EU governance. This Draft includes some measures to empower the Union citizen and ease the legislative process; however what it offers in general is very moderate and palliative solutions.

Nonetheless, there is also a considerable public support for making democratic reforms for the European level institutions, because the so-called 'institutional triangle' remains vital for the process of integration. As it is frequently emphasized, integration cannot continue without legitimate and democratically accountable European institutions[41]. Throughout its history, the EU has stepped forward many reforms in the transfer of national sovereignty to European supranational level and approached to federal structure to a great extent. It is a fact that the EU is a system of governance based on at least two orders of government, each existing under its own right and acting directly to its citizens which remind us a kind of federal structure.

In this context, Turkey's Union membership would be an illuminating case in accordance with the explanations of the previous paragraph. Turkey has passed a long way in the membership to the Union since 1963 and has always created various doubts in the European circles in terms of its differences. Although it has met many criteria required for membership, the European authorities have always treated Turkey with cultural and religious discrimination considering the risk of adaptation difficulties of this country to the European system. However, it is clear that if the EU could succeed in the enforcement of federal principles, such risks would disappear since the civic citizenship ties to the system other than cultural or nationalistic connections will regulate the system-individual relations in a demos created by federal principles. In a federative structure demos will be constructed over civic affiliations; and the citizens will treat the system as the system will treat the citizens on the rights vs. duties framework. Therefore, in this respect, Turkey's case signifies a dilemma relating to the democracy in the Union: if the EU is carrying various democratic deficits how can it question and assess Turkey's democracy? On the other hand, if the EU would be a democratic polity, how can it hesitate for Turkey's membership with religious and cultural concerns?

In conclusion, in this decade, the EU will maintain its enlargement to the east and south-east; and that means the number of member states will probably increase to thirties. However, the current institutional arrangements and distribution of power are not suitable; and enlargement is not possible without increasing democratic capability and functional capacity of the Union. Therefore federal arrangements would allow the European Union to improve its institutional

functional capacity to adopt new members with very diverse cultural, religious, traditional and even lingual background and adapt them to the EU system while seeking to preserve their individual peculiarities.

*Assistant Prof. of Political Science, Dumlupinar University, Public Administration Department, Kütahya, Turkey

**Assistant Prof. of Political Science, Dumlupinar University, Public Administration Department, Kütahya, Turkey

NOTES

1 Markus Jahtenfuchs, 1997. Democracy and Governance in the European Union . EIOP.V.1, N.2.

[2] Iain McLean, 1996. The Concise Oxford Dictionary of Politics. Oxford: Oxford University Press.

[3] Giandomenico Majone, 1996. Regulating Europe. London: Routledge. P.55.

[4] Dimitris N. Chryssochoou. 2001. Models of Democracy and the European Polity. P.1.

[5] The doctrines of the Direct Effect and Supremacy mean that without further domestic legislation community law becomes national law.

[6] Joseph Weiler, 1991. "Problems of Legitimacy in Post 1992 Europe" in Thomas D. Zweifel, 2002. *Democratic Deficit?*, USA:Lexington Books. P.19.

[7] Collective interest is different from both the majority interests, meaning more than half, and strong minority interests. It is a term associated with consensus.

[8] http://www.bambooweb.com/articles/d/e/Democracy.html. Accesed on 20 November 2006.

[9] Negative integration means a kind of integration attempt to lead the obstacle in enlargement

[10] Weiler, 1991. "Problems of Legitimacy…", P.20.

[11] Peter Kielmansegg, 1996. "Integration und Demokratie", in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.19.

[12] Kielmannsegg et al., 1996. P.20

[13] Joseph Weiler, Ulrich Haltern and Franz Mayer, 1995. European Democracy and Its Critique. West European Politics, V.18:3. PP.4-39.

[14] Fritz Sharpf, 1997. Economic Integration, Democracy and the Welfare State. Journal of European Public Policy, 4:2, March. PP.219-242.

[15] Weiler et al 1991. P.22

[16] Alberta Sbragia, 1993. "The European Community: A Balancing Act," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.19.

[17] Kielmannsegg et al 1996. P.21

[18] Kielmannsegg et al 1996. P.22

[19] Alberta Sbragia, 1992. "Euro-Politics: Institutions and Policy-Making in the New European Community" in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.24.

[20] Fritz Scharpf, 1999. "Governing Europe" in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.24.

[21] Mark Franklin, Cees van der Eijk and Michael Marsh, 1996. "Conclusions: The Electoral Connection and the Democratic Deficit," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.26.

[22] Bernard Manin,.1994. "Checks, Balances, and Boundaries: The separation of powers in the constitutional debate of 1787" in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.26

[23] Kielmannsegg et al 1996. P.27.

[24] Dan B. Wood and Richard Waterman, 1994. Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy. Boulder: Westview Press. Chapter 7.

[25] Thomas D. Zweifel, 2002. Democratic Deficit?, USA:Lexington Books. P.26

[26] Giandomenico Majone, 1996. Regulating Europe. London: Routledge. P.82.

[27] New York Times 1/14/2000

[28] Article 177 TEC

[29] Ignacio Sanchez de Cuenca, 1997. "The Democratic Dilemmas of the European Union," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.34

[30] Fritz Scharpf, 1997. Introduction: the problem-solving capacity of multi-level governance, in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books. P.35

[31] Scharpf, et al 1997. P.35.

[32] In 1998 on a Symposium on the Political Relevance of the 1648 Peace of Westphalia, then NATO Secretary General Javier Solana said that "humanity and democracy [were] two principles essentially irrelevant to the original Westphalian order" and criticized that "the Westphalian system had its limits. For one, the principle of sovereignty it relied on also produced the basis for rivalry, not community of states; exclusion, not integration." In 2001, German Foreign Minister Joschka Fischer referred to the Peace of Westphalia in his Humboldt Speech which argued that the system of European politics set up by Westphalia was obsolete: "The core of the concept of Europe after 1945 was and still is a rejection of the European balance-of-power principle and the hegemonic ambitions of individual states that had emerged following the Peace of Westphalia in 1648, a rejection which took the form of closer meshing of vital interests and the transfer of nation-state sovereign rights to supranational European institutions."

[33] Weiler, J.H.H., 1997, 'Does Europe need a Constitution? Reflections on Demos, Telos and Ethos in the German Maastricht Decision', in P. Gowan and P. Anderson (eds.), *The Question of Europe,* Verso, London, New York, pp. 265-294.

[34] Wessels and Diederichs, 1999, 'The European Parliament and European Legitimacy', in Bachoff and Smith (eds.), *Legitimacy and the European Union*, London, pp. 135-138.

[35] Weiler, J. H. H., 1998, 'Europe: The Case against the Case for Statehood', *European Law Journal*, vol. 4, no. 1, pp. 43-63.

[36] Weiler, J. H. H., Haltern, U. and Mayer, F., 1995, 'European Democracy and Its Critique', *West European Politics*, vol.18, no.3, pp.4-39.

[38] Williams, S., 1990 Sovereignty and Accountability in the European Community. Quoted in Kuper, R., 1998, 'The Many Democratic Deficits of the European Union', in A. Weale (ed.), Political Theory & the European Union: Legitimacy, Constitutional Choice & Citizenship, Routledge, Florence, KY, USA. p.158.

[39] Zurn**Hata! Yer işareti tanımlanmamış.**, M., 2000, 'Democratic Governance Beyond the Nation-State: The EU and Other International Institutions', *European Journal of International Relations, v*ol. 6, no.2, pp. 183-221.

[40] Wessels and Diederichs, 1999, 'The European Parliament and European Legitimacy', in Bachoff and Smith (eds.), *Legitimacy and the European Union*, London, pp. 135-138.

[41] Zurn, M., 2000, 'Democratic Governance Beyond the Nation-State: The EU and Other International Institutions', *European Journal of International Relations, v*ol. 6, no.2, pp. 183-221.

BIBLIOGRAPHY

Alberta Sbragia, 1993. "The European Community: A Balancing Act," in Thomas D. Zweifel, 2002. Democratic Deficit? USA: Lexington Books.

Bernard Manin,.1994. "Checks, Balances, and Boundaries: The separation of powers in the constitutional debate of 1787". In Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books.

Dan B. Wood and Richard Waterman, 1994. Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy. Boulder: Westview Press. Chapter 7.

Dimitris N. Chryssochoou. 2001. Models of Democracy and the European Polity. Boulder: Westview Press. Chapter 19.

Fritz Scharpf, 1997. Introduction: the problem-solving capacity of multi-level governance, in Thomas D. Zweifel, 2002. Democratic Deficit? USA: Lexington Books.

Fritz Scharpf, 1999. "Governing Europe" in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books.

Fritz Sharpf, 1997. Economic Integration, Democracy and the Welfare State. Journal of European Public Policy, 4:2, March.

Giandomenico Majone, 1996. Regulating Europe. London: Routledge.

Ignacio Sanchez de Cuenca, 1997. "The Democratic Dilemmas of the European Union," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books.

Iain McLean, 1996. The Concise Oxford Dictionary of Politics. Oxford: Oxford University Press.

Joseph Weiler, Ulrich Haltern and Franz Mayer, 1995. European Democracy and Its Critique. West European Politics, V.18:3

Joseph Weiler. 1991. "Problems of Legitimacy in Post 1992 Europe," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books.

Mark Franklin, Cees van der Eijk and Michael Marsh, 1996. "Conclusions: The Electoral Connection and the Democratic Deficit," in Thomas D. Zweifel, 2002. Democratic Deficit? USA:Lexington Books.

Markus Jahtenfuchs, 1997. Democracy and Governance in the European Union . EIOP.V.1, N.2.

New York Times 1/14/2000

Oliver Williamson E, 1985. The Economic Institutions of Capitalism. New York: Free press.

Peter Kielmansegg, 1996. "Integration und Demokratie", in Thomas D. Zweifel, 2002.Democratic Deficit? USA:Lexington Books

Seymour Martin Lipset, 1981. Political Man: The Social Bases of Politics. The Johns Hopkins University Press.

Stephen Krasner, 1983. International Regimes. Ithaca: Cornell University Press.

Thomas D. Zweifel, 2002. Democratic Deficit?, USA: Lexington Books.

Warleigh, A., 2000, 'Beyond the Functional-Ideational Gap: From Network Governance to Network Democracy in the European Union?', *Unpublished Paper to University of Sassari TSER Eurcit Workshop in 9-11 June 2000*.

Weale, A. (ed.), 1998, *Political Theory & the European Union: Legitimacy, Constitutional Choice & Citizenship*, Routledge, Florence, KY, USA.

Weiler, J.H.H., 2000a, 'Federalism and Constitutionalism: Europe's Sonderweg', *Jean Monnet Working Paper*, no. 10/2

Weiler, J.H.H., 2000b, 'Europe's Tragic Choice', A Contribution to the Symposium: Responses to Joschka Fischer, *Jean Monnet Working Paper*, no. 7/00,

Weiler, J. H., 1999, *The Constitution of Europe: Do the New Clothes Have an Emperor? And Other Essays on European Integration*, Cambridge University Press, Cambridge. Quoted in Eriksen, E. O. And Fossum, J. E., 2001, 'Democracy Through Strong Publics İn The European Union?', *Arena Working Papers*, no. WP 01/16.

Weiler, J. H. H., 1998, 'Europe: The Case against the Case for Statehood', *European Law Journal*, vol. 4, no. 1.

Weiler, J.H.H., 1997, 'Does Europe need a Constitution? Reflections on Demos, Telos and Ethos in the German Maastricht Decision', in P. Gowan and P. Anderson (eds.), *The Question of Europe,* Verso, London, New York.

Weiler, J.H.H., 1991, 'Problems of Legitimacy in Post 1992 Europe', Quoted in Zweifel, D. T.,2002a, *Democratic Deficit?*, Lenxington Books, Oxford, Newyork.

Weiler, J. H. H., Haltern, U. and Mayer, F., 1995, 'European Democracy and Its Critique', *West European Politics*, vol.18, no.3.

Wessels and Diederichs, 1999, 'The European Parliament and European Legitimacy', in Bachoff and Smith (eds.), *Legitimacy and the European Union*, London.

Dann, P., 2002, 'Looking Through the Federal Lens: The Semi-Parliamentary Democracy of the EU', *Jean Monnet Working Paper*, no. 5/02

Williams, S., 1990 *Sovereignty and Accountability in the European Community.* Quoted in Kuper, R., 1998, 'The Many Democratic Deficits of the European Union', in A. Weale (ed.), *Political Theory & the European Union: Legitimacy, Constitutional Choice & Citizenship*, Routledge, Florence, KY, USA.

Wincott, D., 1998, 'Does the European Union Pervert Democracy? Questions of Democracy in New Constitutionalist Thought on the Future of Europe', *European Law Journal*, vol.4, no.4.

Zielonka, J., 2000, 'Enlargement and the Finality of European Integration' A Contribution to the Jean Monnet
    Working Paper, no. 7/00, Symposium: Responses to Joschka Fischer.
Zurn, M., 2000, 'Democratic Governance Beyond the Nation-State: The EU and Other International Institutions',
    *European Journal of International Relations, v*ol. 6, no.2.
Zweifel, D. T.,2002a, *Democratic Deficit?*, Lenxington Books, Oxford, Newyork.
Zweifel, D. T.,2002b, '. . . Who is without Sin Cast the First Stone: the EU's Democratic Deficit in Comparison',
    Journal of European Public Policy, vol. 9, no. 5, pp. 812–840.