

As a supranational institution, European Union has a unique structure. The Union, having a framework based on treaties starting from the Treaty of Paris in 1951 to the Nice Treaty in 2000, is not regarded as a state neither by the people of Europe nor by the scholars; yet there is much talk going on with regards to a constitution (Grimm, 1997). While the EU is formed by and gets its power from the treaties established in the second half of the 20th century, arguably the most intensely discussed issue came into the agenda of European people with the Treaty establishing a Constitution for Europe (TCE) which was approved by the European Council in Brussels in June 2004 and signed in Rome in October of the same year. TCE, which would have come into effect in November 2006 with the ratification of European Parliament and all member states, was rejected by two referanda in France and the Netherlands because of various reasons and changing priorities. Therefore, it should be clarified that the constitution mentioned here is solely a treaty, and legally it will gain power only after the approval of all member states.

There are already two different views regarding the establishment of a constitution. One claims that the international treaties forming the Union's existence are already referred to as a constitution while the second one, however, believes that the treaty basis is not sufficient and it complains of the lack of a European constitution (Grimm, 1997). Without being for or against to one of these views, nevertheless, this paper will try to lay out the rationales of European leaders in the way of establishing a constitution.

One of the main reasons why the EU is willing to get a new constitution is that TCE merges all the previous treaties and forms a single document (Leonard, 2005). From clearly describing the EU's and member states' decision-making power and clarifying the roles of European Parliament, the Council and the Commission to

incorporating a charter of fundamental rights, the constitution makes a rehearsal to form a European State from the standpoints of administration, power, financial issues, foreign policy and defence. Hence, the constitution -the most powerful judicial document-, completes the three pillars of the EU; the European Communities, common security and foreign policy, and cooperation in justice and home affairs (Mayer-Schönberger, September 2005, lecture notes). This will improve the formation of a territory of security, justice and freedom.

Second, according to Leonard (2005), the constitution replaces the present “European Communities” and the “European Union” to form one European Union. The author adds that “in future, European laws will be known as laws” which seems to form an understanding of a common judicial system.

Third, the constitution redefines the role of the Union in international arena by creating a post of Union Minister of Foreign Affairs. My argument is that this a sign of European leadership to increase its power, mainly *vis-à-vis* to the US, and its wish to be heard as one voice in international arena. Without any question, such a single legal personality will help the Union “play a more visible role in world affairs.” (Leonard, 2005)

Last but not least, a final reason of establishing a constitution can be seen in the “European democracy deficit”, Grimm (1997) argues, in the sense that while citizens of the member states are greatly influenced by Community decisions, their representatives in the European Parliament have a weak effect. There are three mechanisms of law-making at present; which can be summarized, depending on the importance of issue, as “Commission proposes, Council acts”, “Commission acts”, and “Commission proposes, Council and Parliament act” (Mayer-Schönberger, September 2005, lecture notes); nevertheless, the veto power of the elected Parliament

is remote. In this sense, the democratic legitimacy is derived from the national governments and Community's decision-making center becomes the Council (Grimm, 1997). Talking about a democratic environment, it also has to be remembered that a guarantee of free communication deriving from a constitution is the imperative for transparent elections. That overall, explains the increased calls for a European constitution.

With this respect, it can be inferred that a constitution is formed by an act taken by the people (Grimm, 1997) and it is the people's political capacity to establish a constitution in an open and democratic society. Nevertheless, such a situation does not exist for the Community's primary law; that is to say that the foregoing capacity goes back to the member states, not to the people. Grimm (1997) reminds that the treaties are not the expression of a society's self-determination and it is the constitution which provides the objectives of a political unity.

Many scholars argue that Europe have been experiencing a constitutional moment. Among them, Walker (2003, p.3) argues that "the Constitutional Treaty will be a significant catalyst in deepening the status of the EU as a 'constitutionally serious' entity." Thus the Constitutional Treaty will make the EU realize a transformation into a constitutional polity.

References:

Grimm, D. (1997). Does Europe Need a Constitution? *The Question of Europe*. Ed. P.

Gowan et al. London: Verso. pp. 239-258.

Leonard, D. (2005). *Guide to the European Union*. London: The Economist.

Mayer-Schönberger, V. (September 21, 2005). *Lecture Notes*. Cambridge, MA: John F. Kennedy School of Government, Harvard University.

Walker, N. (2003). *After the Constitutional Moment*. London: The Federal Trust for Education and Research. pp. 1-15.

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