

## **Democratic Deficit, European Constitution, and a Vision of the Federal Europe: The EU's Path after the Lisbon Treaty\***

**Nam-Kook Kim\*\* and Sa-Rang Jung**

*With the implementation of the Lisbon Treaty in December 2009, it has become more feasible to envisage a federal Europe through the establishment of an 'ever closer union' as a political entity. Although the recent EU appears more like confederal or intergovernmental than federal, the Lisbon Treaty makes it possible to postulate that the future integration process of the EU would be its advance toward a federal state. On the verge of ramification toward either a federal Europe or a durable confederation, the EU faces a critical agenda of democratic deficit, i.e., a lack of vertical accountability between European political elites and voluntarily participating European citizens. The current status of the EU is obviously unique in its structure of multi level governance. Sometimes this structure is evaluated positively, but the study of former confederations also indicates that a confederate system is not durable, and rather unstable and impermanent. If the EU wants to move in a federal direction beyond confederation, it should answer the question of democratic deficit, that is, how to find European citizens who are loyal enough to sustain an independent political community. This paper discusses a possible route for the EU after the Lisbon Treaty, especially with respect to issues related to the democratic deficit and to the necessity of devising a European constitution.*

**Keywords: Federal Europe, Confederation, Democratic Deficit, European Constitution, Lisbon Treaty**

### 1. INTRODUCTION

Where is the European Union heading? Where might be the final destination for European integration? Despite some support for European statehood, it has been rather evident that the current status of the EU is not a federal state, but a union or a confederation consisting of sovereign member states which have agreed to delegate some of their sovereignty to the common institutions of the union for the interests of each member state. Nevertheless, with the effectuation of the Treaty of Lisbon on December 1, 2009, it has become more feasible to envisage a federal Europe, that is, the establishment of an 'ever closer union' as a political entity. The Lisbon Treaty suggests at least four parameters that are essential if this ever closer union is to be realized.

Firstly, the Treaty makes clear the jurisdiction of authority between the EU and member states through classification of three policy categories: exclusive, shared, and supporting competences. Exclusive competence entirely belongs to the EU, which includes a common monetary policy, a common tariff policy, a common trade policy, a competition policy in the EU market, and a participation in international treaties. By contrast, supporting competence belongs to the member states and includes domains of culture, tourism, education, sanitation,

---

\* This work was supported by the Korea Research Foundation Grant funded by the Korean Government (MEST) (KRF-2009-362-A0001)

\*\* First Author

and administrative cooperation. The EU and the member states then share the jurisdiction of authority in the areas of environment, transportation, energy, consumer protection, public health, public security, social policy, and agricultural & fishery policy. This classification confirms a certain trend where more policy domains, which previously belonged to the member states, are inevitably interconnected with the jurisdiction of the EU, especially in the areas of environment, social policy, and public security. More importantly this trend will become irreversible under the deepening and widening of the EU.

Secondly, the treaty reinforces the supervision power of the EU over the macroeconomic policy of the member states. The European Central Bank has now become an official and independent institution and has expanded its jurisdiction over all member states including non Euro zone countries even though its power of monetary policy has been delayed to non Euro zone countries until they begin to use the Euro currency. The ECB's decision-making procedure also adopts a qualified majority voting system instead of a consensus system, thus guaranteeing a rapid response to remove any uncertainty in the market. In addition, the European Commission in cooperation with the Eurogroup, which consists of treasury secretary of the member states, has the power of monitoring both the fiscal soundness and the fiscal deficits of the member states and issuing relevant warnings in these areas.

Thirdly, the treaty aims to enhance efficiency as well as democracy in the decision-making process of the EU. The number of agenda which comes under the scope of unanimity is saliently reduced. More than 40 policy areas including common foreign & security policy, environmental policy, and mid-and-long term fiscal matters can now be decided under qualified majority voting, thus guaranteeing fast and efficient decision making. In addition, the treaty intends to introduce incrementally the double majority voting system beginning in 2014 to prevent disadvantageous situations for small member states. Under this new voting system, a decision will require the double hurdle of at least 55 percent of member states, that is, 15 countries out of 27 member states as well as 65 percent of total EU population. Of course, every member state will still retain a veto power and can demand for unanimity over any new proposals or decisions in the fields of defense, foreign affairs, taxation, and civil and family law. But even in the areas of foreign and taxation policies the treaty tries to bring about common EU standards to protect European citizens and to maintain balance in direct and indirect taxes for importing products from the member states.

Fourth and lastly, the treaty has reinforced the power of major institutions and tried to strike a balance of authority among them. It established the presidency of European Council with a two and half year tenure which is renewable for one term. It also introduced the position of High Representative of the Union for Foreign Affairs and Security Policy with a five year tenure. This position, commonly called foreign minister, combines the former positions of High Representative for Common Foreign and Security Policy and the European Commissioner for External Relations. The newly appointed foreign minister is supported by the department of European External Action Service and plays the role as vice president of the European Commission. The standing position of presidency and foreign minister with a longer fixed tenure means that the EU, as an integrated political entity, might enjoy more stable and predictive relations with other countries.

The European Parliament also became more influential with its increased size of members from 736 to 751 and through sharing co-decision making power with the Council of the EU in more than 70 issue areas including trade and commerce. Although the European Parliament previously ratified the president of the European Commission after decision of the Council of the EU, now it literally elects the president of the European Commission after

recommendation from the Council of the EU. In contrast, the European Commission has adjusted its authority through sharing power with the parliament and council on the one hand, and through reinforcing its supervising role over the member states on the other. It also has a plan to reduce its number of commissioners from 27 to 18 by the year of 2014 which makes the operation of the institution more efficient (Papier 2008; Li 2008; Yang and Lee 2009).

All these characteristics of the Lisbon Treaty make it possible to estimate that the future integration process of the EU will advance it toward a federal state. The current status of the EU is obviously unique in its structure of multi-level governance. Sometimes this aspect is evaluated positively, but the study of former confederations also indicates that a confederate system is not durable, but rather unstable and quite temporary. The most important difference between a federal state and confederation is whether the central government and member states share sovereignty or not, especially in the areas of defense and taxation. The EU has no direct taxation rights over the European citizens and no standing army large enough to perform an independent military operation.

In this regard, the EU is closer to a confederation at present even though it has some potential to move toward a federal state, in terms of institutional arrangements such as the standing presidency and the foreign minister position, expansion of exclusive competence policy category, and various efforts to enhance solidarity among European citizens. If the Lisbon Treaty aims to go in a federal direction beyond confederation, thus to create a single political community, it should answer the question of democratic deficit, that is, how to find European citizens who are loyal enough to sustain an independent political community. In an attempt to solve this problem, there is a suggestion for the necessity to devise a European constitution. Some scholars argue for the introduction of the constitution as a solution to democratic deficit, while others claim the democratic deficit itself makes the attainment of a constitution impossible.

The existence of the growing Euro-scepticism which emphasizes no-demos thesis and the divisions among member states regarding various policy issues should not be overlooked during the process of European integration. In consideration of these differences for the future development of the EU, this paper discusses a possible route for the EU after the Lisbon Treaty, especially with regard to the issues related to the democratic deficit and the necessity of devising a European constitution. Section II explores various interpretations concerning the notion of a democratic deficit, section III analyses the call for a European Constitution as a means to overcome the democratic deficit, section IV contrasts diverse characteristics of federation and confederation as a possible result of the Lisbon Treaty with examination of the statehood of the EU, and finally, the future prospects for the EU including the probable negative characteristics of a federal Europe are considered in the concluding section.

## 2. INTERPRETING A DEMOCRATIC DEFICIT

Why is democratic deficit important in the discussion of the Lisbon Treaty? What does it mean by democratic deficit in the EU context? And why do we deal with the topic of state form in analyzing the EU's democratic deficits? If the Lisbon Treaty drives the current Europe on the verge of ramification toward either a federal Europe or a durable confederation, there remains the critical aspect of democratic deficit. This matter comes out when the EU wants to transfer itself from an economic community based on consumers to a

political community based on citizens. The EU has already started to transform itself into a political community with various state apparatus since the 1992 Maastricht Treaty. Accordingly, the EU as a political community has to achieve democratic legitimacy from European citizens in addition to economic benefit for European consumers.

Democratic deficit has two meanings in the EU context. One is the lack of horizontal accountability among major institutions such as commission, council, and parliament. The other is a lack of vertical accountability between European political elites and voluntarily participating European citizens. Many scholars point out that the EU is suffering as a result of decisions that are insufficiently representative of, or accountable to, the nations and the people of Europe (Lord 2001: 165). Nevertheless, if the EU wants to remain as a durable confederation, that is, a loose network among member states, democratic deficit less seriously matters since the sovereign member state individually absorbs such demand. But if it targets a federal Europe with the centralized state apparatus through continuing establishment of new treaties, then it should answer the problem of democratic deficit, especially of the vertical accountability.

As such, democratic deficit and the state form have close relations especially when the EU goes to the direction of federal Europe in which the central authority rather than the constituent units remain as the decisive force. The Lisbon Treaty as a diminished form of the 2003 constitution for Europe suggests some solutions regarding horizontal accountability especially through reinforcing power of the European parliament. But when it stipulates a high level of institutional interconnectedness, there is no clear answer how to achieve corresponding commitment to those institutions from European citizens. In other words, the Lisbon Treaty takes an incomplete attitude toward a federal Europe without a clear answer to vertical accountability, namely a no European demos problem (Kim 2004: 281-302; Trezn 2010: 93-115).

With regard to the evaluation of a democratic system, Robert Dahl states that elected representatives, free and regular elections, freedom of expression, alternative information, associational autonomy, and inclusive citizenship are all essential democratic criteria for a political unit as big as a state (Dahl 1998: 83-99). That being the case, the democratic deficit, especially the problem of vertical accountability, occurs when democratic institutions or organizations appear to fall short of fulfilling the principles of parliamentary democracy in their practices when representative and related parliamentary integrity is concerned (Levinson 2007: 859-860).

In the context of EU operations, the democratic deficit signifies that the EU suffers from deficiencies in representation and it also reveals that the integration process of the EU contributes to the change of the member states to the extent that each member state can no longer claim to be the source of its own legitimacy (Eriksen and Fossum 2002: 401-424). A chain of representation through EU institutions is associated with the degree of diverse rights and powers that the European Parliament (EP) has since the voice of European people could be heard via individual members of the EP whose elections can be the channels for European citizens to express their interests and preferences over the EU policy areas (Holzhacker and Albaek 2007: 9-10). The EP, however, still has a limited influence on the European Commission and the Council of Ministers, even though the power of EP is increasing under the Lisbon Treaty; thus the chain of representation is imperfect, rather exacerbating the problem of democratic deficit.

Simon Hix suggests a solution to the institutional problem in two ways. One is a presidential system in which a president of the EU is chosen through direct election by

European citizens and he/she would lead the commission as the administrative pillar. The other is a parliamentary system in which a prime minister, who would sit at the head of the European Parliament, is chosen by EU citizens through a general election. Under this system, the current parliament could play the role as a lower chamber and the Council of the European Union as upper chamber. Eventually the EU would have the bi-cameral system with its own prime minister. If one of these systems is adopted, can the democratic deficit matter eventually be solved? (Hix 1997)

Dimitris Chrysochoou interestingly differentiates an institutional perspective of the democratic deficit from a socio-psychological perspective. In an institutional perspective, questions are focused on ‘who governs and how?’ and accentuate the need for democratic power sharing which might give the EP a larger share in the EU decision-making process. In contrast, a socio-psychological perspective asks ‘who is governed?’ and focuses on the absence of European demos (Cini 2003: 365-381). Some scholars claim that the existence of European demos is not only possible, but also could be recognized on the basis of EU citizenship. The concept of EU citizenship was first introduced by the Maastricht Treaty and further developed by the Treaty of Amsterdam.

One might assume that the democratic legitimacy of the EU is growing, considering Article 20 of the Treaty on the Functioning of the European Union, which states, “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship,” and “Citizens of the Union shall enjoy the rights... the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State” (European Commission 2008). This article certainly establishes European citizens, but it describes EU citizenship as an addition to the national citizenship, a by-product. In other words, it does not bring about European citizenship per se unconditionally.

Furthermore, although the formation and development of EU citizenship exhibits the potential for the Union to improve the democratic governance at the supranational level, the EU decisions are becoming more remote from the citizens as a result of expansion of the Union, the incomplete as well as complex passage of representation and the multi-layered governance (Eriksen and Fossum 2000: 5). For instance, according to Eurobarometer 72 conducted from October 23 to November 18, 2009, there is a high percentage of negative opinion about the EU (46% of negative opinion including 14% of no response) regarding the question ‘On the whole, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in the European Union?’ (European Commission 2009) Without a sense of belonging among European citizens who share a common European identity and without ensuring the involvement of European citizens to a higher degree in the policy-making process, the further institutional or structural development of the EU could entail a fundamental instability for preserving the lasting existence of the EU, as a viable political entity. In other words, the reality appears that the EU is still suffering from a degree of democratic deficit, particularly in a socio-psychological perspective.

By contrast, Andrew Moravcsik claims that the EU is democratically legitimate enough since the constitutional checks and balances, indirect democratic control through national governments, and the increasing power of the EP could all guarantee that the EU decision-making process is transparent, effective and receptive to the needs of European people (Moravcsik 2002: 603-624). He also argues that it is necessary to compare the operations of

the EU to the actual functions of national democracies adjusted for a multi-level context in order to fairly analyze the problem. The EU is coexisting with much stronger nation states with regard to fiscal, administrative and legal power within multi-level governance. According to the concept of multi-level governance, the political system of the EU contains three characteristics: first, decision-making abilities are shared by actors at different levels through national and supranational institutions of the EU; second, a joint decision-making among states entails a loss of control for individual national governments; third, transnational stages appear as political arenas are interconnected rather than nested (Hooghe and Marks 2001: 33-69).

Given these circumstances, Moravcsik argues that democratic legitimacy can be interpreted in many ways. For example, decisions from the European Human Rights Court enjoy a high level of support even though the members of the Court are not directly elected. Sometimes the institution needs a distance from the complicated interests and that condition guarantees more stable legitimacy. Moreover, he insists that even though we admit the importance of people's participation in the decision making process, it is not easy for the EU to have a high degree of response from the citizens since the EU has no jurisdiction over the issues in which people have direct interest, such as social policy, educational policy, and public security matters. He investigates innate substantive, fiscal, administrative, legal and procedural constraints on EU policies which are contained in several treaties and legislative provisions. Those conditions play the role as constitutional law for the Union as a multinational body in assuming less direct political participation.

Moravcsik's argument offers a very interesting justification for the vertical perspective of the democratic deficit. Nevertheless, he does not suggest any fundamental solution to the socio-psychological perspective of the democratic deficit that embraces the opportunity for the people to be informed, to comprehend, and to have their voice heard (Holzhacker and Albaek 2007: 8). As Kevin Featherstone argues, Jean Monnet's initial design of an elitist and technocratic High Authority detached from any national interests is to some extent responsible for the current democratic deficit of the EU. In a sense, Moravcsik lines with Monnet's idea that emphasizes the need of inevitable exclusion of people to some extent even though such exclusion has brought about the present European Commission that is short of accountability as well as democratic legitimacy, despite the fact that its status has been vital for the history of European integration (Featherstone 1994: 150-165).

### 3. OVERCOMING THE DEMOCRATIC DEFICIT: ADOPTING A EUROPEAN CONSTITUTION?

How then could the EU remedy its socio-psychological or vertical democratic deficit and to what degree will the European integration process continue? Interestingly, some scholars argue for the introduction of constitution as a good leverage to solve democratic deficit (Mannini 1998; Habermas 2001; Park 2007; Li 2008; Trenz 2010), while others claim the democratic deficit itself makes the achievement of a constitution not probable (Grimm 1995; Weiler 1998; MacCormick 2006; Kim 2008; Grimm 2009). Those who support the introduction of constitution believe that Europe can find new solidarity beyond cultural, regional, and ethnic differences through such a constitutional arrangement which is based on common democratic principles and values. If people share and practice some constitutional principles, this will eventually bring trust among people which is enough to sustain the EU as

a political community. Accordingly, they expect such a positive role from the Lisbon Treaty.

By contrast, those who object the introduction of constitution argue that the EU's legitimacy depends largely on the democracy of the member states, thus one should be careful to exhaust this national capital. This opponent position is more interested in collective civic identity and the extent to which there is a shared feeling of belongings among Europeans. Acknowledging the absence of a European demos, they insist that creating the constitution first without voluntarily participating European citizens means to place the carriage before horses. Such a statist short cut approach adopted in the early stage of European integration now left the negative legacy of how to invent citizens to justify the existence of the EU. Therefore, the EU's priority at this stage should go not to create the constitution, but to further the path of transnational demos-formation under the role of the current nation state system. Accordingly, they suspect too much role of the Lisbon Treaty.

As to the desirability of creating a constitution, Jürgen Habermas states that a European constitution would have a catalytic effect on strengthening democratic legitimacy of the EU by improving the capacity of member states to act collectively, not being biased toward the certain process or content of policies that might be adopted (Habermas 2001: 12). Besides, the constitutional protections secure particular interests of every citizen including those of minorities (Weale and Nentwich 1998: 43). Additionally, Scott Gordon also claims that a political entity is constitutional to the extent that it possesses institutionalized mechanisms for power control in order to preserve the freedom and interests of citizens, embracing those of minorities (Gordon 1999: 4).

By definition, a constitution is 'the set of fundamental rules governing the politics of a nation or sub-national body' (Mclean and Mcmillan 2003: 117) and it restricts the state power while articulating the limits to individual liberty and social autonomy (Grimm 1995: 287). Moreover, constitution-making refers to a 'process of change in which the norms, principles, decision-procedures, and modes of justification that underpin and inform a written body of rules are presented, deliberated, and eventually encoded in a constitution' (Blichner and Fossum 1997: 3). The demand for a European constitution primarily stems from the weak legitimacy of the Union, which is mostly drawn from legal acts of national governments that comprise the Council, the dominant policy-maker (Grimm 1995: 284).

According to Habermas, democratic legitimization asks for two notions together: the mutual contact between institutionalized deliberation and decision-making within parliaments, courts, and administrative bodies on one side, and an inclusive course of informal mass communication on the other. He also argues that there is rationale for European countries to establish a powerful and influential union so long as they desire to regulate to a certain degree of the unwanted social, cultural, as well as economic consequences of globalism (Habermas 2001: 5-26). His view that the enhanced global economic competition would necessitate the building of an ever closer union seems credible, since globalization reveals that an individual state is too small to handle the comprehensive new challenges of international capital flows, technological transfer, environmental problems, immigration and refugees, and global warming, etc (Eriksen and Fossum 2000: 1-3). This situation has provided a rationale of an ongoing debate over whether the EU needs a constitution.

MacCormick, however, argues that legal integration has not necessarily facilitated social integration. The new constitutional order does not guarantee that the emerging European polity will be similar to the supranational constitutional state or welfare state as Habermas expects. Rather it could be a 'sectoral state': a polity in which different policy spheres are

governed by those most closely affected by or most interested in them, a development that has negative implications for democratic rule, legal authority and material equality in Europe's future. In MacCormick's view, Habermas minimizes the traumatic nature of previous transformations of the nation state and overestimates the accomplishments of the welfare state, and then too readily endorses the probability of supranational state at the European level (MacCormick 2006: 422-23).

Dieter Grimm also emphasizes that it is unnecessary to create a European constitution, since institutional reforms can also be obtained by amending the Treaties — which the member states have made to develop the Communities — without changing them into a constitution. He further suggests that the legal binding of the 'public power' — the object of the legal norms incorporated in the treaties as well as in the member states' constitutions — executed by the European Community is not deficient, rather it covers the areas of the constitution at the national level by constituting the Community, setting its purposes and establishing its institutions while allocating its powers as well as directing its operations (Grimm 1995: 289). Above all, for Grimm, there are no European demos who justify the introduction of a European constitution and the transfer of sovereignty of the member states to the European Union.

Nevertheless, those who support a European constitution argue that the EU could improve the accountability, transparency and the effectiveness of its operations, whereby enhancing the democratic legitimacy of the Union, if such a constitution were drafted. Although the Union is not a state for whom constitutions normally build a legal footing, by establishing a European constitution which clarifies the separation of powers and the responsibilities among the institutions of the Union, the EU could have a much clearer voice and a greater influence that may be easily noticed in the international community. Even Grimm admits that 'the Treaties lack a catalogue of fundamental rights bringing the relations between the Community and the natural and legal persons subject to it under the guiding principles of freedom and equality' (Grimm 1995: 289). It might be justifiable to presume that a European constitution would guide the future development and the integration process of the Union by ensuring the observance of the rule of law in the EU, while elucidating the core rights and duties of European people as well as the powers and limits to the authority of the institutions.

In reality, albeit the 2003 treaty establishing a constitution for Europe remains not ratified, the effectuation of the Treaty of Lisbon presents a fair possibility for augmenting the democratic legitimacy of the EU. For example, the Charter of Fundamental Rights of the European Union that ensures social, political, economic and religious rights and freedoms of EU citizens became legally binding under the Lisbon Treaty, which states, "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law (Article 6-3)" (European Commission 2008: 21). In addition, the EU became a legal body with the abolition of the pillar system, and thus the character of the EU appears to be transformed from a political entity into a legal entity (Chae 2009: 122), as the EU may sign treaties or become a member of international organizations thus assuming more effective action on the basis of increased legal certainty (Chae 2006: 33-34).

Furthermore, the expansion of co-decision procedures to more policy areas could increase the competence of the EP in the legislative process, and the establishment of the European Citizens' Initiative would offer an opportunity for European citizens to become directly



involved in EU matters during the legislative procedure. Besides that, by extending the application of double majority voting to new policy arenas, the Union could more faithfully reflect the interests and concerns of the citizens. These overall changes under the Treaty of Lisbon are expected to strengthen independently as well as collaboratively the democratic legitimacy of the Union.

Despite the argument of Elazar that establishing and retaining a constitution is the foremost means of expressing the desire or will of a polity to be federal (Elazar 1987: 42) and in spite of the necessity for the EU to promote a democratic governance at the supranational level based on a robust legal ground, one could not be sure yet whether the EU satisfies the fundamental prerequisites for a union or an association of states for entering into a federation. To rectify the symmetry matter to be a federal state especially in regard to the overrepresentation of small states and the allotment of votes in the Council of Ministers, it is necessary to readjust the power of states and national parliaments by rethinking the authority of the Council and the Commission, whilst seeking the equalized influence of citizens by reflecting population size more reasonably in votes (Weale and Nentwich 1998: 43-44).

Power and position of the EP is crucial for the representation of the people at the EU level, since the EP generates a direct supranational legitimacy, i.e., legitimacy transferred directly from the citizens to the supranational level (Warleigh 2003: 77-88). The EP's multi-level parliamentary field contains two channels of democratic representation directly through the European Parliament as well as indirectly through the national parliaments and governments. These two channels can be maintained under the Lisbon Treaty, thus both the European and the national parliaments can claim to represent citizens in the EU decision-making (Crum and Fossum 2009: 249). Nevertheless, the EP has not gained more legitimacy, in part because the EU as a whole lacks public interest, and also because the significant stage of the co-decision procedure, that is, conciliation process, takes place behind the curtain, detaching the EP's influence from the public view, even though the authority of the EP has been increasing, especially with the co-decision procedure which makes the EP and the Council approximately equal as legislators (Warleigh 2003: 78-90).

#### 4. FURTHER INTEGRATION OF THE EU: A FEDERAL EUROPE OR A DURABLE CONFEDERATION?

Which destination then is the EU heading for if the Lisbon Treaty plays the role as a constitutional framework to reduce democratic deficit and to enhance the effectiveness of its operation? Is it a federal Europe with the centralized state apparatus or a durable confederation as a loose network among member states? In order to predict the future development of the EU under the Lisbon Treaty, it is important to check the relations between democracy and constitution. Democracy definitely needs a constitution especially in a heterogeneous polity in terms of culture, religion and ethnicity. There would be various forms of constitutionalism to foster democracy. Sometimes, unwritten constitution can work in a relatively homogeneous polity like Britain. In contrast, the EU as a multinational community needs the constraint effect of written constitution as a publicly declared principle. The 2003 draft establishing a constitution for Europe was a good example of the positive position toward the role of constitution even though it soon faced 'period of reflection' following the rejection of ratification in France and Netherlands (Pang 2006; Chun 2007).

Numerous treaties in the history of the EU assume that such institutional frameworks can

enhance efficiency and transparency, thus eventually bring about a higher level of democracy. This institutional approach also assumes that even European collective identity can be attained not as the basic infrastructure of a European democracy, but as a contingent by-product of democratic practice. The Lisbon Treaty presupposes the same confidence in the emergence of the democratic agency as a consequential effect of dealing with shared concerns (Trenz 2010: 94-95). But this constitutional position cannot be the only authoritative perspective. According to Barents, the popular concept of an integrated legal order appears to be a limited paradigm. The constitutional approach which aims to override all differences may urge a choice between two options and distort legal reality insufficiently explaining the two way interaction or convergence between the two orders. The concept of constitutional pluralism, on the other hand, can offer an escape from the binary prison of monism (Barents 2009: 445-446).

The historical political development of the EU reveals the ideological or theoretical conflicts between 'intergovernmentalism,' which favors the role of national states as a major drive for the European integration and thereby emphasizes the characteristic of the EU as more of a confederation, a type of union in which the constituent units rather than the central authority remain as the decisive force (Forsyth 1981: 171-181), and 'supranationalism' which values power delegated from member states to the authority of supranational institutions under the Union during the integration process, whereby focusing on the characteristic of the EU as more of a federation. In line with this, under an intergovernmental approach, national democracies need to be adjusted for the role of legitimizing the Union, in accordance with national electorates and national parliaments who ratify treaties and create governments which make decisions in the European Council and the Council of Ministers. Under a supranational approach, democracy at the Union level could assume a European electorate with the European parliament maintaining a significant power for the leadership of the union (Beetham and Lord 1998: 59-60, 74).

Nevertheless, it is not a simple task to judge whether the EU belongs to the category of confederations or that of federations. King defines federation as 'an institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units into its decision-making procedure on some constitutionally entrenched basis' (King 1982: 77) In the context of the European integration, federalism is a specific form of political integration based on a simple maxim 'unity in diversity', which means in cases when the member states want to act independently diversity will predominate, whereas if unity is demanded by common consent, then the EU will act subsequently (Cini 2003: 65-78). On the other hand, as a framework for the European integration process, confederation is a particular type of intergovernmental arrangement in which national sovereignty is preserved unscathed in spite of the building of common institutions (O'Neill 1996: 71, 87). Confederation is also defined as a 'union of states' within a polity, contrary to a federation which is a 'union of individuals' in a polity (Wiener and Diez 2004: 30).

In what specific aspects then do confederations vary from federations? Some general features of a confederation can be described as follows (Lister 1996: 33-34): first, a confederation unites states while leaving their statehood intact; second, a confederation unites states whose people are too heterogeneous to shape federal unions; third, a confederation needs a written basic law legally binding upon the member states; fourth, a confederation offers a minimum mandate which leaves most governmental powers to be executed autonomously by member states; and last, a confederation needs huge support from

the people of member states based on their confidence that such a bond would magnify the security and economic growth of their own country. A federation, on the contrary, is itself a state based on the 'self-rule and shared rule'—in which constituent units have agreed to transfer their sovereignty in matters of common interest while maintaining their autonomy in matters of local interest—rooted in a written and supreme constitution. Additionally, a federation has a supreme court who regulates the relations among the constituent units themselves, as well as between the central authority and the constituent units (Burgess 2000: 268).

The present EU appears to have more characteristics of confederation than federation, because its member states possess a great autonomy and power in making and practicing crucial decisions associated with social welfare such as health, culture, education and employment, i.e., spheres that would have a direct influence on the lives of citizens, and policies concerning foreign affairs, security and defense issues, spheres that might impinge on the critical part of the national sovereignty. Moreover, the principle of subsidiarity, the principle of proportionality, opt-outs and veto rights all allow the member states to enjoy a huge degree of independence in defining their own positions regarding the policy areas of their interests.

It is necessary to ponder the relative merits and demerits of confederation and federation in order to predict the future political development of the EU. Historically, confederate systems have turned out to be relatively non-durable, and confederations have oftentimes been regarded as transitional or unstable due to their inefficiency in decision-making processes and their lack of mechanisms to ensure the execution of the common policies brought in by member states (J. Kim 2008: 143-169). For example, regarding the implementation of decisions, while in federations it is executed either by the central government or by regional governments according to circumstances, in confederations it is always carried out by member states, which might cause critical problems when the uniformity of implementation is questioned (Lister 1996: 43). In the formation and the execution of the budget, confederations frequently suffer from budgetary deficits as they lack funds or contributions collected from regional governments, while in federations the central and regional governments each may levy a tax on the citizens. Moreover, with regard to dispute settlement mechanisms, disputes among the leaders of member states of a confederation, which take place relatively often and which might bring about grave consequences for the union, are usually handled via arbitrary procedures. Conversely, in federations, disputes which would be managed by the federal and national courts are rarely so severe and rarely endanger the existence of the federal union (Lister 1996: 41). Consequently, several former confederations such as the United States of America under the Articles of Confederation (1781-1789), Swiss Confederation (1815-1848), and German Confederation (1815-1866) have transformed into federations.

Nonetheless, Lister suggests four contemporary possible applications of confederal institutions (Lister 1996: 49): first, in order to fortify their economic power, some groups of small states may want to build confederal-type unions; second, some multiracial states imperiled by separation may want to try confederal institutions; third, groups of neighboring states may attempt to form confederal ties for optimizing the gains from an interdependent world economy and for the collective security; fourth and lastly, for the whole global community, the confederal model could be helpful to handle the probable dangers lying before it more effectively. In particular, he argues that confederation would be an admissible alternative in forming a closer union for groups of states for whom the federal model is not

yet viable. However, Lister admits at the same time that when the member states are threatened from abroad militarily or economically, confederal unions have more chances of success, but when those threats disappear they tend to be weakened, and that several historical confederations actually became firm unitary or federal states (Lister 1996: 31-47).

Therefore, even though the current EU seems more confederal or intergovernmental than federal, the future evolution of the Union would likely lead to a federal Europe, considering the historical cases and various characteristics of confederations and federations. Above all, the EU clearly shares in various ways some of the above-mentioned weaknesses of confederations. The process of decision-making and executing the policies via EU institutions—among whom the separation of powers is obscure—is quite complicated and inefficient because of the contrasting opinions among the institutions as well as among member states. As well, although the EU has its own resources as the budget for its own use, the Union cannot directly tax the people, and its revenue is not sufficient enough to implement diverse social policies.

Although the dispute settlement via the Court of Justice which has a strong judicial authority on the arena of Community competence shows the federal feature of the EU, the execution of judgments of the Court relies mostly on the member states' enforcement agencies (Pinder and Usherwood 2007: 56-58), which restrain the legal capacity of the Union. These diverse weaknesses of the EU resulting from the confederal characteristics reveal that the pursuit of a federal Europe could be an aim in the future for the Union. Moreover, according to Monnet's vision of a federal Europe, the formation of specific functional links among constituent states without directly challenging the national sovereignty would make possible and facilitate the Union's approach to federation, and by virtue of the mutual interests and benefits derived from collaborative economic activities, the creation of solidarity among people, from whom a federation would gradually emerge, becomes feasible (Wiener and Diez 2004: 35-37). Besides, federal constitutions might commence with some treaties among states which demand ratification—as in the cases of the United States and Switzerland—but successful federal unions would presume the characteristics of a state before long (Lister 1996: 19).

That being so, in order to visualize the design of a European federal state, some general features of a state must be contemplated. In regard to the concept of statehood, Dunleavy and O'Leary describe various characteristics of a modern state (Dunleavy and O'Leary 1987: 2): first, the state is a separate institution or a set of institutions, distinguished from the rest of its society to form an identifiable public; second, the state is the sovereign power within its territory as well as the supreme authority for all law; third, the state's sovereignty extends to all individuals within its territory and pertains to those in official posts of government or decision-making; the state also has the power to impose taxes upon its population for funding its activities. In addition, Dosenrode suggests that the state has the authorized monopoly to supervise foreign relations, and a modern state should be based on a core culture which is common to the majority of all citizens in order to ensure its stability and durability (Dosenrode 2007: 20).

Considering these characteristics of a state, the EU seems to gradually embracing more features of a federal state. In particular, with the Treaty of Lisbon coming into force, the Union is ostensibly moving toward the building of an ever closer union. For instance, the creation of a President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy would help to maintain the consistency of EU policies and increase the efficiency of the operations of EU institutions. In addition, by demanding

the recognition of 'mutual solidarity' during the implementation of EU policies regarding security, defense and energy problems, the Union could express a more coordinated voice toward the international society while enhancing a sense of unity among the member states.

Besides, the Lisbon Treaty makes clear distinctions regarding the distribution of powers between the EU and the member states by classifying their competences to carry out actions to support, coordinate or supplement the actions of the Member States,' and on the basis of these competences the EU and the member states may act alone or jointly in different areas. Moreover, under the 'area of freedom, security and justice,' the EU handles diverse issues such as a common policy on asylum, immigration and external border control; measures to prevent and combat crime, racism and xenophobia; measures for coordination and cooperation between police and judicial authorities and other competent authorities, the mutual recognition of judgments in criminal matters and the approximation of criminal laws, and so on (European Commission 2008: 75).

These various arenas managed at the Union level as well as the growing authority of the EU, ostensibly, together indicate the EU's progress toward a more united political and social entity, and if the Treaty of Lisbon produces its intended or desired outcomes, a vision for a federal Europe might actually be realized. Interestingly, Mancini (1998), in his article 'Europe: The Case for Statehood,' also claims that a European federal state is not only conceivable but also feasible, 'if the march towards an ever closer union between the peoples of Europe is to continue,' and 'if the peoples of Europe are to preserve the constellation of values informing their ways of life.' He further argues that a European state would be able to have influence on the global market with the exercise of Europe's huge economic power (Mancini 1998: 29-42), a fact the EU is already demonstrating well with a strong euro in the international financial market.

Nevertheless, there still exists skepticism against the statehood of the EU and disagreement among member states regarding the benefits from their EU membership and the extent to which they support decision-making process at the supranational level. For example, Grimm claims that because of the absence of a European communication system due to the language diversity, 'there will be neither a European public nor a European political discourse for the foreseeable future,' and as a result, transforming the Union into a federal State cannot be in the short term a desirable goal (Grimm 1995: 290-300; Grimm 2009: 353-373). Furthermore, Joseph Weiler argues that statehood is not an essential answer in solving the democratic problem of the EU. He criticizes Mancini's opinion of the 'Case for Statehood' on the ground that it is never elucidated how and why statehood could settle the problems of democratic governance and why they could not be solved without the existence of a state (Weiler 1998: 43-62).

Euro-skeptic attitudes in individuals, regions and nations are manifested in refusals to offer more legitimate power to supranational institutions to deal with policy issues (Lubbers and Scheepers 2005: 223-242; Lock 2009: 407-408). There are also discrepancies between European elites and citizens in the support of different aspects of European integration. The public want to Europeanize market-sided policies while elites conceive of European integration as an optimal solution for internalizing externalities beyond the level of nation states (Hooghe 2003: 281-304). However, if the EU gains more competence to facilitate the implementation of its regional and social policy, thus incorporate various policy issues related directly to employment, poverty, education, and general welfare of EU citizens, this means that the EU eventually has the increased social support, cooperation and the unity among European citizens.

According to Habermas, the buildup of democratic legitimacy of the EU based on the formation of a European-wide public sphere, i.e., “a network that gives citizens of all member states an equal opportunity to take part in an encompassing process of focused political communication” (Habermas 2001: 17) appears to be both desirable and viable. Due to the creation of the borderless zone by the Schengen Agreement, through which European people may enjoy equal opportunities of employment and education like local citizens within the member states, the EU has stepped into a sort of life community beyond a simple economic community. In addition, the increased movement of European people over the physical national borders would naturally entail the increased stakes, concerns and common interests shared by the people, and this social cohesion and interdependence may necessitate the spontaneous construction of a pan-Europe public sphere. Howe also suggests that with the coming of increased pluralism, multiculturalism and individualism, contemporary societies would produce a sense of identity which derives more from shared values and beliefs than shared group experience, and as a result, structure, in this case the EU, will form identity by its very existence and its constant use, whilst difference may count less than the belief that individuals share a sort of mutual connection (Howe 1995: 27-46).

## 5. CONCLUSION

Despite the inherent structural obstacles the EU faces as a multinational community, current study of federal and confederal models indicates that the future integration process of the EU would be its advance toward a federal state, and the establishment of an ever closer union. According to the historical perspective on the development of democratic entity in Dahl's explanation, the present Europe belongs to the third transformation out of the three stages which consist of: first, the transition from the undemocratic city-state to the democratic city-state; second, the democratization of the nation-state, moving toward the representative and republican state; and third, the democratization of institutions on the transnational level beyond the nation-state (Dahl 1989: 1-8, 313). But, this third stage transformation is not simple. Schmitter argues that today's EU is “a complex entity, a mixture of supranational, transnational, transgovernmental and intergovernmental structures” (Schmitter 1996: 4). As Larry Siedentop points out, the present EU seems to be “a new political form, something more than a confederation, but less than a federation” (Siedentop 2000: 1).

However, under the Lisbon Treaty, by promoting various social policies and programs at the union level, whilst attempting to coordinate the conflicting opinions among member states, especially those concerning the domains of foreign affairs and security, the EU could develop a single voice toward the international community, rising as a global actor, thus proceeding continuously to build a political entity (Koehler 2010: 71-72). In the course of this political and social integration, it is vital to create a sense of unity among European citizens in order to surmount diverse problems related to the democratic deficit. The Lisbon Treaty as a kind of constitutional foundation may play the role to overcome such a matter of horizontal and vertical accountability, thus to bring a more integrated federal state.

In the deepening as well as widening of European integration, one remaining concern is the possible negative characteristics of a federal Europe. The federal state does not simply mean a reproduction of an exclusive nature of nation state in giant size. It would be desirable for the EU to be a new experiment for the framework of peace beyond modern nation state

system. Negatively or positively, one of unique characteristics of the EU is its multi-level decision-making system which is different from a hierarchical nation state one. If the EU turns into a strong federal Europe with a hierarchical decision making system, thus a federal Europe, a fortress Europe removing any differences among member states, which eventually makes the wall between Europe and non-Europe higher and reinforces the characteristic of the EU as another neo imperial hegemon of the world, it would be difficult to discern the EU's development as a new experiment of peace from another realistic compromiser across the Atlantic oceans (N. Kim 2008).

Nobody wants to see such a deterioration of the European Union. The need of an efficient single voice cannot override democracy even though we need a strong political control tower to rectify the result of economy driven laissez faire globalization. The recent effectuation of the Treaty of Lisbon seemingly displays a prospect for the EU to move further to a more integrated political union. But in the end, whether the Union is deemed to be a confederation or a federation is less significant than the deliberation and trials for making the EU a more durable democratic entity, operating effectively based on the rule of law and the consensus of citizens. This would be what Alain Lipietz referred to as the 'dream scenario': 'a different Europe is possible, one that is ecological, social and democratic in its overall decisions, but regionally diverse in its life-styles; tames blind market forces through a common base of social rights and ecological duties and mobilizes its financial and technical resources to make standards of living equal in different regions' (Lipietz 1993: 512).

**Article Received: 04-28-2010    Revised: 06-21-2010    Accepted: 10-15-2010**

#### REFERENCES

- Barents, René, 2009, "The Precedence of EU Law from the Perspective of Constitutional Pluralism," *European Constitutional Law Review* 5(3): 421-446.
- Beetham, David and Christopher Lord, 1998, *Legitimacy and the European Union*, London: Longman.
- Blichner, Lars and John Erik Fossum, 1997, "Modern Constitution Making," paper published in The Proceedings of the Annual General Meeting of the Canadian Political Science Association, St. John's, Newfoundland.
- Burgess, Michael, 2002, *Federalism and European Union: The building of Europe, 1995-2000*, London: Routledge.
- Chae, Hyeong-Bok, 2006, *European Constitution*, Seoul: NopiGippi.
- Chae, Hyeong-Bok, 2009, *European Union Law*, Paju: Korean Academic Information.
- Cho, Hong-Sik, 2005, "European Integration and the Construction of European Citizenship," *Journal of International Area Studies* 9(3): 355-380.
- Chun, Kwang Ho, 2007, "European Parliament and Its Position in the Context of the Constitutional Debate", *Journal of European Studies* 25(1): 201-238.
- Cini, Michelle, ed., 2003, *European Union Politics*, Oxford: Oxford University Press.
- Crum, Ben and Fossum, John E., 2009, "The Multilevel Parliamentary Field: A Framework for Theorizing Representative Democracy in the EU," *European Political Science Review* 1(2): 249-271.
- Dahl, Robert, 1989, *Democracy and Its Critics*, New Haven & London: Yale University Press.

- Dahl, Robert, 1998, *On Democracy*, New Haven & London: Yale University Press.
- Dosenrode, Søren, ed., 2007, *Approaching the EUropean Federation?* Hampshire & Burlington: Ashgate.
- Dunleavy, Patrick and Brenda O’Leary, 1987, *Theories of the State*, London: Macmillan Press.
- Elazar, Daniel Judah, ed., 1987, *Federalism as Grand Design: Political Philosophers and the Federal Principle*, Lanham MD: University Press of America.
- Eriksen, Erik Oddvar and John Erik Fossum, ed., 2000, *Democracy in the European Union: Integration through Deliberation?* London & New York: Routledge.
- Eriksen, Erik Oddvar and John Erik Fossum, 2002, “Democracy through Strong Publics in the European Union?” *Journal of Common Market Studies* 40(3): 401-424.
- European Commission, 2008, “Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union,” *Official Journal of the European Union* 51.
- European Commission, 2009, Standard Eurobarometer 72 (First Results), December 2009, [http://ec.europa.eu/public\\_opinion/archives/eb/eb72/eb72\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb72/eb72_first_en.pdf).
- Featherstone, Kevin, 1994, “Jean Monnet and the Democratic Deficit in the European Union,” *Journal of Common Market Studies* 32(2): 150-165.
- Forsyth, Murray, 1981, *Union of States: The Theory and Practice of Confederation*, Leicester: Leicester University Press.
- Gordon, Scott, 1999, *Controlling the State: Constitutionalism from Ancient Athens to Today*, Cambridge: Harvard University Press.
- Grimm, Dieter, 1995, “Does Europe Need a Constitution?” *European Law Journal* 1(3): 282-302.
- Grimm, Dieter, 2009, “Defending Sovereign Statehood against Transforming the European Union into a State,” *European Constitutional Law Review* 5(3): 353-373.
- Habermas, Jürgen, 2001, “Why Europe Needs a Constitution,” *New Left Review* 11, Sep-Oct: 5-26.
- Hix, Simon, 1997, “Executive Selection in European Union: Does the Commission President Investiture Reduce Democratic Deficit?” European Integration Online Paper 1 (021).
- Holzhacker, Ronald and Erik Albaek, ed., 2007, *Democratic Governance and European Integration: Linking Societal and State Processes of Democracy*, Cheltenham & Northampton: Edward Elgar.
- Hooghe, Liesbet, 2003, “Europe Divided?: Elites vs. Public Opinion on European Integration,” *European Union Politics* 4(3): 281-304.
- Hooghe, Liesbet and Gary Marks, 2001, *Multilevel Governance and European Integration*, Oxford: Rowman and Littlefield.
- Howe, Paul, 1995, “A Community of Europeans: The Requisite Underpinnings,” *Journal of Common Market Studies* 33(1): 27-46.
- Kim, Jun-Suk, 2008, “Revisiting the Concept of Confederation Historically,” *Korean Journal of International Relations* 48(1): 143-169.
- Kim, Nam-Kook, 2004, “European Integration and Democratic Deficit,” *Korean Journal of International Relations* 44(1): 281-302.
- Kim, Nam-Kook, 2007, “Human Rights Policy of the EU: War, Refugee, and Identity,” *Journal of EU studies* 12(2): 37-73.
- Kim, Nam-Kook, 2008, “A Normative Leader or a Realistic Compromiser? The EU’s Conflicting Roles in Human Rights and Security Policies,” SNU-KIEP EU Center



## Working Paper Series 3.

- King, Preston, 1982, *Federalism and Federation*, Baltimore: The Johns Hopkins Press.
- Koehler, Kateryna, 2010, "European Foreign Policy after Lisbon: Strengthening the EU as an International Actor," *Caucasian Review of International Affairs* 4 (1): 57-72.
- Levinson, Sanford, 2007, "How the United States Constitution Contributes to the Democratic Deficit in America," *Drake Law Review* 55: 859-860.
- Li, Jong Kwang, 2008, "The Conclusion of the Treaty of Lisbon and Institutional Reform," *Journal of European Studies* 26(1): 23-45.
- Lipietz, Alain, 1993, "Social Europe, Legitimate Europe: The Inner and Outer Boundaries of Europe," *Environment and Planning D* 11: 512.
- Lister, Frederick K, 1996, *The European Union, the United Nations, and the Revival of Confederal Governance*, Westport and London: Greenwood Press.
- Lock, Tobias, 2009, "Why the European Union is Not a State," *European Constitutional Law Review* 5(3): 407-420.
- Lord, Christopher, 2001, "Democracy and Democratization in the European Union," in Simon Bromley, ed., *Governing the European Union*, London: Sage.
- Lubbers, Marcel and Peer Scheepers, 2005, "Political Versus Instrumental Euro-scepticism: Mapping Scepticism in European Countries and Regions," *European Union Politics* 6(2): 223-242.
- McCormick, John P., 2006, "Habermas' Supranational Democracy and the European Constitution," *European Constitutional Law Review* 2(3): 398-423.
- Mancini, Federico, 1998, "Europe: the Case for Statehood," *European Law Journal* 4(1): 29-42.
- Mclean, Iain and Alistair Mcmillan, ed., 2003, *The Concise Oxford Dictionary of Politics*, New York: Oxford University Press.
- Moravcsik, Andrew, 2002, "In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union," *Journal of Common Market Studies* 40(4): 603-624.
- O'Neill, Michael, 1996, *The Politics of European Integration*, London: Routledge.
- Pang, Chung Rok, 2006, "The Rejection of the Constitutional Treaty for Europe and Its Implications on the Future European Integration," *Journal of European Studies* 23: 1-31.
- Papier, Hans Jürgen, 2008, "Europe's New Realism: The Treaty of Lisbon," *European Constitutional Law Review* 4(3): 421-428.
- Park, In Soo, 2007, "The Form of Norm in the European Constitution," *Journal of World Constitution Studies* 13(1): 323-344.
- Pinder, John and Simon Usherwood, *The European Union: A Very Short Introduction*, New York: Oxford University Press.
- Schmitter, Philippe, 1996, "Is It Really Possible to Democratize the Euro-polity?" Arena Working Papers 96/10, Oslo: Arena: 4.
- Siedentop, Larry, 2000, *Democracy in Europe*, London: Allen Lane.
- Trenz, Hans-Jörg, 2010, "In Search of the Popular Subject: Identity Formation, Constitution-making, and the Democratic Consolidation of the EU," *European Review* 18(1): 93-115.
- Warleigh, Alex, 2003, *Democracy and the European Union: Theory, Practice, and Reform*, London: SAGE.
- Weale, Albert and Michael Nentwich, ed., 1998, *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*, London & New York:

Routledge.

Weiler, Joseph, 1998, "Europe: the Case against the Case for the Statehood," *European Law Journal* 4(1): 43-62.

Wiener, Antje and Thomas Diez, ed., 2004, *European Integration Theory*, New York: Oxford University Press.

Yang, Oh-Suk and Jong-Kyu Lee, 2009, "Changes and Implication of the EU after the Lisbon Treaty," SERI Issue Paper December, Seoul: Samsung Economic Research Institute.

*Nam-Kook Kim (corresponding author), Professor, Department of Political Science and International Relations at Korea University. Seoul, 136-701, Republic of Korea. Tel: 82-10-2610-9115, E-mail: nkim98@gmail.com*

*Sa-Rang Jung, Graduate student at Graduate School of International Studies, Seoul National University. E-mail: loves1112@hanmail.net*