

# New Constitutionalism: Theorizing European Integration

Written by Chris Bailey

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CHRIS BAILEY, DEC 22 2007

In “Theorizing European Integration: The Case for a Transnational Critical Approach,” Apeldoorn, Overbeek, and Ryner argue that orthodox approaches to European regional integration, such as realism, liberalism, constructivism, and traditional Marxism, overlook the diffused power of elite consensus. They believe Neo-Gramscian approaches can reveal the agency of elite interests, and their formation of a neo-liberal hegemonic bloc supporting integration schemes. Stephen Gill has applied this perspective to explain regional integration schemes with the theoretical framework of New Constitutionalism. Yet other Neo-Gramscians contend that New Constitutionalism is pessimistically determinist, focusing solely on the agency of a liberal elite while overlooking the agency displayed by progressive social forces in formulating regional integration policy.

In “European Governance and New Constitutionalism: Economic Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe” (1998) and “Constitutionalizing Inequality and the Clash of Globalizations” (2002), Gill describes New Constitutionalism as an international framework to separate economic policy from direct political control to make governments more responsive to market forces instead of popular political imperatives. It is the politico-legal dimension of disciplinary neo-liberalism where market forces seek to secure property rights, freedom of capital flows, low inflation, and loose labor market regulation. This can be visualized in much the same way constitutions entrench policies, procedures, and rights at the national level that cannot be easily changed by simple majority vote; for example property rights in the United States. These policies serve to “lock in” economic reforms, and inhibit future governments from changing course on market liberalization by de-politicizing economic policy from popular political pressure. One key aspect is the privatization of state-owned assets. These types of reforms have brought about a decline in the welfare state, rising unemployment, poverty and dislocation. After initially being utilized by Pinochet in Chile and Thatcher in the UK, neo-liberal policies have also been embraced by traditionally progressive social-democratic parties, such as the British Labour Party and the German SPD. Under it, businesses maximize their ability to move capital across borders while seeking to keep inflation low within the countries they have invested. Wealth and poverty become spatially concentrated in different areas, crime increases, education and social services develop a ‘user pays’ mentality, and gated communities form. Populations become ‘disciplined’ by

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market forces and cannot easily contest them in the political sphere. The effects of New Constitutionalism are highly visible in the developing countries that accepted liberal policies in exchange for necessary loans, only to become increasingly constrained by the loan conditions.

Gill feels New Constitutionalism displays the formation and agency of transnational historic blocs made up of elite and co-opted interests that can transcend social classes. Using the example of European Monetary Union (EMU), he examines how regional institutions can strengthen and entrench neo-liberal policies and institutionalize market forces. The formation of the independent European Central Bank allowed monetary policy to be isolated from direct political pressure, contributing to the EU's 'democratic deficit.' Eurozone investors are assured of low inflation because states are unable to manipulate fiscal policy to respond to a recession and instead must implement austerity measures. This insures the maintenance of the value of investments and savings, strengthening the debt sustainability of governments. These measures also reflect elite desires for the EU to be competitive on the global market with the ability to challenge North America and Asia. To be competitive, unpopular neo-liberal policies can be implemented to roll back the frontiers of the state at the European level, allowing politicians to 'blame Brussels' for unpopular economic reforms and deflect accountability. Growth can be achieved, but at the cost of high unemployment. The European Roundtable of Industrialists, financial service firms, privileged highly skilled workers, and members of government bureaucracies are the direct beneficiaries and supporters of these policy changes. Middle class and small business investors also benefit from open markets and growth, and many consumers are able to benefit from the availability of more commodities. Others become dependent on consumption and debt for their living standards and are divided from the people at the bottom of the economy who suffer. By constitutionalising economic policy, political debate is thus confined to 'ordinary politics' within the confines of neo-liberal policy.

Gerard Strange, a British neo-Gramscian theorist, has responded to New Constitutionalism with a challenge to its claims of neo-liberal elite monopolization of integration policies. Strange argues that constitutionalism and competitiveness are contested, not linear, processes open to outside agents, which he feels Gill has overlooked. Constitutionalism at the regional level does not need to lead to monetarism or neo-liberalism. Ignoring this is to be economically deterministic and obscure the agency of progressive forces opposed to neo-liberalism. He cites the social chapter and working time policies adopted under the Delors EU Commission, supported by many trade unions, as examples of progressive policies that developed within the contested EMU and how many trade unions, including in Britain, supported the euro. Strange also notes that Germany and France have avoided strict compliance with the Growth and Stability pact over unemployment and budget deficits respectively. He believes an alternative Pro-Euro historic bloc could be formed at the European regional level to contest the forces of neo-liberalism. Progressives could pool their resources and strength in numbers to campaign for policies that would be far difficult to achieve at

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the national level. Strange attributes the current strength of neo-liberalism in the EU as a reflection of the current state of social democratic forces, which have weakened considerably in his view since the Delors Commission. Were social democracy to regain its strength, the EU could return to supporting progressive policies as it did under Delors.

Is Strange's optimism justified? In the UK, the Social Chapter and Working Time Directive did bring new rights to workers who had lived under Conservative governments for 18 years before the election of Tony Blair in 1997. Yet Blair left many of Thatcher's neo-liberal policies in place, and often conceded to new European Union directive in exchange for economic reforms in other areas. Many continental European businesses in fact supported the Social Chapter. And while the UK did not adopt the Euro, it did give the Bank of England independence with a mandate to maintain low inflation similar to the ECB. Some progressive measures did result, but they were largely concessions as a part to obtain consensus for greater economic liberalisation at the European level. Although the case can be made that the EU has a democratic deficit, it is still largely responsive to the needs of the individual member states and operates on a consensus model, where each state makes some concessions in exchange for favored policies in other areas. It would be very difficult to push for widespread progressive change in a system based on small scale mutual concessions and consensus. For progressives to change widespread EU policy, there would need to be a major political shift to the left in the individual member states. Current trends suggest that it is the conservative right that is gaining from the current economic and social problems, and not the progressive left. Social democratic parties would first need to regain their traditional base, reverse their support for neo-liberalism, come into power in the individual member states, then as a bloc push for policy changes at the European level. As economic policy has been carefully insulated at the European level, an affective constitutional change would be necessary. As this is unlikely to occur, the best they can hope to accomplish is to lobby the EU and member state governments for social concessions. As of now, it is far easier for governments and parties to engage in rhetoric on wedge issues while leaving macroeconomic structural issues largely un-addressed. While Strange does make important points that the agency of progressive forces should not be overlooked and that integration can bring about progressive change in some cases, it is still within a widespread neo-liberal framework. The best chance for progressives are to unite in a counter-hegemonic bloc to oppose neo-liberalism, not to try and gradually change the current system while making widespread concessions. As integration is still seen as progressive because of the shift away from national identities, it will require a realignment in the way the left perceives of itself, a re-engagement with potential working class supporters, and its goals for global social justice.

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