The European Union (EU) has appeared to many analysts as an incoherent mix of the supranational and federal, on the one hand, and the international and intergovernmental, on other. This hybridity makes democratic accountability problematic. The lines of responsibility are often unclear and many decisions get made betwixt and between the established mechanisms of democratic control as matters of executive or administrative discretion. Both criticism of and remedies for this situation standardly appeal to the norms and practices of liberal democracy. Those favouring a move towards greater integration advocate removing the democratic deficit within the EU by extending liberal democratic institutions to the European level through such measures as enhancing the powers of the European Parliament, formalizing the evolving European constitution, and instituting a quasi-federal distribution of sovereign power.(e.g. Burgess, 1989; Williams, 1990, Bogdanor and Woodcock, 1991). Those who adopt a more intergovernmental perspective, by contrast, maintain political authority must largely remain with the constituent nation states, since their linking of people, territory and community provide liberal democracy's only viable context.(e.g. Barry, 1994; Miller, 1995; Moravcsik, 1993)

In what follows, we shall contest this common starting point. We argue that the very global economic and social forces that have promoted European integration have undermined liberal democracy at the nation state level without creating appropriate conditions for its establishment within a supranational European polity. As Schmitter and others have argued (cf. Schmitter's contribution in Marks, Scharpf et al., 1996, and Marks, Hooghe and Blank, 1996), a more complex, multi-layered and hence multi-national form of governance is coming into being. As critics rightly fear, these circumstances provide ample possibilities for the self-interested bargaining and blocking that have so frequently characterised European decision making and produced measures such as the Common Agricultural Policy that are both sub-optimal and inequitable. To avoid these dangers, however, requires a quite different approach to the standard liberal democratic solution - one we dub democratic liberalism,
which draws on the neo-republican tradition in politics (Pettit, 1997; Skinner, 1998).

This analysis rests on a fuller account of the EU's democratic deficit than is usual. There are three dimensions to this phenomenon (Castiglione, 1995, pp. 61-3), two of which are rarely addressed. First, there is the democratic deficit in the narrow sense of the relative absence of any influence by ordinary citizens over European decision-makers and the policies they enact in their name (Williams, 1990). Second, there is the federal deficit. This arises from the ambiguous relationship between the central EU institutions, such as the European Court of Justice, the European Parliament and the Commission, on the one hand, which claim a federal status within their respective domains, and national governments, parliaments, courts and bureaucracies, on the other, which frequently dispute or seek to qualify such claims (Neunreither, 1994). Finally, there is the constitutional deficit (e.g. Pogge, 1997, pp. 160-62; and Rubio Llorente, 1998, para. 6.1). This refers to the lack of any systematic normative and popular legitimization of European political institutions due to the paucity of sustained debate about their overall shape and reach - even by the political and bureaucratic élites. (2) If the first deficit focuses on democratic accountability and representation, the second raises the issue of the distribution of sovereignty, and the third the problem of the EU's legitimacy. The three are interrelated. How one tackles the first of these deficits will largely be framed by one's thinking on the broader issues raised by the second and third. For the type and degree of democracy suitable for everyday political decisions rests to a great extent on the ways sovereignty is parcelled out and the degree to which it is regarded as legitimate for a given body to make them. (3) These dimensions define the scope, content and sphere of democracy - who makes decisions about whom, why, when and where.

This chapter elucidates the advantages of a neo-republican approach to the three deficits over more traditional liberal interpretations of democracy. Two clarifications are necessary. First, these two traditions are of course historically entwined and elements of both can be found in the political systems of most western democracies (cf. Isaac, 1988; and Holmes, 1995, p. 5). However, coexistence should not be taken for complementarity or overlap. As we shall argue below, republican justifications and conceptions of liberty, rights and the rule of law differ from the liberal's in important respects - most especially in relation to the nature and role of democracy. (4) Second, these models reflect contrasting views of the democratic ideal and hence of the norms that should inform democratic institutions. (5) Whereas liberal democratic
norms provide a rationale for both majoritarian and consensual political systems, and federal and intergovernmental conceptions of the EU, we claim the emergent forms of multi-level governance call for rather different regulative norms deriving from a democratic liberal republicanism (see Scott, 1998 for a parallel argument).

Section 1 argues that the complexity and pluralism of modern societies has undermined the constitutional consensus, hierarchical organization of power, and majoritarian decision making characterizing liberal democracy. Section 2 demonstrates that the threefold deficit within the EU arises out of these generic deficiencies of the liberal democratic model in global conditions. Strengthening liberal democracy will exacerbate rather than attenuate these problems, therefore. Section 3 introduces the concept of democratic liberalism. Of republican inspiration, this model of governance identifies the constitution with a political system that disperses power within civil society and encourages dialogue between the component parts of the body politic. Section 4 illustrates its normative and practical attractions for the EU.

I. Liberal Democracy

Liberal democracy rests on a distinction between the state and civil society. Liberals see constitutionalism as a normative framework that sets limits on and goals for the exercise of state power. Traditionally, its principles are grounded in a social contract designed to legitimate the state's monopoly of violence. According to this argument, free and equal citizens would only consensually submit to a polity that removed the uncertainties of the state of nature whilst preserving the most extensive set of equal natural liberties. Interference by the state or law is only justified to reduce the mutual interference attendant upon social life so as to produce a greater liberty over all. The separation of powers supposedly fosters this aim by preventing any one from being judge in his or her own cause, thereby constraining the arbitrary and partial framing and interpretation of legislation. The rule of men is replaced by the rule of universal and equally applicable general laws.(6)

Two features of these arrangements are worth highlighting. First, as James Tully has observed, the normative consensus assumed by the 'modern' liberal conception of constitutionalism hypothesizes a degree of uniformity amongst the constitutive people (Tully, 1995, Ch. 3). It assumes that behind different beliefs and customs lies a common human
nature, a natural equality of status and shared forms of reasoning sufficient to generate agreement on constitutional essentials. What divergences remain are supposedly eroded as historical progress leads to more homogeneous and less stratified societies that conform to a similar pattern of social and political organization, and stand in contrast to the ranked societies and cultural particularisms of the past. Nation building further strengthens this process. As co-nationals, the people share a corporate identity as equal citizens of the polity.

Second, the rights-based approach goes together with a conception of freedom as non interference and of the state as a neutral ring master, unconcerned with upholding any particular set of values. This understanding of the constitution encourages in its turn a purely preference-based picture of the economy and an interest-based account of democracy. In each case, what matters is the degree outcomes correspond to the uncoerced choices and express desires of those concerned. The conditions of production and the protection of public goods enter with difficulty into this view of the economy. The first are assumed to be the result of voluntary contracts, the latter left up to the invisible hand. Likewise, politics becomes a competitive market within which rival interest groups bargain with each other, and involves no attempt to evaluate the interests concerned. Its purpose is purely instrumental: to protect against incompetent or tyrannous rulers by allowing their removal, and to aggregate preferences either through majoritarian voting or corporatist-style consensual politics, and encourage politicians to pursue policies that conform to such aggregate preferences.

Liberals accept that economy and democracy need regulating when they threaten the constitutional structure. However, identifying when such threats occur and who possesses the authority to remedy them proves problematic. Because the economy forms part of the private sphere, there are difficulties about whether the requisite interference is either legitimate or perpetrates an even greater intrusion in people's lives than those it prevents. Such decisions cannot necessarily be left up to democratic governments, since interest groups may use the state's coercive power to further their personal goals. This dilemma raises a further source of tension between the hypothetical consent underlying the constitution and the express will of the people. Liberals try to avoid this crux by treating the constitution as a 'higher' law that provides the preconditions for the 'normal' legislation arising out of democratic politics. They see judicial review by a court buttressed by a bill of rights as the
best bulwark against the democratic subversion of the constitution (Dworkin, 1995, p. 2).

Cosmopolitans extend liberal accounts of the progress of society in a post-national direction. They contend that globalisation produces overlapping communities of common fate that require and render possible global regulatory bodies, such as the EU, underpinned by uniform, equal norms. However, the very forces supposed to underlie this extension of liberalism have in reality given rise to new kinds of post-modern diversity that render a liberal consensus hard to sustain. For the same processes that drive globalisation have augmented functional differentiation in the economy and society and fostered multiculturalism. The consequent pluralism of interests and values, and the growing complexity of the social and economic systems, create difficulties for the liberal model of constitutional democracy. They render majoritarian decision making more problematic, increase the difficulty of regulating the unaccountable power located in civil society, and subvert the rights consensus upon which liberalism rests.

Within this new global context, liberal democracy promises more than it can deliver. As a political regime it succumbs to a democratic, federal and constitutional deficit. Growing complexity and functional differentiation hinder democratic control by rendering problems more technical and less amenable to general regulations. The range and scale of decisions handled by unaccountable specialized bureaucracies, and involving considerable technocratic discretion, expands. The autonomy of many sectors of economy and society is increased. Globalisation may heighten interconnectedness but it has a highly variable impact on different classes, countries and social and economic sectors. As financial markets illustrate, this feature can weaken the ability of political institutions to impose collective decisions whilst improving the capacity for elite groups to evade and defect from them by shifting their capital around.

Having more supranational or global decision making bodies will not help. They will be too distant to regulate in a suitably differentiated manner, and are likely to lack the capacity to implement any but the most general of norms. Nor is it clear that they will be able to count on much democratic legitimacy to act in any case. Voters already feel alienated by a political system that they can influence in only the most indirect and marginal ways. It is far from clear that they will identify to any significant degree with such remote institutions or that appropriately transnational political organizations will be capable of developing - witness the low
turnouts and notable absence of European political parties in elections to the European Parliament.

The difficulty of making and enforcing collective decisions is further complicated by the spread of multiculturalism. Not only are geographically separated cultures brought into greater contact with each other, but improved social mobility renders states more pluriethnic as well. Different beliefs and identities prove less amenable than divergent economic interests to the democratic horse-trading liberals standardly employ to build stable and fair majorities. As a result, the likelihood of conflict or the oppression of minorities rises. This possibility can fuel demands for self-government and the creation of multiple demoi as opposed to an enlargement of the demos.

The net effect of these processes is to suggest a fragmentation rather than an extension of the democratic public sphere, that undercuts the hierarchical organization of sovereign power. The social complexity of highly differentiated advanced industrial societies results in a proliferation of autonomous centres of power. These centres are capable of making decisions according to a variety of functionally specific criteria within their respective domains, with unpredictable knock-on effects for other parts of the social and economic system. Citizens find themselves locked into a variety of these spheres, and get pulled in opposite directions by the inner logic of each. Reconciling such clashes proves highly problematic. The various areas of social life operate with increasingly distinct and largely self-validating criteria. They become ever more taken up with their own concerns and tend to interpret the world from their own perspective, generating incommensurable and incompatible claims (Luhmann, 1981).

Similar difficulties bedevil the constitutional entrenchment and judicial protection of the basic liberties (Bellamy, 1999 Chs. 2 and 7). Liberals claim the constitution can provide a neutral framework for politics that rests on a separation of the right from the good. But this distinction proves practically elusive. How and when rights to privacy and to freedom of speech clash, for example, involve invoking contentious notions of the presence and absence of constraints which may be normatively and empirically evaluated from a range of reasonably different perspectives, giving divergent answers in each case. Moreover, the legitimacy and implementation gap is likely to be even greater than with the political system. Use of precedent means that legal judgement has an inbuilt tendency to self referentiality. Legitimation comes either indirectly, via the legislature, or through a widely held normative consensus. If the influence of the former is weak, and the latter has ceased to exist, then
law is forced to operate in a vacuum and be largely self validating and practically impotent.

The deficiencies of the liberal democratic model are linked. Poor democratic accountability is fuelled by the inadequacy of a territorial and hierarchical distribution of power, and the inappropriateness of applying general, uniform constitutional norms to complex circumstances. As we shall see, the deficits of the EU are to a large extent symptomatic of this general liberal democratic malaise, and so unlikely to be cured by further doses of liberal democracy.

II. The Liberal Democratic Deficit of the EU

Analysis of the EU from a liberal democratic perspective has been especially prevalent amongst legal scholars. They focus on the establishment of a common market through a process of 'negative' integration: the removal of trade barriers and restrictive practices, and the institution of the four freedoms guaranteeing the free movement of capital, goods, services and persons. As lawyers noted early on (Stein, 1981), the jurisprudence of the European Court of Justice quietly, and with a remarkable degree of tacit political support, effected the constitutionalisation of the emerging body of European economic law. Through a series of landmark decisions the Court asserted European law operated with direct effect on individuals and was an independent source of obligations and rights, had supremacy over the national legal systems of member states within its domain, described the founding Treaties as the European Community's 'constitutional charter' rather than a mere international agreement, and maintained the Court's position as the competent authority to decide when European law applied and how.

The Court's justification of its role in establishing and upholding the European constitution rests on impeccable liberal democratic grounds. It alleges a normative consensus exists to ensure maximal equal liberty and facilitate social interaction on terms that are the same for all. Thus, 'the preservation of the Community character of the law' requires 'ensuring that in all circumstances the law is the same in all states of the Community', and has 'identical effects over the whole territory of the Community'. Likewise, the Court assumes a federal organization of power, with certain aspects of state sovereignty definitively ceded to the Community. Hence, EU measures derive their validity solely from
European law and cannot be challenged on the basis of a conflict with national laws - even those of a constitutional status - 'without the legal basis of the Community itself being called into question'.(19) National courts must apply the rulings of the ECJ, ensure due process for the exercise of the four freedoms and uphold a general principle of non-discrimination on the basis of nationality, whilst national legislatures may become liable for failures to adequately implement EU laws.(20) Finally, the Court has regarded the European Parliament as 'an essential factor in the institutional balance intended by the treaty', reflecting 'at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly.'(21)

As already suggested, this legal picture of the EU partly conflicts with the state-centric perspective commonly adopted by political scientists.(22) Moreover, tensions both between member states and between them and various European institutions have heightened recently. These strains reflect the way the liberal democratic version of constitutionalism espoused by the Court exacerbates the threefold democratic deficit described above. At the constitutional level, stress has manifested itself most clearly in conflicts over the interpretation of rights. We noted earlier how pluralism enhances incommensurable and incompatible understandings of rights and their appropriate balance. The potential clashes that result are apparent in conflicting opinions over rights protection offered by the ECJ and national constitutional courts. The ECJ has read fundamental rights into European law to stem challenges to its competence and the supremacy of EC legislation by the German Federal and Italian constitutional courts. They argued that since their national constitutions contain bills of rights whereas the European constitution does not, they had an obligation to scrutinize EC law for conformity to German and Italian fundamental rights and to invalidate or dispense with measures that failed to meet the requisite standard.(23) The ECJ felt constrained to reassure national courts that the general principles of EC law implied rights protection. The Court contended it drew inspiration from common institutional traditions and international treaties acknowledged by the member states - most particularly the European Convention on Human Rights. Regardless of origin, however, these rights become EU rights and as such subject to interpretation 'within the framework of the structure and objectives of the community'.(24) Although Germany initially accepted the ECJ's reassurance, the Italian court has not. Outright confrontation has so far been avoided, but many doubt it can be evaded in the long run (de Witte, 1991, and Shaw, 1996, pp. 188-95).
The ECJ has espoused a narrowly economic liberal view of rights analogous to that of the US Supreme Court during the Lochner era. It has played a significant part in the privatizing of hitherto nationalized enterprises, and the weakening of welfare systems within the member states. This libertarian account of rights has produced tensions in a number of areas. The ECJ has been relatively intolerant of minority language rights, regarding them not just as restrictions on the four freedoms that can increase transaction costs by, for example, requiring multilingual labelling, but also of freedom of expression, although they could be equally interpreted as defending this latter.(25) In Grogan the dilemma posed by the Irish constitution's protection of the right to life of the unborn child was largely side-stepped, though the Court's definition of abortion as a 'service' clearly poses problems for the Irish state's attempts to deny its citizen's access to it.(26) These debates reveal how legitimacy cannot be based on an alleged overlapping consensus on shared liberal democratic principles and the rule of law. In spite of considerable agreement on these matters, and the amended Article F TEU notwithstanding, substantial divergences remain. Nor does an appeal to maximizing liberty help.(27) As we saw, the Court has consistently appealed to a narrowly negative and economic view of freedom in its judgements in these cases, yet this notion is often what is in dispute. The rights of national constitutions are often intended to prevent the removal of valued opportunities by the market. The boot-strapping operation of the ECJ in creating a European Constitution is a remarkable example of the self-validating nature of law. Yet this validity comes called into question when confronted by the fact of normative disagreement.(28) Significantly, the Court has suggested that accession by the Community to the European Convention would compromise the autonomy of EC law - exactly the problem faced by national legal orders.(29)

The Court's assertion of the supremacy of EC law suggests a federal structure based on the hierarchical ordering of sovereign power, in which the particular interpretation and implementation of general formulations can be devolved down to subordinate bodies. The same is true of the much vaunted doctrine of subsidiarity, albeit from the other end of the telescope. Recent developments within the EU suggest a very messy picture, however, with no clear division of powers between federal and lower levels. The principle of subsidiarity in the Amsterdam Protocol (and Articles A TEU, 3b EC) is masterfully vague, allowing both wide and narrow interpretations that can make almost anything or nothing the province of the Community. No criteria are offered for determining either what proximity to citizens entails, or when a matter can or cannot 'be
sufficiently achieved by the Member States' on their own. Although Maastricht and Amsterdam extend qualified-majority voting by the Council of Ministers into new areas and raise the prospect of a dramatic expansion of common policies in the monetary, defence and justice spheres, these developments are hedged around with arrangements 'for derogations where warranted by problems specific to a member state' (Arts. K 15-17, 12 [formerly, K7 TEU] and 5A [formerly, K2 TEU] of the Treaty of Amsterdam, and Art. 8b EC). Thus many of the new policies allow for multiple speeds, variable geometry, and a Europe à la carte. The first type of variation, that accepts different rates and methods of implementation of policies such as VAT harmonization poses no great difficulty to the ideal of a homogeneous, federal Europe. The second and third are far more problematic. The former suggests a distinction between core issues that all should adhere to and peripheral ones that may be optional, the Schengen system being a plausible example of such an optional policy. The latter suggests a far more smorgasbord approach, with Britain's opt-out from stage three of EMU and the Amsterdam Protocol (Art. 73Q) on 'freedom, justice and security' being notorious instances. Perhaps most important of all, Maastricht introduced the notion of the three pillars of the European Union. The first comprises an enlarged European Community, the second and third deal with foreign and security policy and justice and home affairs respectively. The important feature of this arrangement from our perspective is that in the last two areas the mode of operation is essentially inter-governmental and the ECJ has no in-built jurisdiction. Pressure to adopt uniform policies is consequently much less. As such, this system invites variation, derogations and multi-tracks.(30)

Such variability is made even more likely by the way the levels and complexity of decision making have increased, with a greater range of non-state actors being involved in the process. Thus there are not only new powers for the European Parliament (Art. 137 EC ), including a highly complicated co-decision procedure (Art. 189b EC ),(31) but also a new advisory Committee of the Regions involving unspecified sub-national units (Art. 198a EC ) and the possibility of semi-corporatist arrangements involving the Commission in dialogue with labour and management when drafting social policy (Annex I Protocol 14 Arts. 3 and 4 EC). Such groups play an increasingly important role within the comitology process in any case. Indeed, there are now over 3000 interest groups and a 100 regional offices based in Brussels. As analysts of the EU who take a multi-level governance approach have stressed, these developments are eroding state sovereignty without creating a European super state with its own internal hierarchy (cf. Schmitter's contribution in Marks, Scharpf et al.,
Rather, function and territory have begun to pull apart, with a variety of authorities operating at different levels - from sub to supranational - in each domain. These are not hierarchically ordered with exclusive control over specific areas of policy. They overlap and are involved in continuous negotiation with each other, often in somewhat informal fora.(32)

This increasingly complex configuration of sovereign power has profound implications for the EU’s democratic deficit in the strict sense of the term. The European Parliament and Court have a shared federal vocation, and tend to buttress each others claims. Thus the ECJ has seen enhanced legislative powers for the Parliament as augmenting its own democratic legitimacy and has staunchly defended its prerogatives.(33) Likewise, the Parliament has tried to take a lead in by-passing the intergovernmental process and suggesting the enactment of a European Constitution jointly with the national parliaments.(34) These attempts have not gone unchallenged, however. The amended TEC did strengthen the European Parliament in certain respects. In addition to increased powers, most notably the co-decision procedure (Art. 189b EC), member state nationals were bestowed the right to vote and stand in European elections on the basis of residence alone as part of the new status of citizen of the Union (Art. 8 b EC), and ‘political parties at European level’ were solemnly declared to be ‘important as a factor for integration within the Union’, that ‘contribute to forming a European awareness and to expressing the political will of the citizens of the Union’ (Art. 138a EC). Yet there has been little popular enthusiasm for these developments and some active antagonism. Far from being steps towards a pan-European political system,(35) uptake of European political rights remains significantly lower than in national elections. When asked in a recent poll how they describe themselves: by nationality only, nationality and European, European and nationality, or European, respondents divided 45%, 40%, 6% and 5% respectively (Eurobarometer Report No. 48, March 1998). Thus there is little evidence of a European demos or a shared political culture.

The difficulties referenda ratifying Maastricht experienced in France and Denmark have been interpreted by some as indicating a popular reaction against further European integration, although the influence of purely domestic political factors on voters makes this hard to assess. More unequivocal was the challenge thrown up by the German Federal constitutional court in its judgement in the Brunner case. This decision not only disputed the ECJ’s competence-competence in adjudicating on the applicability of European law, it also argued that popular sovereignty
within Europe was exercised primarily through national parliaments rather than the European Parliament because there was no European people. (36) The 'no demos' thesis has haunted discussion of the EU's democratic deficit ever since. A number of commentators have criticized a perceived volkish reasoning behind the German Court's argument. (37) Whilst this interpretation is open to dispute, it is certainly true that national elections give member state citizens only limited control over European developments. The consociational decision making of the Council of Ministers and IGCs manifest all the democratic shortcomings critics have levelled at that system in domestic arenas: namely, elitism, conservatism and the stifling of dissent and new voices. However, most commentators accept one cannot take a unified European demos for granted, and that European political institutions lack legitimacy as a result (Chryssochoou, 1996). There is now growing agreement on the need to talk of dual or even multiple citizenship, reflecting our various political allegiances and membership of a variety of demoi - territorial, cultural and functional - with little congruence between them (Weiler, 1996).

The above suggests that the liberal democratic model of the EU has succumbed to all three aspects of the democratic deficit. (38) Instead of a constitutional consensus, we have a number of competing and overlapping constitutional traditions. Instead of a federal organization of sovereignty, we have an emerging multi-level mode of governance involving a mix and dispersal of sovereign powers over a number of areas. Instead of a unified democratic system based on a uniform citizenship of the union, we have multiple demoi operating at different levels and kinds of political aggregation. So far, commentators have been inclined to regard this picture as a mess, castigating the post Maastricht settlement for producing 'a Europe of bits and pieces' (Curtin, 1993), that Amsterdam confirmed instead of remedying. And from a liberal democratic perspective it is messy. By contrast, a democratic liberalism finds this picture more congenial.

III. Democratic Liberalism

Democratic liberalism harks back to a pre-liberal conception of constitutionalism that identified the constitution with the social composition and form of government of the polity (Bellamy, 1996). Much as we associate a person's physical health with his or her bodily constitution and regard a fit individual as someone with a balanced diet and regimen, so a healthy body politic was attributed to a political system
capable of bringing its various constituent social groups into equilibrium with each other. The aim was to disperse power so as to encourage a process of controlled political conflict and deliberation that ensured the various social classes both checked and ultimately co operated with each other, moving them thereby to construct and pursue the public good rather than narrow sectional interests.

As Quentin Skinner (1998) and Philip Pettit (1997) have shown, the heart of the republican approach lies in a different conception of freedom to the liberal's. Liberty is seen as a civic achievement rather than a natural attribute. It results from preventing arbitrary domination rather than an absence of interference tout court. Domination denotes a capacity to intentionally control and diminish an agent's realm of choice, either overtly through various explicit forms of restraint or obstruction, or covertly by more subtle forms of manipulation and influence. Arbitrariness rests in the power to exert domination at whim, and without reference to the interests or ideas of those over whom it is exercised. Pettit notes that an absence of interference can be consistent with the presence of domination. Those with such power may simply choose not to wield it. Social relations will be adversely affected nonetheless. Likewise, seeking to reduce interference may in given contexts be compatible with leaving certain agents or agencies with considerable power over others. For example, attempts to reduce the arbitrary hold men have traditionally exerted over women in marriage have been challenged on the grounds that they are too intrusive and themselves involve a greater degree of interference. Similar arguments have been used against laws to protect employees from unscrupulous employers. Even social liberals, such as L. T. Hobhouse (1964 [1911], p. 71), accept that the onus of proof rests on the proponents of state intervention to show that less interference is thereby created overall. Republicans by contrast, see debate about the legitimacy of interference per se as misconceived. They concentrate on providing a non-dominating environment where citizens can lead secure lives, plan ahead, and live on a basis of mutual respect - conditions which may require intervention (Sunstein, 1993).

This view of liberty shapes the republicans' distinctive linkage of the rule of law with the distribution of power and democracy. Instead of the constitution being a precondition for politics, political debate becomes the medium through which a polity constitutes itself. This occurs not just in exceptional, founding constitutional moments, but continuously as part of an evolving process of mutual recognition. Domination and arbitrary power involve more than an infringement of the formal rule of law espoused by liberals. It is entirely possible to promote general rules based
on whim or self-interest and that entail a gross curtailment of people's freedom of action. The generality and universality requirements can also seem themselves arbitrary if employed to disqualify special rules that refer to properties that apply to only some groups - as when maternity leave for women or affirmative action policies are accused of being discriminatory, or when such considerations are used to block any form of regulation which might seek to focus on particular contexts or outcomes (Hayek, 1960). Such formal criteria appear particularly inadequate at tackling structural forms of domination, where discrimination and selective blindness have been built into the institutions, norms, social and economic relations, and procedures within which the rules are framed.

Contemporary liberal jurists try and get around these difficulties by adopting a more substantive view of the rule of law, identifying it with the upholding of rights by an independent judiciary. As we noted, this approach proves problematic. A political constitutionalism takes a different tack. Justice becomes identified with the process of politics. Political mechanisms not only ensure all are subject to the laws and that no one can be judge in their own case - the traditional tasks of the separation of powers - but also that the laws connect with the understandings and activities of those to whom they are to apply - the side benefit of dispersing power so that more people have a say in its enactment. Audi alteram partem forms the watchword of legal fairness, not the formal or substantive properties liberals associate with the law (Pettit, 1997, p. 189; see also Hampshire, 1991, pp. 20-1).

' Hearing the other side' within a pluralist polity implies respecting that people can be reasonably led to incommensurable and incompatible understandings of values and interests, and seeing the need to engage with them in terms they can accept. This criterion places constraints on both the procedures and the outcomes of the political process (Gutmann and Thompson, 1996, p. 57; Cohen, 1996, pp. 100-1; Benhabib, 1996b). It obliges people to drop purely self-referential or self-interested reasoning and to look for considerations others can find compelling, thereby ruling out arguments that fail to treat all as of equal moral worth. Political actors must strive for common ground through mutually acceptable modifications leading to a fair compromise.

Political compromise takes the place of a pre-political consensus, for the clashes of principle and preferences associated with pluralism preclude substantive consensual agreement. How such compromises are to be achieved, and what counts as a fair hearing, depends on the issue and the character of the groups debating it. Where the clash concerns divergent
preferences, then a fair compromise is likely to be achieved through splitting the difference or some form of barter. Here fairness makes the proportionate weighting of preferences appropriate. For the political equality espoused by democrats would be violated in cases where a majority vote meant that the preferences of a group that constituted two thirds of the population always held sway, and those of the remaining third never got a look in. But the character of the compromise is different in matters of principle. Here the object will be to ensure equal consideration of the content and intrinsic importance of different values for particular groups of people, so that they seek solutions that are acceptable to a variety of different points of view. Instead of bargaining, participants in this sort of dispute negotiate and argue. In the case of bargained compromises, preferences can be taken as exogenous to the system and democracy seen in largely instrumental terms. A negotiated compromise involves a more deliberative model of democracy, that leads to preferences being shaped and ranked endogenously through the democratic process itself as otherwise inaccessible information regarding the range and intensity of the moral and material claims involved comes to light. Achieving this result requires that groups reach a sufficient threshold to have a voice that people take seriously. With very small groups, that may involve more than proportionate voting power, with others somewhat less will suffice.

The emphasis placed by the neo-republican approach on compromise should not be confused with the consensus model of democracy as identified by Arend Lijphart (1984). There are two important differences that distinguish it from both consociationalism and other forms of corporatist politics. First, as noted above, it does not take preferences as exogenous to the system, but considers democratic deliberation as a way of filtering and changing preferences (cf. on a similar line of argument, Mansbridge, 1992). Second, whereas elites are central to consociational and standard corporatist politics (Lijphart 1977 and 1984), they play a subordinate role in the deliberative model discussed here. As Jane Mansbridge argues, 'traditional corporatist models focus on external negotiation' (1992, p. 42). They assume elites act as mediators and brokers of compromises that can be translated into legislative measures. By contrast, 'more recent democratic corporatist models' stress 'internal negotiation, in which leaders also negotiate with members of their interest groups to reach agreements that members can accept as binding' (p. 42). These models share the neo-republican desire to mobilize the 'moral resources' of deliberative democracy (cf. Offe and Preuß, 1991) and make the 'quest for understanding' (Mansbridge, 1992, p. 42) a
central feature of the process of changing one's own and others' preferences in order to achieve fair compromises. (40)

Indeed, political system builders often overlook that different sorts of policies call for different kinds of compromise, and hence for a different quality of decision making. Yet these considerations prove more crucial than functional efficiency when deciding the level at which decisions are to be made, how groups should be represented, and the degree of autonomy particular bodies or sections of the community may claim. They are integral to a political constitutionalism, with its intimate linking of justice, the rule of law and the democratic dispersal and division of power. In the ancient ideal of mixed government, the favoured mechanism was to assign particular governmental functions to different social classes. In contemporary societies, the answer lies in multiplying the sites of decision making power and the forms of representation employed for different purposes.

Within a more complex and differentiated social context centralized and hierarchical ways of distributing power will be inadequate. Territorially based representation has to be supplemented by functional and cultural forms within particular sectors. Social and cultural interests are often territorially dispersed, or located below any specific territorial unit. Empowering certain groups may require their representation within a specific location, or across a given sector, or in the case of vertical cleavages, according to segment. Work place democracy and parent governors at schools are examples of the first; corporatist representation of unions, employer organizations and professional associations of the second; consociational representation for given ethnic, linguistic, religious and cultural groups of the third. Such mechanisms allow minority opinions to have both a degree of autonomy within their own sphere combined with a say in collective decision making. On the one hand, all groups (those asking for special consideration included) are obliged to consult the broader interests and concerns of society as a whole. On the other, these same mechanisms operate as checks and balances on the purely self-interested or partial exercise of power.

Democracy plays a central role in this system, protecting against arbitrary rule and enabling the educative engagement with others. (41) Interests are not simply advanced and aggregated, as in liberal accounts of the democratic process. They get related and subjected to the criticism of reasons, transforming politics into a forum of principle. In consequence, the need diminishes for a judicially monitored principled constitution to frame democracy. Judicial review can track whether reasoned debate
occurs, but need not substitute for an absence of such deliberation. Democracy also operates within civil society as well as the state. Power is not simply devolved down in a hierarchical manner to lesser levels of the state, as in a standard federal system. It is dispersed amongst semi-autonomous yet publicized private bodies. In this way, politics shapes rather than being simply shaped by social demands.

Republicanism has often been attacked for being impractical and undesirable. Critics contend the liberties of the ancients had to give way to those of the moderns as societies grew in scale and diversity, and the protection of individual rights came to override vain attempts to secure an elusive collective welfare. This picture proves historically and substantively flawed. Far from assuming homogeneity, the republican model was a response to social division and class conflict. As the American Federalists appreciated, territorial size and social differentiation are positive aids rather than blocks to republican government, since a plurality of voices and power centres is conducive to deliberation and a process of mutual checking. Although groups were excluded in the past - notably women and slaves - the same holds for liberal democracy, and the difficulties of updating republicanism are less than those confronting liberalism. For the focus on domination and the relation of social to political power makes the active inclusion of all groups far more essential to the republican model than the liberal, with its traditional distrust of state interference in civil society. Nor is republicanism inimical to the acknowledgement of the standard liberal set of individual rights to freedom of expression, association, bodily integrity and the like. On the contrary, it compels recognition of them since they are integral to the whole process of political deliberation. It also allows the democratic balancing of their relative weight in relation both to each other and to additional values and interests depending on the issue and the people involved.

Far from aiming at or assuming the achievement of a monolithic general will or common good, the purpose of such deliberation is to construct a compromise that specifically acknowledges diversity in the ethical reasoning of agents. Dispersing power helps both the appropriate mix of voices to be heard and the peculiar circumstances of particular contexts to be taken into account. Not only can general rules can be tailored to a wide variety of objects and concerns, and their implementation and monitoring enacted to meet the special requirements of a given situation and constituency, but also - and often more importantly - specific norms can be established to meet special circumstances and relevant
differences, and collective decisions brokered amongst conflicting points of view.

This same quality facilitates the handling of complex problems. Complexity proves problematic for hierarchical forms of decision making whenever a gap exists between public standards and their specification and monitoring. It arises where the actors involved are highly miscellaneous and there is a large degree of cognitive indeterminacy as to the causal relationships between them, and contestability as to how the various factors might be evaluated. These features prevent the decomposition of complex issues into their component parts because there will be no clearly demarcated ends or interests to be served. Environmental regulations typically display these characteristics, with people disputing both the costs and benefits and the cause and effects of pollution. In such cases, devolved deliberation can lead to a problem-solving approach that seeks a suitably integrated solution to the issue that tries to accommodate the multifarious perspectives of those concerned.

Thus a democratic liberalism simultaneously addresses all three of the deficits we identified above. For the democratic making of decisions (democratic deficit) is linked to the dispersion and devolution of power to provide an appropriate mix of social forces and levels of governance (federal deficit), with both being part and parcel of a political constitution that unites law, efficacy and legitimacy (constitutional deficit). It remains to see how suited it is to the EU.

IV. The Democratic Constitution of Europe

The republican model offers a normatively appealing and empirically plausible response to all three dimensions of the EU's democratic deficit. At the constitutional level, an institutional space needs to be created where those bodies delegated with the task of upholding national constitutional values may enter into dialogue with each other to resolve disputes over competences and clashes of values. Joseph Weiler has suggested that a European Constitutional Council comprising members of the national constitutional courts or their equivalents might serve this purpose (Weiler, 1996, pp. 120-21). Whilst welcoming this idea, we would modify it in two respects. First, Weiler fears challenges by constitutional courts to the supremacy of European law and the competence competence of the ECJ threaten the legal integrity of the
Union. He likens the potential stand-off between the two to one of Mutual Assured Destruction. We believe he goes too far. The absolute supremacy of Community law over domestic constitutional provisions has never been accepted by all national supreme courts. They have acknowledged the authority of Community law for reasons internal to the national legal order rather than, as the ECJ argues, because of its intrinsic Supremacy, and have distinguished between alterations to basic principles of the national constitution and the transfer of certain powers. As Neil MacCormick has observed, this analysis suggests a pluralistic and interactive picture of legal systems might be a more appropriate frame of analysis for the relationship of EC to national law than a monistic and hierarchical one (MacCormick, 1995). From this perspective, the ECJ need not assert the Supremacy of any given set of laws over others, but merely seek mutual accommodations in areas of friction.

Examples of this approach already exist in some areas. In his examination of the effect of European integration on private law, Christian Jorges notes how European regulations give recognition to the interests and concerns of non-nationals within an interdependent economic order, but that decentralized fine tuning by national courts enables the accommodation of the different standards and safeguards provided by the legal systems of the member states (Jorges, 1997). For example, the ECJ’s 1990 decision in GB-Inno BM , when it ruled that Luxembourg's prohibition of leaflets advertising price reductions by a Belgian supermarket restricted the rights of consumers and traders, was a response to a situation in which Luxembourg citizens habitually cross-border shop rather than an assertion of the supremacy of European economic law. By contrast, the 1995 decision in Alpine Investments , upholding Dutch prohibitions against firms in Holland marketing commodities futures by cold-calling even in member states that had no such prohibition, acknowledged that Dutch authorities had good reasons for their regulations without suggesting that states such as Belgian should adopt them too. Indeed, one might argue that the ECJ’s desire to side step outright confrontations with national constitutional courts in cases such as Grogan indicates less a failure of nerve and more the acceptance of the pluralistic and compromising approach we advocate.

This observation brings us to our second divergence from Weiler. Our model does not insist on high levels of uniformity or normative consensus as a test of the rule of law. It demands the more substantive assurance that laws track the multifarious interests and values of those concerned. This aim is met by a dispersal of power designed to achieve an appropriate mix of voices instead of a formal separation of powers. It also
suggests that democratic fora may be better than judicial ones for debating such issues, since they are likely to be more representative and possess greater popular legitimacy. Democratic procedures should nonetheless be such as to ensure that the debate is appropriate to the constitutional principles at stake. Thus, only considerations that affirm and relate to the standing of the parties as free and equal citizens should be admissible, and a supermajoritarian decision rule might be necessary to foster such argumentation. A European Constitutional Council need not be an exclusively judicial body, therefore. It could be more like the French Conseil d'État.

Similar reasoning leads us to reject a standard federal organization of sovereignty, whereby the residue of central power is devolved on a territorial basis from the top down to smaller units. As we noted above, certain functions are too dispersed, are carried out in highly divergent and changing circumstances, and have such complex causes and effects, as to make either the centralized monitoring or devising of general regulations inappropriate. Problems have to be solved in a more contextual and ongoing manner, that brings the relevant parties together. The fora required will be as diverse as the issues under consideration: from schools and hospitals to the workplace. Membership will be similarly diverse and overlapping, including in these cases providers, customers, those with specialized knowledge, and other affected parties. As we have indicated, the guiding principle of representation should be to ensure an equitable and informed dialogue rather than equality per se. The result is that purely self-interested bargaining becomes more difficult.

This picture fits well with multi-level governance approaches. These have stressed how public policy making within both the EU and the member states is more fragmented and decentralized than is often supposed, involving a wide range of actors. In consequence, both state-centred perspectives and supranational accounts prove inadequate. Neither the member states nor Brussels can control the policy agenda. EU organizations lack the capacity to push a European view, with the Commission having to vie with the other EU bodies whilst being split into numerous competing Directorates and surrounded by a variety of specialist committees. Within this set up, purely national interests also prove hard to push, partly because the complexity of the issues often makes it unclear where these lie, and partly because they have to compete for a voice with policy experts and trans-national interest groups.
There are encouraging signs of the emergence of a republican politics of compromise within this system. At the intergovernmental level, the EU has been characterised as a confederal consociation, for example. All four of Lijphart's criteria for a consociational system - grand coalition, segmental autonomy, proportionality and minority veto - have typified the deliberations of the Council of Ministers and negotiations surrounding the various treaties (Lijphart 1977; Chryssochoou, 1998). These consociational mechanisms have had the aim and effect of rendering the integrative process consistent with the protection and, to some degree, the enhancement of national identities and interests. Moreover, the Council and Inter Governmental Conferences (IGCs) have divided legislative authority with the European Parliament and Commission. Paul Craig (1997) and Neil MacCormick (1997) have also given a republican rationale to this arrangement. They see it as embodying the notion of institutional balance typical of a mixed commonwealth, that represents the various interests and constituencies involved within the EU far better than making the EP the principal legislative body could.

At the other end of the policy process, Joanne Scott (1998) has argued that the 'partnership' principle employed within Community structural funding can also be interpreted in republican terms. Partnership demands that Community development operations:

be established through close consultations between the Commission, the member state concerned and the competent authorities and bodies - including within the framework of each member state's national rules and current practices, the economic and social partners, designated by the member state at national, regional, local or other level with all parties acting as partners in pursuit of a common goal(46).

She argues that partnership shares power across different levels of government, with the Community recognising that member states are not single units and that actors outside the official public sphere also merit a political voice. Thus, it `does not involve the parcelling out of limited pockets of sovereignty, but a genuine pooling of sovereignty'. In other words, it ensures the mixing of voices that is distinctive to the democratic liberal approach, promoting dialogue by dividing power. At the same time, the example shows how international solutions to global problems can build on local initiatives.

Of course, the compromises of the present system are frequently based on bargaining rather than negotiation and reflect a modus vivendi that entrenches rather than challenges current inequalities of power and
wealth. They are also brokered mainly by elites with an interest in maintaining the status quo. A genuine republican scheme for Europe must look at ways of enhancing popular influence and involvement in the policy process. Proposals for the associative democratic governance of Europe by Paul Hirst (1994: 139-41), Philippe Schmitter (1996), and Joshua Cohen and Charles Sabel attempt just this (1997). To realise the republican device of dispersed sovereignty and the participatory ethic that goes with it, they advocate a scheme of vouchers, redeemable against public funds, that citizens can distribute to associations of their choice. These associations can constitute themselves on a variety of different bases, such as religion, ethnicity, profession or locality, and serve a range of purposes, from the provision of a particular service in a given place through to a more comprehensive range of services equivalent to a welfare system. The only limits on them are that they permit exit, are democratic in organisation, and meet certain conditions of viability. Associationalism is a reformist strategy that does not supplant but supplements existing bureaucratic and market mechanisms. Though often seen as mutually exclusive, these last two actually go together. For the regulative failures of the market produce the need for ever more stringent control by a central bureaucracy, be it the member states or the EU, which in turn generates allocative inefficiencies that only the market seems able to remedy, thereby leading full circle. More dispersed decision making that draws together local groups on issues such as regional development or schooling offers an alternative. The associational system publicises areas that liberalism treats as private without becoming part of a state bureaucracy or subject to centralised legislatures. Rather, knowledge is pooled within a number of confederal institutions that group associations and determine revenue raising powers.

In this model, a deliberative account of democracy focused on the removal of domination is intrinsic to the way politics resolves both the constitutional and federal deficits. At the constitutional level, this conception of democracy welcomes a heterogeneity of viewpoints rather than shunning them as impossible to sum. It offers the best means for ensuring decisions are informed by relevant concerns and so avoid dominating those they affect. As a result, conflicts of values and interests can be confronted as problems to be resolved rather than as threats to the very nature of legal and political authority that one should try and avoid by deferring to a higher authority. At the federal level, it provides a rationale for creating multiple sites for decision making that reflect the plurality of our political identities and the complexity and diversity of the problems requiring regulation.
This scheme aids a process of positive as well as negative integration. The removal of constraints requires positive changes too, of course, but these have often proved inimical to initiatives requiring greater collective action. For example, the developing social agenda of the EU, with its focus on the problems of exclusion, uneven economic development and employment opportunities, and the rights of workers and immigrants, seems far better characterized in terms of the removal of domination rather than of interference. So too does a more collaborative policy in the realm of security and home affairs. In other words, a more devolved and flexible political structure for the EU need not inhibit greater European integration. On the contrary, while the process may be more differentiated, greater legitimacy and efficacy may well render it deeper too.

Conclusion

The European Union's democratic deficit has often been attributed to the absence of a fully-fledged liberal democratic and federal constitutional structure. We have challenged that analysis and argued that many of the legitimation problems within the EU stem from this very model of politics. Instead, we have advocated an alternative constitutional regime that draws inspiration from the republican tradition. We have argued that this approach fits the differentiated and non-statist character of European integration better than the liberal model can, whilst being more legitimate from a normative point of view. We do not say European constitutional development will take this path, merely that a future multinational European polity could be 'a Republic, if you can keep it'.

References


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2. Even Liberal Intergovernmentalists acknowledge 'Europe stands... before a series of ongoing constitutional debates,' and that 'the focus in the future... will be on the construction of a legitimate constitutional order for policy-making responsive to the desires of national governments and their citizens' (Moravcsik and Nocolaidis, 1998, p. 34).

3. Our main interest is the 'normative,' as opposed to the 'popular' or simply 'social,' sense of legitimacy; cf. de Búrca (1996), Weale (1994 and 1995) and Beetham and Lord (1998).

4. See, for example, the work of Cass Sunstein (1993) and Bruce Ackerman (1993) on how a republican perspective alters traditional liberal interpretations of the United States' Constitution. The republican theory advocated here is more neo-Roman than 'civic humanist' (for this distinction see Skinner, 1998 and Pettit, 1997). The neo-Roman version looks to Machiavelli and has a realist edge that is more welcoming to pluralism than the rather soggy communitarianism of the neo-Aristotelian civic humanist tradition (cf. Sandel, 1996; and Pettit's review, 1998). While the Aristotelian view involves a politics of virtue, the neo-Roman tradition focusses on the institutional side of the republican tradition.

5. Whereas Lijphart's famous classification, for example, looks at different ways the democratic ideal might be realised in different circumstances (e.g. 1977, p. 4; 1984, pp. 21-3), our argument adds a further dimension and suggests that different institutional arrangements may require different normative foundations linked to different conceptions of democracy (Bellamy and Castiglione, 2000).
6 See for example the French Declaration of the Rights of Man and the Citizen of 1789, especially Articles 1, 2, 4, 6, 14 and 16, and compare with Rawls (1971, p. 60).

7 The French Declaration of the Rights of Man and the Citizen of 1789 and Rawls (1971) once again provide exemplary instances of this mode of thinking.

8 From this perspective, we consider majoritarian and consensual forms of democracy to reflect the same liberal ideal, although, as we shall remark below, certain institutional arrangements of consensual democracy may also be congruent with the neo-republican approach we favour.

9 For a defence of this cosmopolitan approach, see Held (1995), and from a more strictly normative perspective, Pogge (1994), Beitz (1994) and Ferrajoli (1996). See also several of the contributions to Archibugi et al. (eds) (1998). In our own contribution to that volume and in other related essays (Bellamy and Castiglione 1997a, 1997b), we have explored the pros and contras of the cosmopolitan view. For a sceptical discussion of the effects of globalization see Hirst and Thompson (1996).

10 What follows draws on Zolo (1992).

11 Recently, Kenneth Armstrong and Jo Shaw (1998) have remarked on the tendency to simplify the integrative role of law by considering the 'legal order as a constitutional order' and by 'overstating ... the coherence of purpose achieved by the Court of Justice' (p. 148). We use this now familiar story not to suggest that it is true (or that it fully reflects the complexities of the legal order as an 'autonomous institution'), but as a strategically coherent liberal democratic interpretation of the EU. The reservations raised by Armstrong and Shaw to such an interpretation can only add to the doubts we have on the ability of the liberal democratic model to address the three deficits. Likewise, we do not wish to underplay the tensions between federal and intergovernmental visions of integration, nor the centripetal contribution made by the latter to this process (Weiler, 1991). The ECJ's position is merely the most fully developed example of the liberal democratic vision
of Europe. The resilience of such a view is illustrated by Judge Mancini's recent plea for European statehood; while its 'strategic' (more than simply descriptive) import is evident from Weiler's reply: 'The most interesting issue in my eyes is not the what of this case for statehood, but the who and the how' (both in Mancini and Weiler, 1998)


15. 15 The above mentioned cases, and successive interpretations of Art. 177 EC.

16.


18. 18 Commission v. Italy (Art Treasures II).


22.


23. 23 e.g. German Federal Constitutional Court, Internationale Handelsgesellschaft [1974] 2 CMLR 549.


27. On the limits of such attempts to extend rights from their original strict economic dimension to a broader constitutional meaning, see Armstrong (1998, pp. 167-8).

28. Indeed, as Eleftheriadis (1998) notes, the Court's and its academic supporters tendency to address the constitutional issue from a 'doctrinal' perspective simply begs the question of the 'normative justification of the new legal order' (p. 269).

29. Opinion 2/94 Accession by the Community to the ECHR (28.3.1996). In this Opinion the Court put forward two separate reasons for rejecting accession. The first suggested that Article 235 EC was not an adequate ground, since it was 'part of an institutional system based on the principle of conferred powers' (i.e., from the member states). Jo Shaw (1996, p. 197) argues that the court was backtracking from the high ground taken in Opinion 1/91 Re the Draft Agreement on a European Economic Area [1991] ECR I-6079, where it seemed instead to assert unequivocally the autonomy of EC law. This may be true, but such political caution on the Court's part is tempered by the second reason adduced against accession. This reinforces Opinion 1/91 and considers the Community system as an established one, whose 'entry into a distinct international institutional system' would 'entail a substantial change'. Indeed, national courts could appeal to the same argument with equal force. On the complex interaction between European and national legal orders, within a world-wide network of legal communications, see Maher (1998), who argues not only for a pluralistic analysis of their relationship, but also notes that when national systems assimilate European laws and directives, they must evaluate the latter's impact on 'the links between existing law and the social process being regulated' (pp. 246-7), if their own fundamental equilibrium as legal systems is not to be upset.
30. Amsterdam modified the system, removing immigration and asylum policy from the renamed third pillar to the first, suggesting the Union structure remains fluid. Britain, Ireland and Denmark in any case obtained opt outs (Article 73Q).

31. Extended at Amsterdam, but often to areas where unanimity rather than QMV operates in the Council.

32. For a discussion of the interplay between formal and informal aspects of the decision making process, with particular reference to the role of sub national authorities, cf. Bomberg and Peterson, who, on a more general note conclude that 'it is striking how little the EU acts to iron out national differences' (1998, p.235).


34. OJ 1994 C61/155.

35. Simon Hix (1995), for instance, suggests that the development of a transnational party system at the European level is hindered by the present institutional structure of the Union, and by the poor understanding that political and other institutional actors have of the role that modern parties can play in the legitimation of the EU. His suggestions, though rather minimalist, can perhaps be better accommodated by the kind of neo-republican approach outlined below.


38. Symptomatic aspects of the inability of the present model of politics to go beyond a superficial treatment of the various features of the

39.

39 What follows draws on Bellamy and Hollis (1999).

40.

40 Consociational democracies have traditionally been seen as non-homogenous societies in which the principle of unified sovereignty nonetheless applies. Our model, instead, aims to address the issue of a polity where sovereignty is dispersed both vertically and horizontally. For a brief discussion of this point, see Bellamy and Castiglione (1997b, pp. 441-45).

41. Pettit (1997, p. 30) and Skinner (1998, p. 74 n. 38) stress the first benefit but regard the second as a civic humanist rather than a neo-Roman concern, which smacks dangerously of 'positive' liberty. Putting history to one side, substantively we do not believe a 'weak' positive appreciation of the virtues of participation can be totally excised from republicanism.

42.

42 J. Habermas (1996a, esp. Ch 7 and Appendix II; and 1996b) claims there is a middle way between republicanism and liberalism, which he applies to the EU. However, he conflates republicanism with the contemporary communitarianism of Michael Sandel and Charles Taylor. These theories lack the emphasis on social conflict and liberty as non-domination that characterise the neo-republicanism of our account. See Pettit's review of Sandel (Pettit, 1998). As a consequence of Habermas's failure to see this difference, the deliberative aspect of his thesis is highly idealised; whilst the increasingly prominent neo-Kantian features of his position, with their emphasis on rights-based constitutionalism, place him firmly, or so we maintain, in the liberal democratic camp.


45 For an overview, see Marks, Hooghe and Blank (1996). We have also drawn inspiration from Philippe Schmitter's contributions to Marks, Scharpf, et al. (1996).