Constitutionalism and Citizenship in the European Union: A Normative Theoretical Approach

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The question of a constitution for the European Union has been under discussion for some years now[2]. The convening of IGC2000 to re-examine, principally, voting weights, extension of qualified majority voting, and composition of the Commission, and of the Convention to draft a Charter of Fundamental Rights of the European Union, has occasioned explicit calls for the Union to be "constitutionalised": by the incorporation into the treaties of the Charter of Fundamental Rights, and their simplification and consolidation into one text.[3] Constitutionalising the Union is seen by its supporters and detractors alike as not just another in a series of steps toward integration but one delivering a qualitatively different kind of Union altogether – a Union taking on some of the resonances of a single political community. Proposals for a constitution lay bare, therefore, underlying controversies of political order in the EU. A flavour of these can be had by revisiting the concerns aired in well-known articles by Dieter Grimm[4], Jürgen Habermas[5], and Joseph Weiler.[6]

Grimm has argued that constitutions are the instruments for settling framework relationships between the component parts forming states, whereas the appropriate instruments for settling relationships between formed states are international treaties; therefore the EU should eschew constitutional activity and restrict itself to treaty-making. For Grimm, not only is constitutional activity by the EU founded on a kind of category mistake, and as a result otiose, but it is also positively misguided. The qualities needed for a modern liberal-democratic state – pluralism, internal representativeness, freedom, the capacity for compromise – as institutionalised at the interface of politics and civil society in parliaments, political parties, citizens' movements, interest associations, communications media, and what might broadly be called the "public sphere" – do not present themselves at EU level with enough vigour to prompt confidence. Indeed, the structures are hardly formed. Language and cultural diversity restrict participation in European opinion-forming and interest-mediation, and there is no "European" media, no "European" public, and no

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[2] King & Bosco (1991), Petroni (1997), RSC (1995), Schuppert (1995), Stone Sweet (1995), Weale (1998), Weiler (1996), Weiler (1997).
[3] European Parliament (2000)
[4] Grimm (1995)
[5] Habermas (1995)
[6] Weiler (1995a)

"European" political discourse. The upshot is inadequate accountability of EU institutions and actors, elite and technocratic domination, politicians attentive and oriented only to national publics, weakly developed feedback and steering mechanisms, and all of this with consequences for policy that are obscure and unreported. To summarise Grimm's position: constitutionalist talk detracts from a proper focus on the political substance of the nation state, without that substance being substitutable at supranational level, its conditions for effectiveness there being void. In response, Habermas agreed as to the general nature of the deficits, but observed that since nation-states exhibit relatively increasing democratic deficits themselves they are not necessarily in this regard the lesser evil; that globalisation and denationalisation of economies is in any event causing the secular erosion of nation state hegemony;[7] and, finally and crucially, that democratic citizenship of the EU, as generated by the legal institution of citizens' communication, itself establishes a politically socializing communicative context.[8] Joseph Weiler's contribution explores normative political justifications for the elements of constitutionalism already embraced in the EU – namely the supremacy and direct effect of Community law – by way of analysis of the German Federal Constitutional Court's Maastricht decision, and shows that the twin assumptions that (a) legitimate political authority is dependent on a *demos* and (b) there is no EU *demos* have the perverse implication that democratisation of EU decisionmaking is not possible: since on the Court's reading a *demos* is the political expression of a people whose prior definition is given by organic-cultural features, and such *demoi* in the EU are found only severally, within the boundaries of member states, then democratic legitimacy at EU level is exhausted by its mediation through member state institutions.

From the viewpoint of normative political theory there are three common areas of *problematique* that can be drawn out from these observations. The first is the conceptual status of the EU. Is it, or is it not, a state? Does its status have any theoretical implications with regard to a constitution and, if so, what might they be? Secondly, does the EU need a *demos*? If so, why, and what sort of *demos* does it need? And thirdly, the chicken and egg paradox: are political institutions the creators, or the creations, of their social contexts? The terrain located by the convergence of these three concerns is that of the relationship between political authority and citizenship, and the essential requirements for legitimate political order. The Grimm thesis, at its core, proclaims that (a) a legitimate constitution rests upon a formal condition (statehood); (b) that formal condition in turn rests upon a substantive condition (a *demos*); and (c) a *demos* is the political manifestation of a prior social fact: a people already constituted as a collective entity by organic-cultural definition.
What follows below is a discussion proceeding overtly and systematically from within a normative political theory, proposing an explicit theoretical account of the relationship between citizenship and political authority in the EU. It responds to the three problematiques by way of an examination of the underlying claims of the Grimm thesis, and posits the role of a constitution as key in countering those claims.[9]

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[7] See also Cerny (1995), Cerny (1999), Scharpf (1996), Scharpf (1999)
[8] Also argued in Bellamy & Castiglione (1996a), Bellamy & Castiglione (1997), Howe (1995), Kostakopolou (1998)
[9] To clarify, by "constitution" is meant here a set of provisions, of the standard political type, encapsulated in a text (or set of texts), which *inter alia* embodies an image of the body politic.

The framework adopted is the moral philosophy of Alan Gewirth.[10] A (very) brief summary of the politically relevant aspects of this is provided as a preliminary.

The units of standing are human persons presumed to be rational at minimal levels of inferential ability (henceforth, "agents") and its field is human action.[11] Voluntariness (or freedom) and purposiveness (intentionality) are the invariant and necessary features providing the content of all action,[12] and every agent must hold that each agent has rights to the necessary conditions of action, which are freedom and well-being.[13] Humanity is thus construed as a structured universe of rights and obligations-holders in constant and dynamic interaction.[14] In such interpersonal action ("transactions") there is a structural asymmetry between persons: one (the agent) has control of or determines her/his own participation and also the generic character of the other's(s') – the recipient(s). That is, agents control the impact of participation on recipients' freedom and well-being.[15] Hence what is in this theory the supreme moral principle: "Act in accord with the generic rights of your recipients as well as of yourself."[16] This is *The Principle of Generic Consistency* (henceforth, "the PGC") which lays on agents the categorically binding requirement that they do not distribute freedom and well-being in ways disadvantageous to their recipients. This entails not merely negative duties. In certain circumstances agents are obliged to provide positive assistance to others to enable them to attain these required capabilities for action,[17] and the PGC mandates that a positive concern be shown for the basic well-being of others where it can be affected by one's action *or inaction*.[18]

Freedom can be occurrent (exercising control over one's behaviour by one's unforced choice) or dispositional (relating to one's long-range effective ability to exercise such control).[19] As participation in transactions it is manifested as consent, validating conditions of which are unforcedness, knowledge of relevant circumstances, and emotional calm.[20] Agents must not interfere with recipients' freedom knowingly or intentionally by removing or weakening their informed control over their participation in transactions.[21] Well-being is constituted by effective capacities for purpose-fulfilment, and purposiveness encompasses three kinds of "goods": basic, nonsubtractive, and additive. Basic goods are the minimal necessary conditions of action and their means (such as life, physical integrity, mental equilibrium, and confidence in the general possibility of goal attainment).[22] The other two categories

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[10] The most comprehensive articulation of which is to be found in Gewirth (1978), with major presentations, developments and applications in Gewirth (1982), Gewirth (1996), and Gewirth (1998). Readers are urged to consult these comprehensive works since my terse summary can hardly do them justice.
[11] Gewirth (1978) p 45-6
[12] Gewirth (1978) p 27
[13] Gewirth (1978) p 48
[14] Gewirth (1978) p 207
[15] Gewirth (1978) pp 129-30
[16] Gewirth (1978) p 135
[17] Gewirth (1978) p 34
[18] Gewirth (1978) p 225. From this and the preceding provision it can be seen the allocative/distributional implications of this theory are social democratic rather than neoliberal. See Gewirth (1978) p 312 *et seq.*
[19] Gewirth (1978) p 52
[20] Gewirth (1978) p 258, p 284
[21] Gewirth (1978) p 250
[22] Gewirth (1978) p 54

of goods are relational. The retention of whatever capabilities the agent already has is a nonsubtractive good; a nonsubtractive harm diminishes the stock and lowers levels of purpose-fulfilment.[23] Additive goods are those gains in capabilities for purpose fulfilment for which the agent acts, over and above basic and nonsubtractive goods;[24] they are those by which the "full range of person's problem-solving, purpose-achieving abilities can be effectively developed".[25]

Since the human existential situation is interactive and associative,[26] a stable standardized framework of social rules, functional and organisational institutions and social roles is needed to allow for the free pursuit of and participation in purposive activities. Many transactions are multiperson in modality or effects and so require mediating, coordinating institutions.[27] Some harms are long-range and dispositional, and here too institutional action and arrangements are needed for rectification.[28] Further, as the framework within which such justice is pursued must itself conform to the PGC, the stability, assurance and equity provided by conforming rules and institutions are themselves intrinsic goods deserving support.[29] Agents are therefore duty-bound to support and contribute to such social and political arrangements,[30] including by way of extractive policies like taxation,[31] and to evince correlated modes of respect: "a recognition of the rights of others, a positive concern for their having the objects of these rights, and a positive regard for them as persons who have rights or entitlements equal to [one's] own."[32] This equality of generic rights produces two guiding political principles and criteria – the Principle of Equal Freedom and the Principle of the Common Good.[33]

Political institutions and arrangements therefore are instrumentally justified by their central role in maintaining the conditions for persons' basic well-being and freedom.[34] Non-specific nonsubtractive harms to capabilities of action also require political action: laws preventing and punishing exploitation and fraud, for example.[35] As to additive goods, agents must have and practice those attitudes and behaviours central to others' abiding self-esteem: acceptance and toleration, considerateness, and supportiveness.[36] They must also contribute to social institutions and arrangements which help others to develop their capabilities of action, especially where the freedom, knowledge, wealth, and income enabling others to provide for their additive well-being through their own efforts are lacking; and in general must support a milieu which fosters persons' dignity and effective agency, helps to bring about distributional equality of the means for productive agency, and provides the context within which mutual obligations can operate – including a liberal democratic political system under the rule of law, widely diffused property and opportunities for obtaining

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[23] Gewirth (1978) p 55
[24] Gewirth (1978) pp 55-6
[25] Gewirth (1978) p 245
[26] Gewirth (1978) p 277
[27] Gewirth (1978) pp 272-3
[28] Gewirth (1978) p 137, Gewirth (1996) 54-6
[29] Gewirth (1978) p 305, Gewirth (1982b) p 263
[30] Gewirth (1978) pp 136-7
[31] Gewirth (1978) p 319
[32] Gewirth (1978) pp 137-8
[33] Gewirth (1978) pp 206-7
[34] Gewirth (1996) p 60
[35] Gewirth (1978) 236-7
[36] Gewirth (1978) 241-2

it, and "supportive families, enlightening schools open to all, unfettered and abundant communications media, a pluralistic, nonhierarchical social structure."[37]   In these kinds of indirect PGC application, where its effectuation is dependent on mediating institutions, its requirements bear directly on those rules and institutions, and persons are required (in the first instance) only to act in accordance with the roles, repertoires etc thus established.[38]

From even this cursory review it is clear that within this theoretical schema citizenship is an institutional role instrumental to persons' being able to carry out their mutual obligations *qua* moral agents. That is, the institutional role of citizenship and the sociopolitical institutions in turn constituted by it are mediating instruments with and by which agents effect mutual relational rights and duties vis-à-vis each other especially in multiperson transactions.[39] This position on citizenship contrasts with those which see citizenship as the highest embodiment of a set of virtues or as the fullest realisation of human flourishing, or as the most authentic expression of communal *mores* and ethos.[40] The alternative advanced here is much narrower in scope but more stringent and focused in application. As an institutional role, citizenship's rules constitute the institution of citizenship and define what its holders are required to do to participate in its functions and activities: institutional roles are those that specify the logical and conceptual relationships between the institutions and what kinds of actions are logically required by (=constitute) them.[41] Structured modes of interacting have their own requirements arising from (a) the purposes for which persons so engage, and (b) how persons are to act in the relevant roles, and the obligations persons have as participants stem from these requirements.[42] So far as those actions have moral significance it is dependent upon the justifications (or lack of them) attaching to the institutional framework which the role helps to constitute. Full normative evaluation must rest on consideration of the whole political framework which citizenship supports, and the terms on which it does so: its capabilities, purposes and functions in effectuating equality of generic rights to freedom and well-being. This follows from its definition: if its primary purpose (necessarily) is to constitutively uphold the polity, then the first point of enquiry must be to ascertain whether and to what extent the polity is worth supporting, as assessed by criteria of PGC-conformity.[43] Further, the structures and workings of the apparatus of political authority must be consistent with those considerations counting within such a reasoned defence, so the kinds of arguments advanced to justify the EU as a political project will constrain and shape the constitutional structure and political process defensible within the same rationale.

Before considering the question of the justifiability of the overall political framework, something more can be said about citizenship's purposes within the polity: what citizenship is in the business of trying to achieve. With respect to the internal

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[37] Gewirth (1978) p 248
[38] Gewirth (1978) p 278
[39] Gewirth (1982a) pp 241-3
[40] In contrast to the visions of citizenship found in, eg, Arendt (1958), Clarke (1996), MacIntyre (1995), Oldfield (1990), Walzer (1989). Gewirth (1998) however goes some way to meeting Aristotelianism: by making self-fulfilment (defined as aspiration-fulfilment and capacity fulfilment) dependent on a secure foundation of human rights, he ventures a reconciliation of ethics and morals.
[41] Gewirth (1982b), Simmons (1979) pp 16-21, Weale (1991), pp 158-9
[42] Gewirth (1978) pp 273
[43] Gewirth (1978) pp 273-4, (1982a) pp 262-4

standing and activities of the polity citizenship's occurrent immediate purposes are, first, to effectuate the measures needed to make of its polity a zone within which fundamental human rights are safeguarded, involving a framework of law and order to regulate transactions, a macroeconomic arena in which a wide range of opportunities for productive agency and the activities of supply, demand, and exchange are effectively present, and a society interlocked in mutualist relations of positive recognition and respect;[44] and, secondly, to uphold the institutions of effective citizenship and governance by contributing the time, attention and effort to responsibly fulfil the specific procedural tasks allotted to citizens, and by contributing the financial and other resources needed for those institutions' maintenance and steady improvement.[45] Dispositionally, citizenship's purpose is to stabilise, by embedding self-reinforcing mechanisms, the capacities for the reproducibility of the permissive and facilitating backgrounds for the occurrent purposes as sketched above, namely, the political and social institutional resources already outlined; the context providing affective, socio-psychological, cognitive, attitudinal and motivational resources; and the context of interactive economic and physical resources. In other words, citizens must have a care for the institutionalized acceptance of the PGC not only cross-spatially (over the territory of the EU) but also, crucially, cross-temporally.[46]

Citizenship's purposes, as regards the external standing and activities of the polity, are comparable: to support occurrent measures conducing to international order, especially where they facilitate more than nugatory levels of freedom and well-being, regulating and managing resource use, regulating and managing economic exchange, furthering international retributive and international distributive justice and, most importantly, the dispositional task of enhancing the stability and self-reinforcing reproducibility of such achievements.[47]

As an institutional role constituting a framework of institutions (including but not exhausted by itself), citizenship is necessarily instrumental to the purposes of those institutions, which is as much to say that citizenship's occurrent purposes are to secure and expand its own capacities, especially dispositionally. It is the core purpose of the practice of citizenship to cultivate and enhance its own capacities for action, and of what enables citizens to act with hope of successful fulfilment, in general. So, having settled that the central points at stake are the part played by citizenship in effectuating a mutualist structure of rights and the prerequisites needed for it to do so, the constitutional structure of the polity can now begin to be sketched.

The most fundamental and compelling imperative is the need for basic levels of social and political organisation. Why does the PGC require that there be political order? First, because of the seriousness of basic harms and their potential destructiveness to stable transactions between persons in its absence: without that elementary standardization conflicts will be unresolved or resolved by force.[48] Secondly, a public order of collectively supported institutions provides the stability and uniformity such

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[44] Gewirth (1996)

[45] This seems to be congruent with the "European social model" explored in Shaw (2000)

[46] Consistent with notions of political community, which usually remark on its resilience over time despite constantly changing membership(s), eg Canovan (1996), Miller (1995), Weale (1991)

[47] Gewirth (1984) p 232

[48] Gewirth (1978) p 305. This is of course a standard Kantian position.

rules and penalties must have in order to comply with the PGC. Thirdly, and crucially, since the minimal political organisation embodies and guarantees the foundational elements of the PGC's general rules, neither its existence nor the obligatoriness of its most fundamental rules can be contingent or optional.[49] The institutions and organisations of the basic ("minimal") level of order must be authoritative over some bounded portion of the Earth's surface, that is, over populations and activities within those jurisdictional boundaries,[50] so implying hierarchy and coercive monopoly, without anticipating the configuration of the former nor the modalities of the latter. What this means is that the levers of compliance – persuasion and compulsion – and the means to nurture compliance, and inhibit infractions, must not reside with any extra-polity party.[51] In other words, the purchase of the term "sovereignty" is here conceived negatively, such that no extra-territorial power vitiates intra-territorial power, otherwise the conditions for peace and the securing of basic well-being will be absent. Further, internal parties should not be permitted to secede and set up rival political orders, else the most powerful will defect and perhaps pose a threat to those that remain.[52] This follows from the point made above: at these basic levels of political and social order, the very minimum sufficient for conditions of individual agency to be possible, the complex of social rules and organisations cannot be voluntaristic but must be mandatory.

Now, this establishes that there be political authority, but not of what type. Sufficient justification requires further specification as to exactly which associations, rules and activities are PGC-justifiable, and why. Political authority exists for the purposes of individuals' freedom and well-being, but is itself not optional. The solution to this seeming tension between the imperatives of freedom and of well-being lies in combining structural (constitutional) mandatoriness with voluntarism of routine political process, the former entrenching the latter.[53] The polity will then comprise four political objects: (1) a system of criminal law and enforcement machinery for retributive justice, (2) further laws concerned with distributive justice, its institutions and personnel, (3) the constitutional structure which guarantees consensual decision procedures, (4) the specific laws and personnel decided upon as the results of those procedures. (In this theory only the last is to be put to empirical consent.)[54] Gewirth's theoretical justifications can thus be cashed out in terms of the (socio)political arrangements whose authority they ground and, conversely, ground critiques of those institutions, where they fail to comply with the PGC.

That supplies arguments of the need for a certain specification of political authority, namely, political authority guaranteeing a determinate range of basic rights within a determinate territorial zone. While the absolutely fundamental purpose of such a discrete regime of political authority is to secure and maintain the basic social order to enable the conditions for voluntary and purposive action to be in place, it must, if it is to fulfil its purposes, also be democratic[55] and, within those parameters, supportive.[56] While a non-democratic regime may be able to maintain by authoritarian means a

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[49] Gewirth (1978) p 283, 302
[50] Gewirth (1982a) p 248
[51] Gewirth (1982a) p 243
[52] Gewirth (1978) p 291
[53] Gewirth (1978) p 306, (1996) 317
[54] Gewirth (1978) pp 306-7, (1996) 311-46
[55] Gewirth (1996) p 313
[56] Gewirth (1982a) p 247, (1996) pp 324-35

context of order, a social and moral order claiming to secure the equal generic rights to freedom and well-being necessary for purposive action more closely and more fully than in this most elementary and desultory regard will need democratic legitimation. Even a benevolent despotism with an enviable performance as measured by the levels of well-being of its subjects fails the first test of moral justification as, breaching agents' requirements with respect to freedom, it violates the PGC and is therefore illegitimate.[57] In order to conform fully to the PGC not only must a polity be normatively justifiable and positively justified, in tandem, but its acceptance must rest precisely on the grounds which enter into its justification (unlike, say, what has been called "Government House Utilitarianism" where a hiatus decouples the two[58]). It is often claimed that a regime of political authority has the twin tasks of securing policy performance effectiveness and democratic legitimacy[59] (or, output-oriented effectiveness and input-oriented authenticity)[60] and that trade-offs must be made between capacity effectiveness and citizen effectiveness.[61] Let us instead say, with Habermas,[62] that it must fulfil three tasks: exogeneously, to secure as much capacity as possible for insulation and control; and endogeneously to secure democratic legitimacy as regards process and also steering legitimacy as regards output or, differently put, both procedural and substantive legitimacy.   Further, output performance above certain thresholds must, whether endogeneous or exogeneous, be within the parameters set by democratic legitimacy.

In calling a regime democratic something is being said about the source and the nature of the decisions made. The source, because it is ultimately the citizenry at large, via their selected representatives, from whom emanates legitimate political decisions. The nature, in two ways: first, (and positively) decisions must be presentable and vindicable in the universalist idiom of the common good; secondly (and negatively) decisions must face the trammels of prior restraint by means of the doctrine of accountability in combination with the law of anticipated reactions. Then, of course, the various procedural decision rules must be plausible specifications of the principle of equality of generic rights, and universal suffrage, where each counts for one and none for more than one, plus majoritarianism, is usually taken to indicate adherence to the principle.[63] These democratic features are logically required as extensions of agents' basic rights to freedom. With respect to their rights to well-being, there is good reason to suppose those precarious in the absence of democracy.
These then are the purposes and justifications of the as-yet abstract polity. Two further questions arise: theoretically, must the regime of political authority be a state? And secondly, is this account applicable to the EU?

It should be said straight off that Gewirth himself uses the term "state" to signify the system of political authority whose attributes and justifications he is at pains to establish. But the choice of nomenclature *per se* carries no theoretical import. While the PGC implies certain features must characterise the constitution and exercise of

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[57] Gewirth (1996) p 316
[58] The term is attributed to Bernard Williams and occurs in Williams (1993) pp 108-10
[59] Analyses of the EU in these terms are found in Andersen & Eliassen (eds) (1996), Weiler (1991)
[60] Scharpf (1999) p 2
[61] Dahl & Tufte (1974), Dahl (1994). This can be seen as the pitting of a "Humean" legitimacy against a "Lockean" legitimacy (Weale (1997)).
[62] Habermas (1999)
[63] For an offered definition of democracy, within a discussion of its essentials, see Weale (1999), pp 12-4

political authority, in principle its applicability is as valid and viable for non-state configurations of political authority as it is for states. Indeed the attribution of territorial sovereignty to states is entirely derivative from and dependent upon their historically contingent status as the dominant and, until the advent of the EU and similar emerging systems of governance, monopolistic, form of political authority in the modern era. The state is the product of a certain method of configuring political authority which has held sway over recent centuries. Justifications of the "Westphalian" state as a particular composition of political authority are entirely instrumentalist, pertaining to the purposes they serve in securing and promoting persons' freedom and well-being, just as are the justifications for Hobbes' Leviathan and Locke's Commonwealth. There is no reason, therefore, to make a fetish of the concept of the state. What are of relevance are the underlying arguments which sustain it as well as, conceivably, other compositions of legitimate political authority.[64] (Without venturing on a detailed analysis of the differences, the core and definitive distinction separating the two types of political authority in the EU is that normative warrant flows, overwhelmingly, upward, rather than downward. The EU receives its warrant from the member states, and not the other way round, except possibly for the one determining feature that members are obliged to accede to the openly normatively disciplinary provisions of Article F1 TEU ("Action in the Event of a Breach by a Member State of the Principles on which the Union is Founded").[65]) Gewirth's adoption, within the elaboration of his larger philosophical project, of what is currently the orthodox term in the available political vocabulary to denote territorially bounded political authority, should not be read as the staking out of a position in a definitional *imbroglio.*

If the EU were to claim PGC-derived justifications, what sorts of arguments would have to be advanced in its favour? Just as the state's purposes – tasks, activities, functions, and the reasons for them – are analysable as, and must be justifiable as, contributions to the securing (variously) of agents' basic, nonsubtractive, and additive goods, so too should be those of the EU. At first sight, this perspective may strike one as counter-intuitive. Plainly the EU is not the primary sociopolitical organisation needed for anti-criminality codes on its territory, since it comprises pre-existing states having (in most cases) had the benefits of highly elaborated and developed social order(s) for centuries. Nor are the EU-level institutions politically "sovereign" within the territory as conventionally understood – politically supreme jurisdiction seems on the contrary to be joint and several between a wide range of political and quasi-political bodies lying at different institutional levels.[66] And the notion that the EU is, or should be, in a position to forbid and forcibly prevent member states from seceding, if they chose to do so, chimes neither with prevailing empirical nor normative intuitions. Indeed there is a widely- and deeply-held sense in member state electorates that the central political institutions of the member states are (and should remain) the dominant and decisive focus of allegiance and activity within the topography of the EU, and that, as far as the populations of these states are concerned,

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[64] Similar arguments are put in MacCormick (1997), which posits the EU as a commonwealth comprising people conscious of a common "weal", or good, to be pursued politically (p 9), and Beetham & Lord (1998) p 32: "Because the EU requires its own normative justification, it must satisfy the general criteria that apply to the legitimation of any liberal democratic system."
[65] Duff (ed) 1997, p 3-5
[66] Schmitter (1992), Schmitter (1996)

their polity's continuing membership of the EU and its agreement with or acquiescence in its policy are at its discretion, and not to be taken for granted.

On the topic of sovereignty, however, several points can be made. First, the proliferation of *locii* of political activity, the increased interactivity and interdependence of states, and the increasing irrelevance of the (late medieval/early modern) concept of sovereignty when it comes to making sense of nonhierarchical multipolar systems of governance are fast making it an archaism in the literature of the political sciences.[67] Secondly, since the EU as a system of governance includes not only the EU-level institutions but also the political institutional frameworks of the member states and, further, the former are wholly supervenient on the latter, it can hardly be claimed that the EU is not sovereign either externally or internally. There is no third party, whether of extra- or sub-EU origin, that has supreme political authority within the EU. A sovereign in the EU cannot be indicated, save we concur in the sovereignty of the EU itself. Thirdly, despite its being a perplexingly hybrid sovereign it has many of the required features: one thinks immediately of qualified majority voting in the Council, direct election of a parliament (in a system of increasing legislative bicameralism), and the legal doctrines of supremacy and direct effect. In particular the EU confers a direct citizenship, demonstrable formally as codified by Treaty[68] and informally as practice.[69] Though bestowed only upon existing member state citizens precisely on the grounds of that primary citizenship, to which it is supplementary, it is not the case that EU citizenship is, thereby, indirect and mediated. Member state citizenship functions as the filter determining the distribution of EU citizenship but not its ongoing modalities; once through the filter citizens have crossed the threshold into what is thereafter a direct political relationship with EU rules and institutions, and are subject both directly and indirectly to their authority. By contrast, citizenship of a conventional intergovernmental organisation is an oxymoron. Though severely circumscribed imitations of that relation have been developed (as with, for example, international human rights norms and courts) they are partial, embryonic, almost entirely mediated through nation-state frameworks, and are nowhere, as far as I am aware, found in the combination required to generate a status plausible as citizenship.[70]

The basis of Gewirth's claim of the mandatoriness of the minimal levels of political order rests, as we saw, on its necessity to secure the basic context without which the basic goods of freedom and, especially, well-being, are unavailable; and thus the internal security and peace availing within the polity is the prime value. Physical threats to life and its prerequisites arise from transactions not only within, but

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[67] Beitz (1991)

[68] Article 8a-e, Part II, Treaty on European Union 1992

[69] As explored in the works of Antje Wiener and Elizabeth Meehan. Major presentations are Meehan (1993), Wiener (1998a)

[70] Even the leading contemporary theorist of cosmopolitan governance, David Held, views international democracy as holding between communities, and the notion of global citizenship naive: see Held (1995) pp 230-3. Thomas Franck, in claiming to detect the emergence of an internationally upheld entitlement to democracy, suggests it is "the citizens of *each state*" (my italics) who will expect its guarantee. See Franck (1992) pp 46-91. Linklater concurs with the general thrust, seeing a central role for the state in mediating between the individual and the international levels of regulation (1996), despite his use of the term "cosmopolitan citizenship" to signify universalist moral duties being capable of effectuation by means of solidarism between states. See (1998) pp 204-7. Coverage of the issues and debates is supplied in Archibugi, Held & Kohler (eds) (1998).

between, states, most obviously in case of war, but also from other interdependencies, for instance from international terrorism, cross-national environmental harms, or large-scale epidemics and risks to public health. That the EU was founded in response and as prophylactic to war, and is therefore a precondition of peace and stability in the region, has already moved from orthodoxy to cliché. It is frequently argued that the EU protects, by insulation of one sort or another, its member state populations from external security threats or the kind of serious financial or commodity shocks able to cause macroeconomic meltdown to individual member state economies (as implied by the commonplace commendations of the EU as a zone of monetary stability).[71] And, to the extent that the loss of nonsubtractive goods may permit social disruption and instability – as may conceivably be occasioned by sudden large-scale "retrenchment" of welfare states – then in so far as it functions to shore up these goods, the EU has buttressing to the claim that it secures the basic goods comprising a context of order. Rather more than in the case of the state, the EU's contribution to basic order as a secondary tier built, as it is, on prior social order(s), must be a matter of degree and fine shadings. But that is as much as is required to show that, since basic human freedom and well-being may be at stake without it, the EU's bindingness must be more like that of the mandatory state than that of optional secondary associations which are founded for purposes connected with additive or the less urgent of the nonsubtractive goods and rights.

Nonsubtractively, the EU's role in maintaining existing stocks of goods can be viewed under two aspects. There are, first, those specific sociopolitical goods (policies) already obtaining in member states, whose diminution or depletion might be prevented or decelerated by the countervailing presence of EU institutional activity: the argument that EU integration has contributed to (weak version) or been the necessary condition of (stronger version) the survival of the welfare nation state is an example. Alternatively the argument might refer not to specific sociopolitical items but to the whole cultural institutional framework, and here it might be claimed that the EU militates in favour of, prevents erosions of, whole ways of life, that is encompassing cultural and social codes and practices, institutions (including domestic political and legal apparatuses) and attachments, commitments, and loyalties. Hence, if the EU appears to allow the member states to retain more of their salient features as going concerns than its most conjecturally convincing counterfactuals, then it is nonsubtractively protecting existing reservoirs of political resources that the member states are themselves individually unable to guarantee. This would make the EU a context of sustainability as well as of order.[72]

Finally, it might be claimed that the EU goes beyond safeguarding basic generic rights and ameliorating deterioration of current stocks, to securing additive goods over and above those available to individual member states. These may stress well-being, as in contentions that EU integration *per se* generates economic surpluses and productive

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[71] As in Habermas (1998), Habermas (1999); a general argument about the capacities of federations for these kinds of insulation is given by Proudhon (1979), especially in his discussion of "agro-industrial federation".

[72] For historians' arguments to this effect, see Milward (1992), Milward et al (1993) and, though his focus is on the European post-war order in general and not the EU specifically, Maier (1986). Moravcsik (1999) challenges Milward's specific interpretation re the explanatory dominance of welfare state survival (p 496), but as his general argument, from a liberal inter(national)governmentalist perspective, is that the "statesmen and citizens" (p 501) of the member states embarked upon integration to realise economic gains, it does not undermine my point – quite the reverse.

potential, by dint of (positive) trade creation effects and (negative) dismantling of barriers.[73]   Or they may emphasise freedom, as is evident in the arguments as to expanded opportunity sets made available to individuals by the various freedom of movement and establishment provisions arising from statutory and case law in the EU, and the contention that a multiplicity of *locii* of individuals' political attention and allegiance prevents a constricting and impoverishing of citizenly potentials.[74] Now although a PGC-consistent justification of the EU must appeal to its enabling of basic, nonsubtractive and additive rights and goods to all its individual agents, and those will include rights to the capacities/goods of the intermediate level of mediating institutions better known as the member states, from the internal perspective of each state the relative weight of these three within the portfolio of goods and capacities supplied, so to speak, by EU membership, will be idiosyncratic simply because, each state having already diverse traditions, histories, and trajectories of policy development, EU initiatives impact differently in those varied settings. What might be received as a nonsubtractive good in the circumstances holding in one state might well be deemed an additive good in another. Thus cultural and institutional variation in the nitty-gritty of the justifications advanceable would be expected, but an overall justificatory strategy of the type required here could stop short of such close examination, establishing merely that for all its members the EU provides a context of order, a context of sustainability, and a context of aspiration.[75]

One challenge to a reading of the EU as straightforwardly PGC-consistent along these lines is posed by Fritz Scharpf's thesis[76] that an expansion of problem-solving capacity n one set of problem areas ("market-creating" policies) has been at the expense of a (relative) diminution of capacity in another set, namely those "market-correcting" policies supported by parliamentary majorities in the member states, and on which a good deal of normative legitimacy rests. Viewed this way and put in Gewirthian terms, the EU level would then have additively increased output effectiveness (overall well-being) absolutely but nonsubtractively harmed input effectiveness (overall freedom) relatively. On the output side taken distributively, having emphasized the production of economic surplus over its distribution, the EU could be said to have encouraged the formation of inequalities such that a close examination of the patterns of winners and losers would deliver a less rosy picture on the well-being side of the equation, for many persons, too.   If this analysis is broadly accepted, as it is here, then four possible positions from which to respond suggest themselves. The first is to agree that the EU is imperfectly and ambivalently in accord with the requirements of the PGC and so lacks any robust normative defensibility, but to shrug one's shoulders, metaphorically speaking, concluding the situation can't be helped. The second is to resolve that the erosion of decisionmaking effectiveness of national majorities vitiates the integrationist project, and prescribe a reining back, even at the cost of the overall gains made in terms of well-being capabilities. The third is to interpret the asymmetry to the effect that, though the EU has enhanced capabilities for well-being apparently at the expense of freedom

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[73] As lauded in Cecchini (1988)

[74] The classic argument of which is in Proudhon (1979), for an EU-specific claim see Meehan (1996), (1997)

[75] And these are in fact the implicit justifications that find their way into the conventional statements of intent in EU treaties (especially preambles), presidency communiqués, set-piece speeches etc: consider the values exhorted in Articles 1 and 2 of the Treaty of Amsterdam 1997.

[76] Scharpf (1999)

capabilities, since it is the member states themselves who have created and continue to acquiesce in this outcome, the trade-off made is best read as the revealed preference of member state electorates (and thus an implicit exercise of consent). The fourth is to argue that the balance between the two values is not zero-sum and, while facing difficulties the resolution of which will require ingenuity as well as goodwill and patience, much can yet be done to upgrade the EU's performance across its various normative problem-solving (especially distributional) deficits without abandonment of its existing gains. The standpoint taken here is the fourth, informed by some sympathy with the third.[77]

Aside from the question of whether the justifications can in fact be vindicated, the considerations generally taken to register as purposes of and for the EU are exactly those more usually agreed to provide compelling reasons for the establishment of political authority as such, whether in the state or commonwealth or anywhere else.

Now, if agents' possibilities of transacting with each other with moral defensibility rest in the first instance on the necessity of the structural context of order described as the minimal level of political authority, and this must itself necessarily be democratic, and further that citizenship is what constitutes democracy (in the sense that it is a role specifying what has to be done to participate in the practice, or game, of democracy, and without that participation the practice or game cannot exist), then it entails that the institutional role of citizenship is a necessary precondition of agents – citizens and non-citizens alike – being enabled to act morally across the full range of their actions, and is not merely an optional, albeit desirable, contingency. What conditions must obtain in order to allow this practice of citizenship? Institutionally specific though the tasks are, the roots of any answer must lie in the conditions generic to action as such: voluntariness, or freedom, and purposiveness, or intentionality.[78] Freedom expresses itself in an agent's controlling her or his behaviours, which means the performance of action is under that agent's direction in line with certain minimal plans s/he must be able to make regarding what s/he must do to achieve what s/he wants, and that the agent must have and maintain the general abilities needed for making such plans and exerting such control[79] and, further, that the agent chooses unforcedly to act so, having knowledge of the relevant circumstances. The agent is thus assumed to know what action to take for what purpose, its proximate outcome and its recipients, in the light of a consideration of germane circumstances and knowledge of salient personal characteristics.[80] For the purposes of agency all that freedom requires is that action not be caused by external compulsion, direct or indirect, such that choice and its opportunities is marked by compulsoriness, undesirability, or threat, nor by internal compulsions like reflexes (including psychological), ignorance, disease, or severe emotional turbulence.[81] Agents' purposes may be ultimate ends in themselves or

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[77] Certainly, if the EU is held to be unjustifiable from the start (position two above) there is little point in holding it to account or attempting improvement. Because, however, the case for supposing electorates prepared to bear the losses consequent on abandoning the project are slight (position three defeats it), one is forced back to the moral nihilism and practical fatalism of position one.

[78] Gewirth (1978) p 27

[79] Gewirth (1978) p 59

[80] Gewirth (1978) p 31. This need not the the "best" or "correct" action, since fallibilistic factors will intrude, but it must be a course of action it is reasonable to settle upon in the known circumstances, and one coherently integrated with other of the agent's purposes and proceeding from an organized dispositional system.

[81] Gewirth (1978) pp 31-7

intermediate ends instrumental to further purposes, but agents are assumed to be capable of reflecting (under conditions of emotional equilibrium) on purposes, whether or not they actually do so, deploying minimal levels of inductive and deductive rationality. The means-end relation inherent in purposiveness implies that agents must be able to more or less clearly envisage the action and the link to the consequences intended by it (though in some situations this may be habitual rather than at the forefront of consciousness).[82] Freedom and purposiveness are generic goods which are basic in being preconditions for any prospect of purpose-fulfilment, and nonsubtractive and additive goods in that, dispositionally viewed, they are constitutive purposes the aim of which is to, respectively, retain and expand levels of purpose-fulfilment and also the capacities to do so.[83]

How do the generic features of action play out in the specific context of EU citizenship? What contextual conditions are needed, and what are the specific measures required and available to maintain and reproduce them? We have seen they can be indicated as negatives: the absence of impediments such as ignorance, direct threat, and coercion, and also incentive/sanctions regimes which manipulate or foreclose choice; and as positives: resources including cognitive, practical, skills, and materials on or in which to exercise them: so, for example, in the EU the provision of information and the opportunities for reasoned interchange within a "public sphere" would be needed to allow agents to have knowledge of relevant circumstances. The two features of absence of constraint on action and knowledge acquisition, and positive provision of opportunities for action and knowledge, translate in turn into the need for (a) basic security, stability and human rights to be guaranteed, to permit agents to formulate and pursue purposes, to set their values, objectives and ends, and (b) the institutional structures and instruments to enable agents to comprehend and deploy the means to attain those ends. In so far as political purposes and values are to be pursued via activity in the political process, and achieved through policy formation or change, persons need to understand the institutional framework and the mechanisms of effective political intervention within it. This in turn means the regime of political authority must have (1) formal guarantees of fundamental human rights and the civil and political rights needed as qualifying conditions for politically relevant action as such; and (2) clarity, transparency and predictability as to the major political demarcations, viz: (a) the separation of powers between various functionally demarcated institutions (or, horizontally differentiated coordination), and (b) the allocation of competences at different territorially-politically demarcated levels (or, vertically differentiated coordination). Constitutive declarations on rights, separation of powers, and allocation of competences are, unsurprisingly, the three components traditionally ascribed to constitutions. This establishes the key role of a formal constitution as a contextual condition for the effective practice of citizenship. Moreover, quite a lot of the content of such a constitution can be suggested by unfolding the implications of PGC conformity.

The first of those is that the EU Constitution must therefore instantiate, directly and indirectly, the principles of equality of generic rights and of the common good that are the most immediate derivation of the PGC. Directly, it must, first, secure the basic goods and rights which provide in persons' dealings with one another the preconditions for their agency, for example, life (and the means to it such as food and shelter), physical integrity, freedom of movement. An open guarantee of a regime for

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[82] Gewirth (1978) p 38
[83] Gewirth (1978) p 58-60

the protection of standard human rights and immunities should form the Constitution's basis, so incorporation of the proposed Charter of Fundamental Rights into a consolidated constitutionalized text would be required. Protection of such rights also entails commitment to the broad guarantee of a system of criminal law to maintain a deterring order and retributive justice.[84] The basic conditions of individual agency are threatened not only by the absence of order in the relations of individuals with each other, and in the relations of political authorities with individuals, but also by the absence of order in the relations of political executives with each other; a constitution codifying the structure of a multipolar polity must also provide for the existence of mechanisms of conflict avoidance and conflict resolution between these executives as well as a common sanctions regime reinforcing compliance and deterring and penalising infractions.[85]

Next, a vital part – indeed the main point[86] – of the Constitution is to secure a set of methods and mechanisms of governance of a certain kind so as to embody equality of generic rights. This equality must be manifest in the structure of distribution so, formally and comparatively, each individual must have an equal right to what Gewirth calls the civil liberties (which include freedoms of speech, publication, assembly, and association) else basic freedom rights are infringed.[87] These should not be restricted to citizens only.[88] The standardisation, predictability and uniformity of this parity between agents is part of the order which is the bedrock of the PGC.[89] It is the duty of citizens of a polity *qua* moral agents to use the determinative political rights, the exercise of which is reserved to themselves (and as far as rights-holding goes, this is the defining difference between citizens and non-citizens), to secure equality of human rights and civil liberties for all inhabitants of their polity, citizens and non-citizens alike.[90] As to citizens' political rights, the Constitution must establish that all

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[84] Though constitutional guarantee need not imply executive implementation at the same level: in a multipolity as the EU this may amount largely to acknowledging and bolstering such systems as are in place and reinforcing cross-jurisdictional coordination as necessary.

[85] It might be conjectured that the member states are unlikely to commit themselves to such a regime unless and until the self-reinforcing habits and expectations of cooperation have gained such momentum as to make calls upon it exceedingly improbable: but by the same token states are unlikely to have continued in train the underlying political processes provoking the need for a constitution in lieu of such cooperation, so intoning the mantra of state sovereignty would not be a sufficient objection to this provision. Also, the rudiments of such a regime are, arguably, now in place with Art F.1, Treaty of Amsterdam 1997.

[86] Gewirth (1978) p 307

[87] Gewirth (1996) p 316

[88] Gewirth (1996) p 315. It appears such a restriction is contained in Article 16 of the European Convention on Human Rights (Lundberg (1995) pp 114-6)

[89] Gewirth (1978) pp 305-6

[90] Unfortunately Gewirth does not discuss the variety of categories of inhabitant within many polities, certainly including those of Western Europe. In particular the complexities in the situation of persons choosing both to maintain their citizenship of one polity, and reside long-term in another, are not recognised within the theory. For present purposes, non-citizens can be assumed to be citizens of other polities, and it should be noted that though the PGC provides that every person has a right to be a citizen of a polity with a constitution providing equal rights to the civil liberties, (Gewirth 1996 p 316) this polity need not be the one they inhabit. This qualifies the political equality of those inhabiting the territory, vis-à-vis its political institutions, since some persons (its citizens) will thereby have the standing of political agents and others (non-citizens) their recipients. A division of this type between citizens and non-citizens is unavoidable, save by promiscuously awarding citizenship universally (including, say, to day trippers). So long as the requisite range of protections and other elements of equality is in place, and the rights for which citizenship is the qualifying condition remain exceptional

policies, legislating representatives and executive officials are selected and decided upon by the method of consent.[91] This refers to institutions, and not to individuals, so it does not mean that an act of empirical consent from each individual must vindicate each such decision, but rather that the institutionalised decision procedures incorporate, to the fullest possible extent, opportunities for citizens to consent and dissent to them. Excepting establishment of the mandatory human rights/criminal law regimes and the method of consent itself, political arrangements and laws are morally justifiable if and only if they have resulted from the method of consent.[92]

Intrinsically, the civil liberties and political rights itemised in the Constitution must be effectively operational as powers in practice, and not mere rhetorical flourish.[93] In this way the equality of rights is fully material as well as being a description of a formal structural relation.[94] Otherwise, not only are agents' freedom and well-being not being served but, worse, by having deception perpetrated on them by the Constitution, they suffer a nonsubtractive harm.[95] The constitutional structure of the polity must not just passively protect persons in the exercise of their rights but must therefore actively promote them,[96] including drawing them to agents attention, and – without the kind of rigid and pedantic over-specification that itself infringes freedom and encroaches on the method of consent – the Constitution should tend toward positively facilitating rights, by actively removing obstacles to them in a number of ways. It should for instance establish and enumerate rights-effectuating opportunity structures and the relations between them, such as competitive political parties, transfers of the reins of political authority according to regular, free, and fair elections, channels of functional consultation, and various courts with identifiable scopes of jurisdiction. It should also incorporate the positive obligations incumbent on political authorities to identify and supply the information agents, who are in this regard their recipients, need, in order to enable them to make choices after rational reflection and with knowledge of the relevant circumstances. The failure to give such information invalidates consent and diminishes agents' capacities for voluntary purpose-fulfilment, and so is a positive harm. Similarly, the right of each person to sufficient education to allow adequate reception of and thinking about that information must be upheld.[97] Finally, the Constitution must as far as possible prevent and inhibit the kinds of differences in economic and social power that debauch citizens' equality of political participation by making the capacities of some of them relatively derisory – typically, where such background differences are large and cumulative.[98] It should tend towards buttressing rights to equality of opportunity of productive agency, as with anti-discrimination measures; advocate formulae such as the common good, public benefit, steady upgrading of the quality of life and

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(as empirically is generally the case in EU jurisdictions: see Gardner (ed) (1994)), the extent of the inequality is kept within justifiable limits. But the boundary must be drawn with great circumspection and also allow liberal, unrebarbative opportunities for non-citizens to attain citizenship. Naturalisation policies should carry a presumption favouring non-citizens of the polity already integrated into and with settled stakes in its society, such as long-term residents. See also Gewirth (1982b) p 289

[91] Gewirth (1996) p 317
[92] Gewirth (1978) pp 308-9
[93] Gewirth (1982c), (1996) 335-47
[94] Gewirth (1996) p 71, Gewirth (1962) pp 119-69
[95] Gewirth (1984) p 228
[96] Gewirth (1996) pp 341-7
[97] Gewirth (1978) 244-5
[98] Gewirth (1996) 345

standard of living within the territory as orienting values and criteria for collective action; and take steps to preclude the exercise of unequal social and economic power compounding inequality further through causing consequential harms. This should include constitutionally entrenched opportunities including, if this is the enabling condition, publicly-funded supply of the required resources (such as broadcasting airtime) for subaltern groups, relationally defined, to challenge political and constitutional arrangements,[99] organised so as not to provide incentives for mischievous or speciously inflated dissent. Where persons' resources or capabilities fall below the threshold for dispositional agency their right to bring this to public attention must be constitutionally protected. The polity's institutions must themselves refrain from breaching, in both their structures and in their day-to-day workings, adherence to principles of mutual recognition and respect of the dignity and rationality of all persons, dispositions to truth and justice, and regard for the fostering of persons' self-esteem and the prudential virtues.[100]

Secondly, as well as the basic goods the Constitution must secure certain nonsubtractive goods, though these pertain not to the rights of the individual directly but indirectly with reference to their pre-existing institutional commitments. Collectively, agents in the EU already have stocks of goods/capabilities comprised of prevailing political, social, cultural, and economic institutions and the practical ongoing endeavours and achievements of those institutions. To varying and variable extents persons will have allegiances, attachments and projects in which these are important factors.[101] Indeed, they may be central to agents' purposes either instrumentally or as valued purposes in themselves (ends), of great, perhaps even overriding, significance, whose disposal may leave persons so bereft that their continued well-being (and life itself) becomes untenable.[102] Such existing institutions, their roles and activities, represent in their creation and in their maintenance the successful filling of (past and/or continuing) purposes, and must not without due processes of consent be nonsubtractively eroded, formally or materially, by the EU's Constitution. In particular levels of electoral representation in the EU must not diminish. It could be argued they already have been, by virtue of (1) the transfer of decisionmaking from the purview of domestic electoral forums to supranational representative institutions whose performance, as assessed by the criteria of democratic legitimacy, is comparatively poorer in a number of respects;[103] and (2) the relative weighting of electoral representation and functional representation to the advantage of the latter, as demonstrable in the wide and substantial policy activity constantly taking place within the comitological trinity of the Commission, COREPER, and the (reputedly) 1500 or so lobby groups coalescing around Brussels[104] – a system described as "the private management of public business"[105] - invisible to, and undreamt of by, oblivious EU electorates. This double relative feebleness of supranational electoral representation, whose historical roots lie in the original conditions of possibility for integration[106] is a nonsubtractive harm as

[99] Gewirth (1996) p 344
[100] Gewirth (1978) p 319
[101] Gewirth (1988)
[102] Williams (1981), p 18
[103] Andersen & Eliassen (eds) (1996), Scharpf (1999), Weale & Nentwich (eds) (1998), Williams (1991)
[104] Greenwood & Aspinwall (eds) (1998), Mazey & Richardson (eds) (1993)
[105] Mazey & Richardson (1995) p 356
[106] Featherstone (1994)

compared to citizens' capacities *ex ante*, and also a basic breach of the method of consent which must be rectified. That is, citizens acting through their member state executives are under a positive institutional duty to retain their capabilities to act as citizens, by ensuring that governance by the method of consent is effectively entrenched and rendered operational, within the European Parliament and elsewhere.

Obviously the Constitution will contain its own limits: (1) that any restrictions on freedom must be justified by the PGC; (2) that no restriction can be placed on the equal freedom of all citizens to participate functionally in political determination; and (3) laws and policies transgressing (a) the Constitution itself, (b) equality of civil liberties, and (c) basic human rights of the PGC, are all invalid – even where they may be supported by the *demoi*.[107]

As well as these specific measures anchoring the conditions for freedom and well-being into the polity's workings, it might be enquired whether the fact of the Constitution as such provides value over and above the *status quo* and in particular how it may conduce to the institutional purposes of EU citizenship. Again, the analytic tool is Gewirth's distinction between the occurrent and the dispositional. In one way, this distinction is not infrequent in discussions of constitutionalism, which often allude to the two moments, or phases, of democracy, between the "high" architectural politics of the polity's constitutional venture and its routine quotidian processes of governance.[108] The Gewirthian schema maps easily on to this, since we can envisage the constitutional moment as one in which citizens rationally and dispositionally choose to bind themselves in respect of their contingent and occurrent possibilities.[109] There are however both occurrent and dispositional potentialities in the moment of constitutional politics itself. So, taking as organising maxim that the function of a constitution is to stabilise and publicise the conditions for legitimate political authority, constitutionalism's occurrent fulfilments of citizenship's purposes can be generally located in publicity, and its dispositional contributions to citizenship, in stabilisation.

Occurrently, a constitution in general declares its own form. By bringing together in a schematic juxtaposition the various relevant (constituent) elements and their relationships to each other and promulgating the schema to open public view, it makes visible and transparent what is otherwise an occluded hierarchy of institutions, the opacity of whose inter-dynamics and inter-structural relations precludes citizens' having full knowledge of the relevant circumstances pertaining to their decisions and also fails to provide the clarity, transparency, and publicity required for the formal and material equality of effectively exercisable civil and political liberties. Citizens are hindered in their exercise of rights if they do not know what they are,[110] nor who are the citizens and others among whom the rights and duties are distributed, nor how the polity that is the institutional midwife to their community is put together: how powers and competences are distributed.

In the particular case of the EU, that is one way in which a constitution would add occurrent value over the *status quo*. There are four other, context-specific, ways.

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[107] Gewirth (1978) p 310-11
[108] As in Ackerman's "constitutional politics" and "normal politics" (Ackerman (1988))
[109] Gewirth (1996) 317
[110] A point made by Shaw (1997) p 437

First, the Constitution, by adumbrating the EU's guiding purposes and orienting values, would highlight the EU's central importance in helping member states to maintain the conditions of their own PGC-conformity and relative sovereignty (so, again, adding to agents' knowledge of politically relevant circumstances).[111] Secondly, the exercise of codifying institutional relationships and powers in one fell deliberative swoop may itself provoke rationalisation and simplification of the institutional and procedural complexity which, developing by treaty and policy accretion and *ad hoc* response, means the three streams down which politics flow in the EU are inadequately integrated. They do not facilitate purposive citizen activity, because the opportunity structures and access/veto points available are mostly informal and indirect, yet at the same time taxing.[112] Of the many deficits in the EU for which "democratic deficit" stands as portmanteau term,[113] informational and cognitive deficits are perhaps the most in need of urgent remedial attention[114] since without it little action on the other deficit fronts is likely to be forthcoming, and there is little point in designing innovative EU-adapted devices for the expression of consent if its validating conditions are not yet in place. Thirdly, a formal constitution would bring to light the extent to which past policy choices have already become informally constitutionalized, and thus operate as hidden constraints, as is claimed of the *de facto* constitutionalization of competition law and the four freedoms.[115] Opening these to public scrutiny would allow electorates chances to consent or dissent to them after due reflection on their fuller implications. Fourthly the value of the process of open constitutionalising, itself, should not be underestimated. The EU's "constitutional moment" could well be the "democratic baptism" called for by Albert Weale.[116] Agreed, a constitutional moment telescoped à la 18th century America is unlikely, and such haste could well ensure the process was undesirably divisive, anyway. But between that and the constitutional moment as we have come to know it in the EU, whose languor as it meanders over the decades is matched only by the exclusiveness of the elites within which its enjoyments are confined, there is lots of scope for selecting preferable alternative schedules. That it is an identifiable, democratically inclusive, and legitimatable process,[117] with a commencing moment of initiative and a finishing moment of interim accomplishment, matters more than its precise timeframe. While inequalities in respect of political efficacy are an ineliminable part of any political system, including those of member states, there is in the EU an especially grotesque disparity between the tiny elite of citizens "in the know" and the rest who, being thereby made recipients of other's political agency, suffer the imposition of an effective inequality. Because citizens with the relevant knowledge and information have a PGC-derived obligation to ensure their fellow-citizens are also privy to it, they are also under an obligation to put in place the mediating institutions to make such knowledge openly and widely available (and that means a constitution). If citizens do not understand the institutional role of citizenship in the overall political shape of things they will be shorn of vital links needed to engage in the means-end reasoning to fulfil its purposes.

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[111] Milward & Sørensen (1993) p 19
[112] Nentwich (1998)
[113] Kuper (1998), Weiler (1995b)
[114] Requiring not just "more", but "better": "politicized, made relevant, and presented in an easily digestible form". Lodge (1994) p 361
[115] Scharpf (1999) p 54, p 58
[116] Weale (1995)
[117] Contrast the depiction in Stone Sweet (1995)

Dispositionally, the constitution stabilises the external conditions for its own effectiveness. While in every case it must do this by setting up the institutional context that, by drawing on facilitative dispositional resources already current in the social fabric (lifeworld, public political culture), establishes itself sufficiently to become at least in part the causative agent of their reproduction,[118] in the case of the EU this casts upon it two poignantly idiosyncratic inflections.

As the EU is so obviously deficient in anything approximating to an "imagined community" of primordialist stamp, the social cement required for the moral solidarity to stabilise itself and its product(s) over time and generate self-sustaining mechanisms to underpin a liberal/social democratic order[119] cannot be drawn from any notions of a "people" constructed around prior convergences of culture, ethnicity, and so on. It can only be built and then reproduced as a kind of *demos* constituted by the convergence of *demoi* on a framework of common institutions designed to permit them their chosen enterprise of addressing collective action problems, collectively, constrained by the circumstances of politics[120] and within a social order cognitively apprehended as structurally mutualist in its relations of recognition and respect between rights-holding agents.[121] Herein lies the dialectic. The two contextual conditions for the effectiveness of the EU constitution, namely, adequately functioning political institutions, and a supportive public political culture, are the two most in need of its existence for their assured continuation over the longer term. In this way the conditions for effective citizenship evolve through the constitutional moment itself.[122]

The second point: if the EU constitution must be part-creator as well as creature of its social and institutional underpinnings, it must manage this stabilisation so as to permanently disrupt tendencies to ossification. All polities are advised to stave off rigidity, as it is always ultimately self-defeating, but the peculiar nature of the EU imposes upon it two especially implacable constraints. It must stabilise itself under conditions of internal social and cultural mobility and heterogeneity, which are not dispensable being, as they are, some of the most important goods the EU exists in order to protect. James Tully is one commentator drawing attention to the ways in which constitutional arrangements which don't trouble to incorporate the antennae to detect innovative modes of dissent gradually undercut their own liberal values[123] – which must lead either to instability, or to a PGC-violating stability. The EU must also stabilise itself despite having boundaries, including external territorial boundaries, which are fluid, and fluid in principle. This probably recommends that constitutional desiderata should not form comprehensive schedules of detailed fixity. Instead, the basic requirements of the PGC should be constitutionalised in such a way as to anchor them as determinants of the ranges of permitted variation in their specification, so as to allow stable equilibria combining institutional endurance with institutional flexibility and responsiveness. By this "acceptance of the political

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[118] As Elkin argues, constitutionalism bears on "the design of political institutions not only with an eye to controlling the powerful but also with a concern for intelligent social problem solving and the formation of the character of citizens." Elkin (1993) p 118
[119] Mason (1999)
[120] Constrained generosity, bounded rationality, and path-dependence. Weale (1999) p 13
[121] Gewirth (1996)
[122] I am grateful to Magnus Ekengreen for suggesting this felicitous phrase.
[123] Tully (1995)

obligation of active, informed, reformist citizenship"[124] EU citizens will have begun to maintain and expand the long-range capabilities for free purposive action of themselves and their recipients within the EU.

It is now possible to reconnect with the three common *problematiques* located earlier in the commentaries of Grimm, Habermas, and Weiler, and offer observations from the standpoint of the account laid out above. First, on the question of the conceptual status of the EU. As to Grimm's general claim that the EU lacks the essential credential to earn it a constitution – statehood – it should be apparent this is a controversy not susceptible of resolution by empirical investigation or definitional fiat. The counter-argument advanced above was that the justifications of the political authority of the EU are congruent with those traditionally adduced in support of the political authority of the state. If that is granted, then whatever we choose to call the EU is surely peripheral to the question of whether a constitution or no. However just because putative EU justifications must refer to the stakes of political authority – what goods are supposed to be secured by it – theoretical implications for the structures and practices of that authority do flow from accepting it as authoritative, and one of them is that it should have a formal constitution.

By the same token, greater accuracy and precision is to be had by considering what follows from reconceptualising the *demos* as the citizenry. Certainly if it is, specifically, democratic legitimacy, that is the value to be secured (as one is entitled to assume from the tenor of the remarks of the three distinguished commentators), it must be possible to show that the arrangements at issue plausibly fall within the rubric of "government for the people by the people". But in the circumstances of the modern era the *demos* cannot simply be envisaged as its archaic forerunner –as "the people", or as "the many", without further qualification as to their institutionalised capacities for political action. Instead democratic legitimacy requires an enfranchised and active *demos*, that is, a body of the people or the many viewed from the perspective of their peculiarly political role: as actors within an institutional and constitutive role analytically distinct from their other social roles. Legitimacy therefore requires not a *demos* but a citizenry. And that citizenship is constituted by an institutional framework, and is not the emanation of an inchoate primordialism. Given that, the important issues – for the EU, the decisive issues – are rather whether the underlying social contexts and mechanisms of solidarity (or prospects for them) are able to support the exercise of that citizenship, and also whether the institutional arrangements themselves support or endanger it.[125] The creative evolution of citizenship practice itself is the most significant of these.[126] What is needed therefore is a clearer and more detailed understanding of how the two (socio-cultural identity and institutional role) interact, rather than a conflation of the two into one muddying concept.

Political institutions must be the creations of their social contexts – trite and true. But they are also the creators of their continuing contexts, viewed cross-temporally. For a

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[124] Gewirth (1982b) p 289

[125] And it is not hard to see how some arrangements – inappropriate majoritarianism, to recall Weiler's "Danish" hypothetical example - could actively create new difficulties and exacerbate slumbering frictions. Weiler (1995a) p 228.

[126] As identified by Bellamy & Warleigh (1998) p 456, Howe (1995), Kostakopolou (1998) p 160, Meehan (1993), Wiener (1996), (1997), (1998a), (1998b), (1999b), (2000), Shaw (2000) p 317.

start, they, more than any other organisational complex, set the conditions of human possibility both objectively, by provision of frameworks of opportunity structures across economic and social life, as well as the informational resources needed to tap them, and subjectively, by helping to shape the contours of political imagination and the collective appetite for innovation. Within the realms of human activity presided over (even remotely and indirectly) by political arrangements, the patterns of incentives and disincentives across social life that come ineluctably in their train influence both human behaviour and also cognitive or psycho-social dimensions – this is, after all, the whole premise of government – and thus raise or lower the probabilities of certain specifiable outcomes.

The Grimm thesis, to conclude, is incorrect. It is not the case that a legitimate political constitution rests upon formal statehood. It rests upon legitimate territorially-bounded political authority.[127] Secondly, statehood strictly speaking doesn't need a *demos*, if by that we mean a politically enfranchised majority. It does need a population over which it has jurisdiction, but this could be a body of disenfranchised subjects. If that is all that is meant by *demos,* well and good, but then we need to be clear that we have quitted the realms of talking about *democratic* legitimacy. To bring it back in, what is needed is a citizenry (aka politically enfranchised *demos* viewed under the aspect of that capacity), and that applies whether its polity is a state or something else. Conversely, citizens can and do constitute both states and non-state polities. Finally, citizenship is not an expressivist conceptualisation of an organicist ethno-cultural collectivity. No doubt there are other social identies which are best imagined or described in these terms. Citizenship however is an instrumental and institutional role, and conflating it with expressivist notions of social identity is therefore analytically and normatively unhelpful. Admittedly, it is highly probable that underlying political affect of the types associated with nationalism and its cognates has more or less favourable or hostile impacts on effective practice of that institutionally-constituted citizenship, and there may be some distance to go to demonstrate it is alive and kicking in the EU. But had not member state citizens already adopted some of the practices of members of a common social and political space it is hard to see how EU citizenship could ever have become juridified,[128] so we are even further away from being able to conclude that a substantive citizenship is impossible.

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[127] Historically "the constitution", understood as the established system of institutions and powers of a polity, predates the state (Lane (1996) pp 19-25, Maddox (1989) p 51). In some ways they can be seen as functional alternatives, since both set the boundary conditions that permit coordinated action.

[128] As illuminated by a social constructivist perspective: see eg Wiener (1997b). Meehan (1993) discusses rights-exercising in the EU prior to formal establishment of citizenship.

REFERENCES

Ackerman, Bruce A (1988) "Neo-Federalism?", Jon Elster & Rune Slagstad (eds) *Constitutionalism and Democracy* Cambridge and Norway: Cambridge University Press and Universitetsforlaget, pp 162-3

Andersen, Svein S & Kjell A Eliassen (eds) (1996) *The European Union:How Democratic Is It?* London/Thousand Oaks/New Delhi: SAGE Publications

Archibugi, Deniele, David Held & Martin Köhler (eds) (1998) *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, Cambridge: Polity Press

Arendt, Hannah (1958) *The Human Condition,* Chicago: University of Chicago Press

Beetham, David & Christopher Lord (1998) "Legitimacy and the European Union" in Albert Weale & Michael Nentwich (eds) (1998)

Beitz, Charles (1991) "Sovereignty and Morality in International Affairs", David Held (ed) *Political Theory Today*, Cambridge: Polity Press, pp 236-54

Bellamy, Richard, Vittorio Bufacchi & Dario Castiglione (eds) (1995) *Democracy and Constitutional Culture in the Union of Europe*, London: Lothian Foundation Press

Bellamy, Richard & Dario Castiglione (1996a) "The communitarian ghost in the cosmopolitan machine: constitutionalism, democracy and the reconfiguration of politics in the New Europe", Bellamy (ed) *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, Aldershot: Avebury, pp 111-29

Bellamy, Richard & Dario Castiglione (eds) (1996b) *Constitutionalism in Transformation: European and Theoretical Perspectives*, Oxford?: Blackwell/PSA

Bellamy, Richard & Dario Castiglione (1997) "Building the Union: The Nature of Sovereignty in the Political Architecture of Europe", *Law and Philosophy*, Vol 16, pp 421-45

Bellamy, Richard & Alex Warleigh (1998) "From an Ethics of Integration to an Ethics of Participation: Citizenship and the Future of the European Union", *Millennium*, Vol 27 (3) pp 447-68

Canovan, Margaret (1996) *Nationhood and Political Theory*, Aldershot: Edward Elgar

Cecchini, Paolo, with Michel Catenat and Alexis Jacquemin (1988) *The European Challenge 1992: The Benefits of a Single Market*, Aldershot: Wildwood House

Cerny, Philip G (1995) "Globalization and the changing logic of collective action", I*nternational Organization*, Vol 49 (4), pp 595-625

Cerny, Philip G (1999) "Globalization and the erosion of democracy", *European Journal of Political Research*, Vol 36 pp 1-26

Clarke, Paul Barry (1996) *Deep Citizenship*, London: Pluto Press

Dahl, Robert A & Edward R Tufte (1974) *Size and Democracy*, Stanford, CA: Stanford University Press/London: Oxford University Press

Dahl, Robert A (1994) "A Democratic Dilemma: System Effectiveness versus Citizen Participation", *Political Science Quarterly*, Vol 109 (1) pp 23-34

Duff, Andrew (ed) *The Treaty of Amsterdam:Text and Commentary*, London: The Federal Trust/Sweet & Maxwell

Elkin, Stephen L (1993) "Constitutionalism's Successor", Stephen L Elkin & Karol Edward Soltan (eds) *A New Constitutionalism: designing political institutions for a good society"* Chicago: University of Chicago Press, pp 117-43

European Parliament (2000), *IGC Proposals adopted by Parliament for the revision of the Treaties,* Background Information: 03-05-00, at http://www.europarl.eu.int/dg3/sdp/backg/en/b000503.htm

Featherstone, Kevin (1994), "Jean Monnet and the 'Democratic Deficit' in the European Union", *Journal of Common Market Studies,* Vol 32 (2) pp 149-70

Franck, Thomas M (1992) "The Emerging Right to Democratic Governance", *American Journal of International Law*, Vol 86 (1) pp 46-91

Gardner, J P (ed) (1994) *Hallmarks of Citizenship: A Green Paper*, London: The British Institute of International and Comparative Law and the Institute for Citizenship Studies

Gewirth, Alan (1962), "Political Justice", Richard B Brandt (ed) *Social Justice*, New Jersey: Prentice-Hall Inc, pp 119-69

(1978), *Reason and Morality*, Chicago: University of Chicago Press

(1982) *Human Rights: Essays on Justification and Applications*, Chicaco: University of Chicago Press

(1982a) "Individual Rights and Political-Military Obligations", Gewirth (1982) pp 234-55

(1982b) "Obligation: Political. Legal, Moral", Gewirth (1982) pp 256-89

(1982c) "Civil Liberties as Effective Powers", Gewirth (1982) pp 310-27

(1984) "Replies to my Critics", Edward Regis Jr (ed) *Gewirth's Ethical Rationalism: Critical Essays with a Reply by Alan Gewirth*, Chicago: University of Chicago Press

(1988) "Ethical Universalism and Particularism", *The Journal of Philosophy*, Vol LXXXV (6) pp 288-302

(1996) *The Community of Rights*, Chicago: University of Chicago Press

(1998) *Self-Fulfillment*, New Jersey and Chichester: Princeton University Press

Greenwood, Justin & Mark Aspinwall (eds) (1998) *Collective Action in the European Union*, London: Routledge

Grimm, Dieter (1995) "Does Europe Need a Constitution?", *European Law Journal,* Vol 1 (3), pp 282-302

Habermas, Jürgen (1995) "Remarks on Dieter Grimm's 'Does Europe Need a Constitution?'", *European Law Journal*, Vol 1 (3) pp 303-7

(1998) "There are Alternatives", *New Left Review* 231, Sept/Oct pp 3-12

(1999) "The European Nation-State and the Pressures of Globalization" *NewLeft Review* 235, May/June pp 46-59

Held, David (1995) *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* Cambridge: Polity Press

Howe, Paul (1995) "A Community of Europeans: The Requisite Underpinnings", *Journal of Common Market Studies*, Vol 33 (1) pp 27-46

King, Preston & Andrea Bosco (eds) (1991) *A Constitution for Europe*, London: Lothian Foundation Press

Kostakopolou, Theodora (1998) "European Union Citizenship as a model of citizenship beyond the nation state: possibilities and limits", Weale & Nentwich (eds) (1998) pp 158-71

Kuper, Richard (1998) "The many democratic deficits of the European Union", Weale & Nentwich (eds) 1998 pp 143-57

Lane, Jan-Erik (1996) *Constitutions and Political Theory*, Manchester and New York: Manchester University Press

Lehning, Percy B & Albert Weale (eds) (1997) *Citizenship, democracy and justice in the new Europe*, London: Routledge

Linklater, Andrew (1996) "Citizenship and Sovereignty in the Post-Westphalian State", *European Journal of International Relations*, Vol 2 (1) pp 77-103

(1998) *The Transformation of Political Community:Ethical Foundations of the Post-Westphalian Era*, Cambridge: Polity Press

Lodge, Juliet (1994) "Transparency and Democratic Legitimacy", *Journal of Common Market Studies*, Vol 32 (3) pp 343-68

Lundberg, Erik (1995) "Political Freedoms in the European Union", Allan Rosas & Esko Antola (eds) *A Citizens' Europe: in search of a new order*, London/Thousand Oaks/New Delhi: SAGE Publications pp 113-34

MacCormick, Neil (1997) "Democracy, Subsidiarity, and Citizenship in the 'European Commonwealth'", *Law and Philosophy,* Vol 16 pp 331-56

MacIntyre, Alasdair (1995) "Is Patriotism a Virtue?", Ronald Beiner (ed) *Theorising Citizenship*, Albany, NY:State University of New York Press, pp 209-28

Maddox, Graham (1989) "Constitution", Terence Ball, James Farr & Russell L Hanson (eds) *Political Innovation and Conceptual Change* Cambridge: Cambridge University Press, pp 50-67

Maier, Charles S (1981) "The Two Postwar Eras and the Conditions for Stability in Twentieth-Century Western Europe", *American Historical Review*, Vol 86

Marks, Gary, Fritz W Scharpf, Philippe C Schmitter & Wolfgang Streeck (1996) *Governance in the European Union* London/Thousand Oaks/New Delhi: SAGE Publications,

Mason, Andrew (1999) "Political Community, Liberal-Nationalism, and the Ethics of Assimilation", *Ethics* Vol 109, pp 261-86

Mazey, Sonia & Jeremy Richardson (eds) (1993) *Lobbying in the European Community*, Oxford: Oxford University Press

Mazey, Sonia & Jeremy Richardson (1995) "Promiscuous Policymaking: The European Policy Style?", Carolyn Rhodes & Sonia Mazey (eds) *The State of the European Union: building a European polity?*, Boulder, Colorado: Lynne Rienner Publishers Inc/Harlow: Longman Group Ltd, pp 337-59

Meehan, Elizabeth (1993), *Citizenship and the European Community*, London/Thousand Oaks/New Delhi: SAGE Publications

(1996) "European Integration and Citizens' Rights: A Comparative Perspective", *Publius: The Journal of Federalism*, Vol 26 (4) pp 99-121

(1997) "Political Pluralism and European Citizenship", Lehning & Weale (eds) pp 69-85

Miller, David (1995) *On Nationality*, Oxford: Clarendon Press

Milward, Alan S (1992) *The European Rescue of the Nation-State*, London: Routledge

Milward, Alan & Vibeke Sørensen (1993) "Interdependence or Integration? A national choice", Alan Milward et al *The Frontier of National Sovereignty: History and Theory 1945-1992*, London: Routledge pp 1-32

Moravcsik, Andrew (1999) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, London:UCL Press

Oldfield, Adrian (1990) *Citizenship and Community: Civic Republicanism and the Modern World*, London and New York:Routledge

Petroni, Angelo M (1997) "A liberal view on a European constitution", Lehning & Weale (eds) pp 86-106

Proudhon, P-J (1979) *The Principle of Federation*, translated and introduced by Richard Vernon, Toronto/Buffalo/London: University of Toronto Press

RSC (1995) *A Constitution for the European Union? Proceedings of a Conference, 12-13 May 1994, Organised by the Robert Schuman Centre with the Patronage of the European Parliament*, EUI Working Paper RSC 95/9, Badia Fiesolana: European University Institute

Scharpf, Fritz W (1996), "Negative and Postive Integration in the Political Economy of European Welfare States", Marks et al (1996) pp 15-39

(1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press

Schmitter, Philippe C (1992) "Representation and the Future Euro-Polity", *Staatwissenschaften und Staatspraxis*, pp 379-405

(1996) "Imagining the Future of the Euro-Polity with the Help of New Concepts", Marks et al (1996), pp 121-50

Schuppert, Gunnar Folke (1995) "On the Evolutionof a European State: Reflections on the Conditions of and the Prospects for a European Constitution", Joachim Jens Hesse & Nevil Johnson (eds) *Constitutional Policy and Change in Europe*, Oxford: Oxford University Press, pp 329-68

Shaw, Jo (1997) "European Union Citizenship: the IGC and Beyond", *European Public Law,* Vol 3 (3), pp 413-39

(2000) "Constitutional Settlements and the Citizen After the Treaty of Amsterdam", Wiener & Neunreither (eds), pp 290-317

Simmons, A John (1979) *Moral Principles and Political Obligations*, Princeton University Press

Stone Sweet, Alec (1995) "Constitutional Dialogues in the European Community", EUI Working Paper RSC 95/38, Badia Fiesolana: European University Institute

Tully, James (1995) *Strange Multiplicity:Constitutionalism in an age of diversity*, Cambridge: Cambridge University Press

Walzer, Michael (1989) "Citizenship", Terence Ball, James Farr & Russell L Hanson (eds) *Political Innovation and Conceptual Change*, Cambridge: Cambridge University Press, pp 211-19

Weale, Albert (1991) "Citizenship Beyond Borders", Ursula Vogel & Michael Moran (eds) *The Frontiers of Citizenship*, Macmillan Academic & Professional Ltd, pp 155-65

(1995) "Democratic Legitimacy and the Constitution of Europe", Bellamy, Bufacchi & Castiglione (eds)

(1997) "The Single Market, European Integration and Political Legitimacy", David G Mayes (ed) *The Evolution of the Single European Market?*, Aldershot: Edward Elgar, pp 199-226

(1998) "Between representation and constitutionalism in the European Union", Weale & Nentwich (eds) pp 49-62

(1999) *Democracy*, Basingstoke and London:Macmillan/New York: St Martin's Press Inc

Weale, Albert & Michael Nentwich (eds) (1998), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*, London: Routledge/ECPR Studies in European Political Science

Weiler, J H H (1991) "Problems of Legitimacy in Post 1992 Europe", *Aussenwirtschaft,* 46 Jahrgang, Heft III/IV (Zürich), pp 411-37

(1995a) "Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision", *European Law Journal*, Vol 1 (3) pp 219-258

with Ulrich Halter & Franz Mayer (1995b) "European Democracy and Its Critique", *West European Politics*, Vol 18 (3) pp 5-39

(1996) "European Neo-constitutionalism: in search of Foundations for the European Constitutional Order", Bellamy & Castiglione (eds) (1996b), pp 105-121

(1997) "The Reformation of European Constitutionalism", *Journal of Common Market Studies*, Vol 35 (1) pp 97-131

Wiener, Antje (1996) "Rethinking Citizenship: The Quest for Place-Oriented Participation in the EU", *The Oxford International Review*, pp 44-51

(1997), "Assessing the Constructive Potential of Union Citizenship: A Socio-Historical Perspective", *European Integration online Papers,* EIoP Vol 1 (17) pp 1-28 at http://olymp.wu-wien.ac.at/eiop/texte/1997-017.htm

(1998a) *'European' Citizenship Practice*, Boulder, Colorado and Oxford:Westview Press (1998b) "Promises and Resources – The Developing Practice of 'European' Citizenship", Massimo La Torre (ed) *European Citizenship:An Institutional Challenge*, The Hague/London/Boston: Kluwer Law International, pp 387-414

(1999a) "From *Special* to *Specialized* Rights: The Politics of Citizenship and Identity in the European Union", Michael Hanagan & Charles Tilly (eds) *Extending Citizenship, Reconfiguring States,* Maryland: Rowman & Littlefield Publishers Inc

(1999b) "The Constructive Potential of Citizenship: building European Union", *Policy and Politics* Vol 27 (3) pp 271-93

(2000) "The Embedded *Acquis Communautaire*: Transmission Belt and Prism of New Governance", Wiener & Neunreither (eds) pp 318-41

Wiener, Antje & Vincent Della Salla (1997) "Constitution-making and Citizenship Practice – Bridging the Democracy Gap in the EU", *Journal of Common Market Studies*, Vol 35 (4), pp 595-614

Wiener, Antje & Karlheinz Neunreither (eds) (2000) *European Integration After Amsterdam: Institutional Dynamics and* Antje Wiener *Prospects for Democracy*, Oxford: Oxford University Press

Williams, Bernard (1981) "Persons, character and morality", *Moral Luck: Philosophical Papers 1973-1980*, Cambridge: Cambridge University Press, pp 1-19

(1993) *Ethics and the Limits of Philosophy*, London: Fontana Press, 3rd imp, with amendments

Williams, Shirley (1991) "Sovereignty and Accountability in the European Community", R Keohane & S Hoffmann (eds) *The New European Community: Decisionmaking and Institutional Change*, Boulder, Colorado: Westview Press, pp 155-176