

# Europe's Democratic Deficits through the Looking Glass: The European Union as a Challenge for Democracy

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Despite widespread disagreement about democratic deficits in the European Union (EU), most critics begin by conceiving democracy as a problem for the EU. Seeing the EU as undemocratic or insufficiently democratic, they devise institutional innovations to democratize it. These innovations seem to require breaking the traditional link between democracy and the nation-state, which in this context appears outmoded or inappropriate. This article challenges that approach, arguing that it gets the relationship between democracy and the sovereign state wrong—or at least, incomplete—by stressing modern democratic theory's empirical ties to the state while underestimating their normative significance. The complex interdependence of normative and empirical assumptions informing modern democratic theory means that detaching democracy from the state is much less straightforward than critics often imagine. The essay argues instead for conceiving the EU as a problem for democratic theory. Doing so reveals that democratic theory is ill-equipped to address recent changes in the configuration of rule and new structures of governance associated with Europeanization, European integration, and globalization more broadly. This change in perspective highlights important limits in recent democratic theorizing about the EU and clarifies the role of European debates in reinterpreting and reconstructing democracy in the age of globalization.

The problem of democracy in the European Union (EU) has occupied scholars from across the discipline of political science and beyond. As Europeanization and European integration transform structures of governance throughout the continent, questions about the nature and trajectory of the EU spur debates among students of comparative and international politics, international law, and normative political theory about shortcomings in existing structures of democratic governance and about appropriate legal, normative, and institutional alternatives. The literature on these questions is remarkably sophisticated, and it is, perhaps not surprisingly, characterized by deep disagreement. The disagreement no doubt stems in part from the pressing practical importance of this debate as the EU struggles to define itself within a complex and rapidly changing world. Together these

factors explain why, as one leading scholar asserts, “more ink has been spilt in recent years over the issue of the democratic deficit in the EU than just about any other problem.”<sup>1</sup>

Despite the diversity of opinion about whether there are any democratic deficits worth worrying about, in what they might consist, and how they might be best addressed, there is an almost complete (if unspoken and perhaps unconscious) consensus among scholars on conceiving democracy as a problem for the EU. I argue that this apparently straightforward conceptualization obfuscates important normative puzzles concerning democracy in Europe (and beyond) by training attention on the structure and institutions of the Union rather than on democracy or democratic theory. I further contend that we can gain invaluable analytic leverage and normative insight by instead conceiving the EU as a problem for democratic theory. Framing the question this way simultaneously highlights important limits in much democratic theorizing about the EU and clarifies how our already extensive knowledge of the European challenge for democracy can inform—and potentially mislead—theorists engaged in reflection on democracy in the age of globalization.

These assertions will undoubtedly be greeted with skepticism by many students of democracy in Europe, who will rightly point out that numerous scholars of different stripes have called for new theories of democracy to meet the challenges posed by the EU. These arguments will

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be engaged in due course. Part of this article's purpose, however, is to lay the historical and normative groundwork to demonstrate that such calls do not go far enough. Modern democracy is deeply tied up with the Westphalian state not just historically and institutionally but also normatively, through the doctrine of sovereignty. Developing a new theory of democracy requires more than devising ways to sever the empirical ties between democracy and the state; it is not only a matter of institutional redesign, or of altering or extending concepts like the *demos*, deliberation, and popular control to fit new realities of governance—though there is much to learn from the many lucid proposals on offer for doing so. A new theory of democracy appropriate for the EU and related challenges of supranational democracy requires reworking the very *meaning* of democracy, a meaning itself deeply structured by the complex normative and empirical ties elucidated here. Put differently, the problem is not that the issues addressed here have not received attention; it is rather that more remains to be understood about the implications of detaching democracy from the state than previous studies have fully appreciated. Reversing our perspective, treating the EU as a problem for democratic theory, clarifies the shortcomings of these approaches.

The article is divided into five sections. The first undertakes a critical analysis of the literature on democratic deficits designed to highlight the analytic and normative assumptions that structure the present debate. The second section considers the views articulated by *sui generis* critics, who seem to effect just the reversal of perspective I advocate in problematizing the territorial and institutional departures of the EU from the familiar model of nation-state democracy. While these critics properly treat the relationship between democracy and the state as empirical and contingent, they miss the extent to which that same relationship has also been constructed historically as normatively necessary to democracy. This latter dimension of the relationship, one mediated through the concept of sovereignty, is the subject of the third section. This section traces in broad outline the complex relationship between democracy and sovereignty and shows how that relationship links democracy to the Westphalian state normatively as well as empirically. It is the interdependence of these normative and empirical aspects of democracy's conceptual ties to the state that gets overlooked in debates about the EU. As argued in the fourth section, even scholars advocating new theorizations of democracy focus primarily on devising appropriate new mechanisms for its successful implementation, relying on concepts like the *demos*, deliberation, and popular control whose democratic credentials ultimately trace back to precisely the normative presumption of sovereignty that Europeanization and European integration undermine. The final section emphasizes the importance of treating the EU—as well as other instances of supranational and non-state gov-

ernance arrangements—as problems for democratic theory. That is, conceiving the problem as lying with democratic theory, rather than with the EU, shifts the focus to central normative questions about democracy's meaning and harnesses our extensive, interdisciplinary knowledge of the EU to the task of working out what a new democratic theory might look like. Such an approach also highlights the promise and peril of treating the EU as an exemplar of the challenges and promise of democracy in the context of globalization.

This article will not reach conclusions of the kind now familiar in the democratic deficits literature; it proposes no specific reforms, no reconsiderations or assessments of particular practices and procedures, no alternative conceptions of legitimacy that might justify or validate the EU or its component institutions. Rather, its goal is to show readers the urgency of adopting a different way of looking at this problem, one that opens up potentially fruitful new avenues of inquiry. It aims to persuade readers that adopting a radically different perspective is itself a substantive conclusion with the potential to transform this important debate.

### **Democratic Deficits in Europe: Democracy as a Problem for the EU**

Years of study and argument have produced deep disagreement among students of the EU regarding what democratic deficits are and where or even whether they exist. This discord is amplified by the lack of a commonly agreed vocabulary or set of categories within which to conduct the debate. This section presents a typology of democratic deficits as a heuristic to bring two salient features of the debate on democratic deficits into sharper relief.<sup>2</sup> First, it clarifies that the debate over democratic deficits is structurally indeterminate. It admits of no single or correct answer. Second, it reveals that, their important disagreements notwithstanding, scholars studying democratic deficits routinely conceptualize the question about deficits in the same way. In addressing the purported lack or insufficiency of democracy within various EU governance arrangements, they set up democracy as a problem for the EU and in doing so obfuscate important normative questions about democracy itself.

Four broad types of democratic deficit emerge from the vast and diverse literature on this subject: institutional, performance, secondary, and structural deficits. *Institutional* deficits refer to purported flaws and omissions in EU institutional design and function, flaws and omissions typically based on comparisons with the institutions of advanced democratic societies or with the accepted standards of liberal democracy. Critics focus on the insufficiency of the EU's institutional infrastructure for accountability, frequently citing the weakness of the Parliament, the Council's powerful legislative role, etc. They

also cite procedural deficiencies concerning the degree of citizen “input” into EU politics, criticizing the secondary nature of EU elections, the lack of an effective European party system, and other systemic shortcomings.<sup>3</sup> Some critics have questioned whether these worries are well-founded, arguing vigorously that many EU institutions are essentially similar to national democratic ones and reliant on similar mechanisms for ensuring democratic accountability.<sup>4</sup> In their view, there are no deficits worth worrying about. Similarly, some contend that the design of EU institutions of accountability is consistent with principles of democratic delegation and reflects citizen preferences about economic and political integration.<sup>5</sup>

A second category of deficit concerns the *performance* of the European political system. The idea of output or performance deficits is most associated with the work of Fritz Scharpf.<sup>6</sup> Scharpf’s position is that globalization and negative European integration (the creation of a European common market and economic policy on a neoliberal model) have, through external constraints manifest in the threat of a “race to the bottom” in tax, social, and regulatory policy, forced member states to reverse the democratic choice for the welfare state. This so-called negative integration undermines democracy, which to Scharpf entails positive commitments to protection from the vagaries of the market and other measures that enable democratic citizenship. Scharpf calls for a more democratic Europe based on *positive integration*, which entails market-cushioning mechanisms, European social and economic policies supporting an egalitarian welfare state, and variable-speed systems of cooperation among member states.

The category of *secondary* deficits includes what are sometimes called *double* or *domestic* deficits, deficits that occur within the EU’s member states when governmental competences get transferred to the European level (or within candidate states when they are constrained to alter their domestic policies and institutions to satisfy mandates established by the Union as conditions of membership). These deficits are secondary because they inhere not in EU institutions or performance but rather in the shift of authority from domestic to European actors and in the attendant diminution of domestic democratic control and contestation.<sup>7</sup> In short, these deficits arise as a result of “multi-level governance.”<sup>8</sup> Examples include: decreased accountability of member-state governments, who can use EU mandates as political cover for unpopular decisions or who can avoid action in certain functional domains by deferring to (real or imagined) European constraints; decreased popular control through national parliaments thanks to the shift in decision-making authority to European entities in numerous domains; and, decreased policy autonomy in key—especially economic—domains due to European policies or mandates.<sup>9</sup> Multi-level governance is a “Faustian bargain” for democracy in that it exchanges

enhanced openness and opportunities for negotiation and bargaining for the institutions of government that have been historically essential for democratic rule.<sup>10</sup> Multi-level governance also raises questions about the new legal order of Europe, especially the legal or constitutional bases of and justifications for new forms of political authority in emerging governance arrangements and their impact on domestic legal orders. Debate has been intense around the German constitutional court’s ruling in the Brunner case (“Maastricht Urteil”), the primacy and direct effect of EU law, and the constitutional sovereignty of member-states under a treaty-based Union.<sup>11</sup>

The final category of deficit I call *structural*. These deficits inhere in structural and conceptual differences between the European polity and the state polity idealized in liberal democratic theory and practice. For example, scholars often cite the lack of a European political discourse and public sphere as serious democratic shortcomings in the European polity. Europe is not seen, by its political leaders or its citizens, as a primary locus of politics and in the eyes of critics it lacks the common language, unified public sphere, and ongoing discourse necessary for democratic politics. Similarly, many students of European democracy worry about the absence of a shared European political or ethno-cultural identity or recognized European political community (the “no *demos*” problem). Such structural deficits, under various names, rank among the most frequently cited challenges for democracy in Europe.<sup>12</sup>

As this discussion makes clear, the debate about Europe’s democratic deficits is, at least as presently framed, intractable. There is simply no single or correct answer to whether the EU suffers from democratic deficits; rather, there are many plausible and potentially conflicting answers. This intractability stems from the variety of distinct (though related) types of deficit under discussion: even if consensus were reached on the existence, nature, and extent of one type of deficit, that consensus would not be dispositive with respect to the others. Without a change in perspective, resolution of these debates seems unlikely.

Despite this deep disagreement, each of the main debates on democratic deficits in the EU shares two important analytic similarities. First, *each treats democracy as a problem for the EU*. Questions about whether the institutions and performance of the EU measure up to democratic standards, about whether the EU’s governance arrangements preserve adequate democratic control and accountability for member states, and about whether the European polity’s fundamental structures are amenable to meaningful democracy are all in essence questions premised on the notion that democracy poses a challenge for the EU—and that the EU, as the term “deficits” implies, is presumptively insufficient democratically.<sup>13</sup> The second analytic similarity among these debates is that *each addresses fundamentally normative questions*, though often indirectly. Assessment of deficits turns on normative judgments

concerning the appropriate standards or criteria of democracy. Regardless of what approach one takes to which type of deficit, the key question remains the adequacy and propriety of the normative standards of democracy invoked.

This claim might seem controversial; after all, some empirically-minded critics argue that we can resolve questions about deficits simply through application of the comparative method. Moravcsik, for instance, maintains that “as long as political procedures are consistent with existing national democratic practice and have a *prima facie* normative justification” there is no basis for negative conclusions about the EU’s legitimacy based on observations of its non-participatory institutions.<sup>14</sup> Note that even if this argument about institutional deficits were correct, it would not resolve questions about the EU’s performance, secondary, and structural deficits, underscoring the previous point about intractability. The empiricists are not, however, correct. It is a category mistake to conclude that institutional similarity is an indicator of democratic legitimacy in cases involving EU institutions. Democratic legitimacy is a species of normative legitimacy, which has to do with whether an agent or institution *deserves* support when evaluated in light of certain ethical or political principles, with whether it meets or conforms with those principles or comes close to doing so. (It is distinct from questions of *sociological* legitimacy, which address whether an agent or institution actually *enjoys* support among some set of people.) The inference from institutional similarity to normative legitimacy begs the highly salient question of whether state-based democratic norms are adequate and appropriate for a supranational polity like the EU. I shall return to this question in due course.

Empiricists also offer a normative argument against using normative standards: that those standards are too demanding and therefore inappropriate. It is often observed that many advanced democratic states might be found wanting if measured against “idealistic” criteria of democratic theory. The claim that this gap indicates a problem with normative standards is fallacious, however; the fallacy lies in thinking that the democratic illegitimacy of existing state democratic regimes should justify or excuse illegitimacy in the EU.<sup>15</sup> The real issue again concerns the appropriate standards of normative assessment. The empiricist argument, properly specified, is that the normative standards implicit in the actual design and function of liberal democratic states provide the appropriate norms against which to assess EU institutions—rather than ideal theories of liberal democracy or other standards. This claim echoes those made by revisionist theorists of democracy in the 1950s and 1960s, and it similarly misapprehends the critical purpose of normative standards of evaluation.<sup>16</sup> That debate lies beyond this essay’s scope; the crucial point here is that even apparently empirical measures of legitimacy remain enmeshed in normative controversy. The point is crucial because it demonstrates that

there is no way around the fundamentally normative challenge of determining appropriate democratic standards for the EU.

In this light, framing democracy as a problem for the EU entails several important conceptual disadvantages, disadvantages that ultimately obscure important normative questions about democracy raised in these debates. This frame centers analytic focus on the EU and its institutions, procedures, policies, and broader governance arrangements. While these are important subjects for discussion, this focus pushes questions about democratic theory to the periphery. It does so by bracketing questions about the meaning of democracy and its relationship to specific configurations of rule or governance. Assuming that existing democratic theories can make sense of democracy in the EU, that democracy in the EU will be more or less the same as it has been in the national state, begs crucial questions. Why should we expect institutions and normative standards of democracy to retain their meaning and significance when translated from the national to the supranational context—from the context of their theorization and development to a new and different context never considered in their formulation? Even if existing national institutions and practices “have a *prima facie* normative justification,” why assume that that justification remains valid in a new and different political context? Such questions point beyond the analysis of democracy as a problem for the Union; they indicate the need for a change in perspective on democracy itself.

Such a change is warranted by the conjuncture of the EU’s *sui generis* nature (its non-*stateness*), and the statist-character of existing theories of democracy. Numerous scholars have interrogated the adequacy and appropriateness of democratic theory for making sense of the EU along such lines. The next section addresses their work, arguing that they have pushed the debates in the right direction by probing the fit between the EU polity and familiar theories of democracy used to understand and assess it. They have not pushed far enough, however, in exploring the interdependence of modern democracy’s normative and empirical foundations.

## A New Political Animal

A growing number of scholars characterize the EU ontologically as—to repeat an oft-used phrase—a “new political animal,” something *sui generis*. Many *sui generis* critics locate the most serious normative challenges to democracy in what I have called the EU’s structural deficits—such as its lack of a (single) *demos* and related problems concerning the lack of public discourse and civic identity within the European polity.<sup>17</sup> Thinking in roughly structural terms, Schmitter invites readers to ponder the democratic challenges posed by a polity lacking such familiar features as:

a locus of clearly defined, unchallengeable supreme authority; an established, central hierarchy of public offices; a pre-defined and distinctive sphere of competence within which it can make decisions binding on all; a fixed and contiguous territory over which it exercises authority; an exclusive recognition by other polities, membership in international organizations, and capacity to conclude international treaties; an overarching identity and symbolic presence for its subjects/citizens; an established and effective monopoly over the legitimate means of coercion; a unique capacity for the direct implementation of its decisions upon intended individuals and groups; and, an exclusive capacity for controlling the movement of goods, services, capital, and persons within its borders.<sup>18</sup>

To Schmitter, the core of what is *new* about this European polity is its characteristic and “growing dissociation between territorial constituencies and functional competences.”<sup>19</sup> The EU, he argues, is a “post-sovereign, poly-centric, incongruent, neo-medieval” arrangement.<sup>20</sup> It represents a new configuration of rule.<sup>21</sup>

These structural deficits are normatively troubling because democratic legitimacy has historically rested on the “common belief that government is responsible to a given people, accountable to that people, and obliged to serve the interests of that people.”<sup>22</sup> Democratic theory treats the identity of the people as given, defined (in part) by the boundaries of the state itself.<sup>23</sup> However, “interdependencies among communities have escalated to such an extent that democracy can no longer be simply conceived as it traditionally has been—as something within a sovereign, self-governing community of political equals who constitute a more or less homogenous society.”<sup>24</sup> Interdependencies, therefore, make the related problems of identity, territoriality, and inclusion and exclusion highly salient in debates about Europe’s democratic legitimacy.<sup>25</sup> Authority, accountability, and representation all rest on satisfactory resolution of the identity question, which assumes that the political community must be recognized and accepted by its citizens as rightful and legitimate.<sup>26</sup> Thus “a political system should correspond to a felt sense of political identity. For no political process. . . can function as a democracy unless its people feel themselves to be part of a group with a right to make collectively binding decisions.”<sup>27</sup> A European constitution would not help because its legitimacy would presuppose precisely what is lacking: a congruence between sovereignty and identity that would make it an expression of the will of a pre-existing people.<sup>28</sup>

The upshot of this *sui generis* critique is that the EU’s novel features make it difficult to measure against the yardstick of modern liberal democratic theory. Democracy’s traditional assumptions of spatial congruence—between the people affected by decisions and their representatives and between the space in which regulations apply and the space where the social interactions to which regulatory decisions refer take place—no longer hold.<sup>29</sup> Applying democratic theory to a polity like the EU therefore requires that we “detach the notion of democracy from both the

national institutions and the socio-cultural and socio-economic prerequisites that made it possible in a given historical context.”<sup>30</sup>

Føllesdal claims that the mere existence of the EU proves that the sovereign state can no longer remain the basis of normative reflection since sovereignty is itself at stake in assessing the Union’s status; familiar theories of democracy will thus also prove inapposite.<sup>31</sup> Christiansen concurs, maintaining that “there is a need to reformulate democratic theory . . . if we are to make normative sense of European integration.”<sup>32</sup> To Newman, “the difficulties involved in democratizing the EU are not just the practical ones of securing the necessary changes but are also theoretical.”<sup>33</sup> Bellamy and Castiglione insist that “the very principles of democracy may need revision to meet post-national and global conditions. . . .”<sup>34</sup> Recent innovation in the EU, Eriksen argues, “requires a serious re-examination of the concepts available to depict these developments, and thereby theoretical frameworks and attendant standards that we can use to assess the democratic quality of this nascent system of governance.”<sup>35</sup> It is thus crucial that theorists give proper consideration to the normative status of various arrangements within the model of democracy from which they are derived and make sure that new institutions conform to them at the European level.<sup>36</sup>

These *sui generis* critics seem to recommend just the reversal of perspective called for in the previous section. They recognize that the EU poses a challenge for democratic theory and argue that a new democratic theory of and for the EU must disentangle democracy from its ties to the sovereign state. Most of these scholars, however, seem to share Decker’s view that the connection between democracy and the nation-state is empirical rather than normatively compulsory.<sup>37</sup> They conclude that to make sense of multi-level or supranational democracy we must give up our habit of thinking of democracy in territorial terms. The trouble is that detaching or dissociating democracy from its territorial foundation in the sovereign state is a much more radical and problematic enterprise than adherents of the *sui generis* view typically recognize. The challenge is not just to sort out how democratic norms, procedures, and institutions can be applied to supranational entities like the EU (as if this were not enough). This conceptualization of the problem mistakenly—perhaps unconsciously—presumes that no normative or conceptual problems attend the dissociation. It presumes, that is, that democracy remains unchanged in its essentials, that its meaning and coherence are unaffected by its detachment from the sovereign state.

This presumption is fundamentally mistaken. The territoriality of the sovereign state is not simply incidental to modern democracy; it is central to democracy’s meaning, justification, and legitimacy. Most *sui generis* critics, in proposing their own democratic theories for the EU, rely

on concepts whose meaning is premised upon the very logic of sovereignty they purport to question. In identifying the structural dimensions of the challenge the Union poses for democracy they overlook its conceptual dimensions. To show this, it is first necessary to establish that modern democracy is sovereign democracy, a theory of rightful rule whose meaning and justification are predicated upon the sovereign state. On this view, the EU is not the kind of thing that can be democratic. I present this argument in the next section and return to the democratic proposals of *sui generis* critics in section four.

Before proceeding, I want to anticipate two likely objections to the line of argument just foreshadowed. First, critics might doubt the argument's originality, noting that sovereignty's role and significance are controversial and hotly contested. My position, which I defend in the next section, is that present debates do not adequately comprehend sovereignty's normative dimension and its centrality to democratic theory. The originality of this position lies not in its identification of sovereignty as problematic but in showing how sovereignty's normative dimension shapes democracy's meaning, a role that has been overlooked. Second, critics might protest that the EU is not nearly so novel or strange as the *sui generis* accounts claim and that democratic theory does have adequate resources for making sense of it. But *whether and how the EU is novel from the perspective of modern democratic theory* is precisely the point at issue here. Whether existing democratic theory can make sense of the Union cannot be answered without exposing the conceptual underpinnings of modern democratic theory and analyzing the conditions that informed its early development and trajectory. Although I focus on the EU here, this approach can be extended to the broader challenge of reconstructing democratic theory in light of globalization, a challenge I consider further in the last section.<sup>38</sup>

## Sovereign Democracy

In the previous section I argued that *sui generis* critics typically frame the links between democracy and the state as contingent. Here I shall argue that, while correct, this argument is crucially incomplete. Democracy's links with the state are at once *empirically contingent* and *normatively necessary*; this paradox is central to understanding the challenge the EU poses for democratic theory. The paradox inheres in democracy's conceptual relationship with sovereignty.

Sovereignty has recently reemerged as a contentious subject.<sup>39</sup> The EU case nicely illustrates why. European integration and Europeanization entail a significant, complex, and somewhat contradictory transformation of political authority, a transformation consisting in the state's loss of its monopoly on collectively-binding decision-making (the spatial reconfiguration of public authority), the reassess-

ment and redefinition of public functions (the functional reconstitution of public authority), and the new and unique problems of democratic legitimacy that these first two changes engender.<sup>40</sup> As a result, it is "not plausible to maintain that sovereignty has remained what it once was."<sup>41</sup> As MacCormick puts it, the European Community is a not-sovereign entity comprising no longer fully sovereign states.<sup>42</sup> This transformation manifests in shortcomings in participation, representation, and popular control—in precisely the types of democratic deficit considered above.<sup>43</sup> These strains on democracy reflect the widely recognized fact that modern political theory takes the sovereign state for granted as its foundational idea or starting point.<sup>44</sup>

The "international constitution" of sovereignty undergoes periodic revolutions, revolutions tied to changing ideas, interests, and facts on the ground.<sup>45</sup> If the present revolution is, as Pauly and Grande argue, distinctive in altering the spatial configuration and functional consolidation of public authority, and if these alterations in turn explain the democratic deficits plaguing governance in Europe and beyond, then understanding democracy's connections with sovereignty should give us a firmer grasp on the threats facing democracy. Numerous theorists—including theorists of recent transformations in the EU—recommend that sovereignty be reconceived as pooled, complex, divided, de-territorialized, or even as outmoded.<sup>46</sup> Descriptively these accounts seem plausible, as they track well with the changes in governance witnessed in Europe and associated with globalization more generally. Sovereignty has anyway always been an amalgam of disparate notions.<sup>47</sup> The difficulty, though, is that in reconceiving sovereignty as pooled, divided, or whatever, theorists focus on the empirical practice of sovereignty while ignoring its normative significance for democracy.

The doctrine of sovereignty was predicated upon a specific and historically contingent configuration of rule, a configuration most readily explained by reference to three tectonic shifts that characterized its emergence from medieval Europe: a shift from a non-territorial to a territorial configuration of rule, a related shift from functional differentiation of authority to consolidation of all public authority within a particular territory, and a shift in the normative account of political authority that explained and justified this new configuration of rule. In what follows I focus on the interdependence of the first two empirical shifts and the new normative account that accompanied them. Since the broad outlines of this story are familiar to most readers, I shall sacrifice detail for brevity in illustrating the key points.

The first shift was from a non-territorial to a territorial basis for authority. All systems of rule, even nonterritorial ones, necessarily have some geographical extension; that is, all systems of rule extend across some space.<sup>48</sup> Territorial systems posit a determining relationship between the boundaries and nature of that space and the justification

of the particular system of rule. In the Middle Ages, justifications of Empire and Christendom rested primarily on the notion of a confessional community, not on territory. As wars of reformation raged and kings gained power and leverage vis-à-vis ecclesiastical authorities and the landed nobility, a more segmented territorial system evolved: the king's realm, defined in part by ownership or *dominium* and in part by his (related) jurisdiction, became the primary locus of rule. As this configuration of rule solidified, the king's realm transmogrified into the territorially exclusive state. This evolution demonstrates the important interdependence of ownership, jurisdiction, and right, an interdependence reflected in the multiple meanings of the elastic term *propriety*.<sup>49</sup> *Sovereign* ultimately described the territory, its ruler, and the type of rule he exercised.

The second important and closely related shift was from a functionally-differentiated form of rule where a multiplicity of authorities held sway in several, often overlapping, jurisdictions to one in which all public functions were bundled together in an omnicompetent authority. Functional differentiation structured by a primary cleavage between secular and ecclesiastical authorities gave way to a form of rule in which all manner of public authority was concentrated in the prince. The extensive lists of the sovereign's rights and prerogatives in Hobbes and especially Bodin remind us that the fusion of these various functions in a single authority is every bit as revolutionary as the idea that authority should be exclusive within a particular territory.<sup>50</sup> The sovereign does everything. What distinguishes him from other authorities is not what he does but *where he does it*: within a particular territory where his rule is proprietary or rightful. These changes were mutually reinforcing: consolidation of functional authority promotes territorial exclusivity, which in turn promotes consolidation of functional authority within the territory where the sovereign rules effectively. Hereafter, I shall refer to the configuration of rule marked by territorial exclusivity and functional consolidation of authority within the state as Westphalian, and to Westphalian states as ones possessing these distinctive characteristics. (To do so is anachronistic, but while this terminology is inaccurate it is also conventional and therefore preferable to neologism.)

These profound changes generated a legitimacy crisis for the old order; a new theorization of politics was required to make sense of these developments. Sovereignty provided not only an ideal of territorially exclusive, functionally consolidated rule but also an account of the *legitimacy* of that distinctive configuration of rule. Rightful political authority became linked to a particular kind of space, one in which authority is singular (functionally omnicompetent) and supreme (territorially exclusive). Crucially, on this account sovereignty's normative and empirical dimensions are mutually presupposing: the notion of rightful

authority only makes sense given a specific configuration of rule, one whose emergence was consolidated in part through appeals to this normative account. As Anthony Giddens remarks,

reflection on social processes (theories, and observations about them) continually enter into . . . the universe of events they describe. . . . Theories of sovereignty formulated by seventeenth century European thinkers . . . were the result of reflection upon, and study of, social trends into which they in turn were fed back.<sup>51</sup>

Three important qualifications are called for at this point. First, I do not mean to suggest that these changes occurred everywhere at once; alternatives to the sovereign state persisted into the nineteenth century, and its eventual dominance was by no means assured at the outset.<sup>52</sup> Nor was the absolutist account of sovereignty represented by the likes of Bodin and Hobbes the only one on offer; how it came to be the dominant one is a fascinating question that lies beyond this article's scope.<sup>53</sup> Second, sovereignty was consistent with internal differentiation of governmental authority; it never required an absolute monarchy on the model of Hobbes's Leviathan—as even Hobbes recognized. Third, in arguing that sovereignty explained and justified changes “on the ground,” I do not mean to suggest that the theoretical account of sovereignty accurately represented empirical facts. On the contrary, it was always an exaggeration, blending description and prescription; as Kobrin has observed, “absolute territorial sovereignty has always been easier to imagine than to construct.”<sup>54</sup> That said, for sovereignty to be persuasive it had to represent at least a plausible account of politics; there had to be some reasonable fit between the descriptive and prescriptive elements of the theory and the world they purported to explain. Only a close fit could render sovereignty's circularity unproblematic by making it appear natural. Put another way, if sovereignty has always been to some degree a fiction, it was also at least a useful and credible one. Thanks to what Habermas calls “a historical constellation that had defined state, society, and economy as more or less coextensive within natural boundaries,”<sup>55</sup> sovereignty proved congenial to theorists struggling to make sense of a new world order. Westphalian states and the Westphalian states system were treated by European theorists as natural features of political life, and sovereignty became the starting point of political knowledge rather than a subject of it.<sup>56</sup> Thus, long before the sovereign state emerged as the dominant political form, it achieved theoretical dominance as both a descriptive and a prescriptive account of political authority. This assumption about the primacy of the sovereign state remains problematic within the social sciences even today, in the form of what Beck and others have called “methodological nationalism,” which uncritically accepts the Westphalian state and states system as the unreflective starting points of political analysis.<sup>57</sup>

This interdependency of sovereignty's normative and empirical aspects is crucial to understanding democracy's conceptual entanglement with the sovereign state. Modern democracy developed after and within the sovereign state, adapting to its empirical and normative forms, to its unique conception of functionally consolidated, territorially exclusive political authority. Modern democratic thinking effectively began with a transfer of sovereignty from prince to people.<sup>58</sup> This transfer was effected through the introduction of two key democratic principles, freedom and equality. By positing that *all* people are naturally free and equal, theorists of popular sovereignty in its modern form made consent the sole foundation of legitimate authority.<sup>59</sup> With this argument they wrested sovereignty away from kings and vested it instead in the people.<sup>60</sup> The transfer of sovereignty to the people changed the identity of the sovereign but left intact sovereignty's conceptual framework, including its distinctive account of rightful rule within a particular territory. The appeal to freedom and equality provided an argument for the sovereignty *of the people*, not for sovereignty itself; that it simply presumed. The earliest advocates of popular sovereignty were interested in challenging the identity of the sovereign authority, not the nature of it.

Conceptually, then, modern democracy is *sovereign* democracy; it presupposes and builds upon the normative and empirical framework of the Westphalian state. More or less all modern democratic theory accepts what Yack, following Julian Franklin and others, calls "constituent sovereignty"—the power of the people to establish and disestablish governments, alter their powers, and decide on their legitimacy.<sup>61</sup> Popular sovereignty in this sense is not equivalent with Rousseauist notions of direct citizen sovereignty, though it encompasses them. It also includes Lockean notions of the people as the ultimate, if indirect, source and repository of political authority and is in this respect consistent with federalism as well. Schmitter argues that federal systems adhere to a set of "meta-rules" established by the consent of citizens.<sup>62</sup> As Weiler puts it,

the institutions of a federal state are situated in a constitutional framework which presupposes the existence of a 'constitutional demos,' a single *pouvoir constituant* made of the citizens of the federation in whose sovereignty, as a constituent power, and by whose supreme authority the specific constitutional arrangement [is justified].<sup>63</sup>

On this view, *sovereignty* is not divided even though power is differentiated, a view perhaps most famously articulated in the *Federalist Papers*.<sup>64</sup>

In some respects *sovereign* democracy barely seems a novel proposition: the familiar notion of popular sovereignty is nearly synonymous with democracy. Indeed, popular sovereignty or rule by the people is the very essence of modern democratic theory; it is the idiom in which thinking about democracy developed.<sup>65</sup> While the doctrine of

popular sovereignty or rule by the people has received a great deal of attention, most all of it has focused on the *popular* dimension—on who "the people" comprises and who counts as a citizen entitled to a voice in ruling.<sup>66</sup> Popular sovereignty is rarely taken seriously as a theory of *sovereignty*, and this failure limits theorists' ability to appreciate fully how the changing configuration of rule affects democracy.

Democratic theory tacitly relies upon a territorial symmetry in which the people as citizens (or their representatives) make the laws for the people as subjects; this model renders authority accountable to the citizen-sovereigns and ensures, imperfectly, that laws, policies, and decisions serve their interests and protect their rights.<sup>67</sup> This symmetry merely reflects sovereignty. It is a prescriptive feature of democracy and one of its background conditions; it is central to democratic legitimacy and yet taken for granted. Numerous contemporary theorists have been struck by this apparent paradox in popular sovereignty: the people is imagined as defined or constituted by the state and simultaneously as constituting it.<sup>68</sup> For early modern theorists of popular sovereignty no such paradox would have been evident. The relevant political community was that defined by the Westphalian state, which was accepted more or less uncritically as a natural feature of the political world and natural starting point of political inquiry.<sup>69</sup> Indeed, modern democratic theory offers scant justification for—or even mention of—the underlying configuration of rule on which it is based: a territorial polity with exclusive borders and membership; a supreme, comprehensive public or political authority within that polity; and, high levels of autonomy and independence within a system comprising like units.<sup>70</sup> Democratic theory presumes such a world, in which states seem like natural containers of politics. No gap or paradox would have been evident for early theorists of popular sovereignty because sovereignty was the *solution* to problems about the nature and identity of political community. Their solution appears paradoxical to us because we can no longer take it for granted.<sup>71</sup>

We no longer do so because sovereignty is an increasingly less useful fiction for understanding our political world. As we have seen, changes in the configuration of rule have made problems about identity, boundaries, community, and the origins of rightful authority salient again; they have made sovereignty a less plausible and less persuasive frame for understanding contemporary politics.<sup>72</sup> Thus Näsström misses the point when she argues that we can either view democracy as historically and conceptually dependent upon the sovereign state (and thus impossible under contemporary conditions) or as merely contingent upon the state form (and thus unaffected by processes like globalization).<sup>73</sup> Democracy is normatively dependent upon a contingent system of rule. The contingency of that Westphalian system, along with its centrality to normative accounts of democracy, means that

ongoing political changes result in something like pulling the empirical rug of sovereignty from under the normative democratic furniture arranged upon it, upsetting everything. Democracy can no more be unproblematically detached from its territorial foundations than it can remain content with them. It becomes incoherent.

While sovereignty is a political construct, it does not follow that democratic theorists can reconstruct it however we please.<sup>74</sup> Sovereignty is a *historically-conditioned* construct; its meaning at any given time is conditioned (though not determined) by empirical realities. Once these change, sovereignty might well be reconceived or reconstructed. The key for our purposes is that there is no reason to assume that these newly-constructed understandings of sovereignty will serve democracy well. Democracy incorporates, and its meaning is predicated upon the Westphalian account of sovereignty. To see why this matters, consider proposals to restore the symmetry or spatial congruence between citizens and decision-makers by detaching democracy from the state and extending it supranationally. We can now see that the problem with such schemes is that the democratic symmetry such proposals seek to restore is normative as well as empirical; while the empirical dimensions of this symmetry can be restored by “super-sizing” existing models of democracy, normative symmetry is more problematic. The familiar democratic institutions—parliaments, electoral accountability—are normatively embedded in an empirical configuration of rule in which notions of political community are antecedently determined by the existence of a sovereign state whose existence has been naturalized, placed beyond question. Similarly, the equal influence in making collectively binding decisions that these institutions enshrine is parasitic on a conception of singular and supreme territorial political authority.

Such institutions are democratically legitimate not because they are representative and give citizens equal influence but because they represent and give equal influence to *the right people*. Once we can no longer take for granted who *the right people* are, the representative model becomes incoherent. Attempts to reconceive democratic sovereignty as an all-affected principle illustrate this.<sup>75</sup> There is no way empirically to determine definitively who is (significantly) affected by a decision. Sovereignty provided off-the-shelf answers to such questions: those relevantly affected are the citizens of an already-constituted political community of fate wherein the rightfulness of rule requires no further justification.<sup>76</sup> The point is neither that representation or popular input into decisions should be abandoned in supranational contexts nor that we should insist on strictly maintaining democratic authority within states. It is rather that the democratic meaning of and justification for such “democratic” institutions becomes unclear once empirical conditions no longer match up with those presumed in democracy’s

underlying conceptual framework. There need not be a *correct* answer to who should have a voice or where representation should function; there was only ever an *assumed* answer. Under contemporary conditions that assumption appears arbitrary and so becomes problematic. Under such conditions—our conditions—there might be no persuasive or widely accepted answers.

In this light, it becomes clear that the EU’s democratic deficits reflect less about democracy in Europe than they do about democratic theory itself. The EU is a problem for democratic theory *because it is not the kind of thing that can be democratic* on modern accounts of democracy. Institutional deficits arise not because of faults in the design of democracy within the EU—here Moravcsik and company are correct—but because the normative significance of the same institutional design changes when it is translated into a new context. Similarly, the problem is less with the particular “output” of the European political system than with the failure of existing accounts of democracy to provide a democratic justification for pursuing certain outcomes in a transnational context. Secondary deficits arising from the multi-level character of governance in the EU cannot be resolved by altering the division or diffusion of powers among polities because none of them possesses the requisite attributes of a *democratic* polity on the traditional understanding of that term. Put differently, all democratic deficits boil down to what I have called structural deficits: they all originate in the breakdown of the normative/empirical framework of sovereignty that democracy takes for granted. The new polities of Europe lack the salient features of the democratic polities imagined by modern democratic theory. This fact reflects changing historical and political conditions and cannot be “fixed.” The true democratic deficit, I submit, lies on the side of democratic theory, which cannot comprehend developments like the EU.

## New Democratic Theories for Europe?

This “democratic theory deficit” is evident in ideas offered by EU democratic theorists. This section briefly considers proposals for institutional innovation, discursive (re)construction of a *demos*, and republican contestation as alternative theories of democracy suited to the EU. These fascinating and provocative proposals, which follow from the *sui generis* critique, would transform the shape of European democracy but would not, I shall argue, adequately address challenges at the level of democracy’s meaning and justification because they rely on or reify sovereign democracy.

Schmitter’s institutional proposals are perhaps the most prominent and far-reaching on offer.<sup>77</sup> His variable geometry *consortio*, à la carte *condominio*, and the myriad suggestions accompanying them represent creative alternatives

to familiar democratic arrangements, but they are “justified” purely through their pragmatic appeal. Schmitter offers no sustained discussion of normative standards or conceptions of democracy, relying on a procedural definition amenable to his goal of “[reinventing] the key *institutions* of modern political democracy.”<sup>78</sup> Another popular institutional approach is to work out different accounts of legitimacy for different components of the larger EU system.<sup>79</sup> While many of the individual arguments are persuasive, the approach is fatally flawed. Aside from the compositional fallacy involved (that the legitimacy of the parts would provide legitimacy to the whole), the various sources of legitimacy to which pluralist justifications appeal remain grounded in sovereignty. Lord and Magnette maintain that original institutional means are needed to achieve familiar liberal democratic standards in the EU.<sup>80</sup> Héritier similarly argues that since “the future European polity will be different and altogether new” it “accordingly requires new types of democratic institution.”<sup>81</sup> Finally, proponents of federalist schemes argue that federalism makes room for multiple levels of governance and a “division of sovereignty” and is thus well suited to address the complex institutional realities of EU governance and deeper questions about sovereignty, authority, and legitimacy.<sup>82</sup> Numerous thinkers have addressed the potential benefits of federal arrangements for EU governance.<sup>83</sup> Like many of them, Elazar maintains that “federal democracy offers a complex and comprehensive theory of democracy which stands in sharp contrast to the theories of democracy regnant in Europe until now—Jacobin democracy and parliamentary democracy in the Westminster model.”<sup>84</sup>

As we have seen, however, democratic federations share with Jacobin and parliamentary democracies a normative foundation in *constituent sovereignty*. As many federalists acknowledge, the EU lacks this presupposed “constitutional demos.” This probably accounts for the fact, noted by Stepan, that there have been no successful “coming-together” federations since the French Revolution.<sup>85</sup> Such a coming-together would face the same democratic objection facing the EU: in creating a new sovereignty it would transgress an already-existing one. The question is thus not whether the Union’s institutional structures can be fruitfully compared with federalist systems; it is rather by what normative standards a European federation should be judged democratic. Federalist theory remains underdeveloped in this respect.<sup>86</sup> More broadly, theories treating institutional innovation as the basis for a “new” theory of democracy for Europe miss the crucial distinction between the new *institutional arrangements* designed to achieve familiar (sovereign) democratic ends and new *normative conceptions* of democracy by which the EU’s *sui generis* governance arrangements might be justified or legitimated.

Recognizing the EU’s lack of a *demos* as envisioned by modern democratic theory, many scholars have advocated

discursive (re)construction of a European *demos*. Prominent among them is Habermas, who argues that the lack of an already-existing European *demos* need not pose an obstacle to democratic development within the EU. While historically democracy and the nation-state, with its ethnic understanding of the *demos*, were mutually reinforcing, there is no reason why these ethnic ties cannot be replaced by a *civic* conception of *demos* and citizenship.<sup>87</sup> Solidarity among strangers can in principle be extended beyond the traditional nation-state, Habermas argues, and he urges theorists to pay closer attention to the conditions of solidarity’s existence and development. To him a Europe-wide civil society and public sphere and the formation of a political will shared by all Europeans are functional prerequisites of a democratically constituted EU.<sup>88</sup> More recently, Habermas has called for a federal European state based on communicative power, itself built upon an increased capacity for collective will-formation created through civic solidarity or “constitutional patriotism.”<sup>89</sup>

Eager to avoid the conceptual “tyranny” of the state form, Eriksen and Fossum also seek an alternative foundation for democratic legitimacy in deliberation.<sup>90</sup> In their view deliberation provides legitimacy because bargaining, within a framework of shared meaning and common will, actually shapes identity and interests; democratic legitimacy thus springs from the deliberation of all.<sup>91</sup> Further, since the EU lacks formal aggregation procedures at its core, democratic deliberation standards apply to it “by default” in their view, since deliberative politics disconnects collective will-formation from the pre-existing system of common values and affiliations to which it is traditionally attached (the state).<sup>92</sup> “It is the flow of free communication in and between the associational network of civil society and the parliamentary complex that constitutes and ensures popular sovereignty.”<sup>93</sup> Norms are only valid when consented to in free debate by all parties.<sup>94</sup> Importantly, they stress that the realization of a values-based community is not a precondition for a rights-based democratic Union.<sup>95</sup> The conventional wisdom that EU democracy requires a European *demos* is, they argue, precisely backward. An EU democracy, by which they mean entrenched respect for individual rights that enable participation, is a precondition for the emergence and consolidation of a European *demos*.<sup>96</sup> Constitutional patriotism is a constitutive process, one through which increased direct deliberation will correct democratic deficits.

Habermas, Eriksen, and Fossum want to reconceive the *demos* as civic rather than ethnic and recognize it as a product, rather than a precondition, of European democracy.<sup>97</sup> All three share the goal of democratizing Europe by (re)creating a legitimate system of popular sovereignty grounded in the deliberation and consent of an appropriate people, the citizens of Europe. In Eriksen and Fossum’s view, the EU is pursuing the goal of statehood divorced from nationhood.<sup>98</sup> So, while these authors

articulate innovative mechanisms for democratic deliberation in a unique, post-sovereign polity, they remain clearly committed to a model of sovereign democratic legitimacy, a commitment to which their federalist ambitions testify. Despite arguing that the EU “requires a serious re-examination of the concepts available to depict [Europeanization and globalization], and thereby theoretical frameworks and attendant standards that we can use to assess the democratic quality of this nascent system of governance”<sup>99</sup> they endorse a deliberative politics *normatively* grounded in popular sovereignty—again, with the aim of restoring (sovereign) democracy at the European level through a European *demos*. On this view, the Union’s *sui generis* character is transitional; the normative problem of democracy dissolves into the political problem of state-building.

Finally, republican approaches to EU democracy call for enhanced structures and opportunities for engagement, contestation, and exercise of rights by citizens. Early versions of republican theory for Europe articulated by Bellamy and Castiglione remain explicitly grounded in popular sovereignty, defined as the expression of the community’s demand to exercise political influence upon itself through such means as direct representation, democratic control, and accountability.<sup>100</sup> They argue that in democratic regimes the people authorize collectively binding political decisions; freedom and equality in the mechanisms and procedures of democracy allow for citizens to exert equal influence and thus ensure responsive government.<sup>101</sup> These authors have since advocated a “neo-Roman republicanism” in which contestatory mechanisms within various institutions ensure that each side engages the others.<sup>102</sup> Such a regime would increase the direct input of citizens into the legislative process by increasing their participation, enhancing internal legitimacy through dialogue.

More recent republican arguments push even further. Bellamy argues that sovereignty resides in constraining norms and the people who interpret them. In his view, “republican constitutional arrangements offer the most normatively attractive way to ensure [the EU’s] complex structures meet the twin demands stemming from democratic politics and legal rights.”<sup>103</sup> He advocates a combination of law and democracy in which there is no sovereignty—citizens engage and negotiate as equals. A mixed constitution, separation of powers, multiple sites of decision-making, and dialogical reason create a system in which norms of “hearing the other side” and a democratic “people” are not presupposed by but rather intrinsic to democratic dialogue and rights are identified through contestation. Similarly, Bohman acknowledges the diverse and dispersed nature of the European polity but eschews attempts to recreate a *demos*. He focuses instead on combating juridification, “the tendency toward the increasing expansion of law and law-like methods of formal rules

and adjudication to new domains of social life.”<sup>104</sup> Juridification of the legal process can make Europe a more reflexive and deliberative political order, Bohman maintains.<sup>105</sup> Achieving this aim requires an unprecedented institutional design, including federalism enshrined in a constitution that matches the complexity and subsidiarity of the EU. This constitution should institutionalize guarantees for human rights and provide for multiple memberships and entitlements for citizens.<sup>106</sup> Bohman argues that only citizens themselves can decide questions regarding the distribution of rights and duties.<sup>107</sup> The EU is (or should be) a directly deliberative polity, one that should create greater opportunities for democratic influence. A sufficiently reflexive constitutional order might even guide Europe toward future statehood.<sup>108</sup>

The republican theories of Bellamy and Bohman are promising moves in the direction of a non-sovereign conception of democracy, yet both ultimately remain committed to a conception of law authorized by the appropriate citizenry—albeit while insisting that that citizenry be understood as self-constituting or self-defining through a deliberative process. It is doubtful whether such attempts to bootstrap out of the problem of political community are persuasive.<sup>109</sup> Still, authorization even by a self-constituted people invokes a justification in popular sovereignty whose utility and appropriateness in the European context are precisely the points at issue here—consider how such theories would conceive the boundary between European citizens and outsiders. More remains to be done in building on these efforts to devise a new normative foundation for democracy in the EU.

## Perspectives on Democracy in the EU and Beyond

Insisting on the distinction between new institutional mechanisms for realizing familiar democratic ideals and genuinely new normative interpretations of democracy clarifies that contemporary theorists of EU democracy have not offered models that adequately address the problems they have so insightfully identified. The European challenge for democracy is not merely to find new institutional forms to adapt familiar ideas to new political contexts. The challenge lies in reckoning how changes in the configuration of rule in Europe necessitate the reinterpretation and reconstruction of normative democratic theory. Most of the “new” theories on offer remain (unconsciously?) grounded in normative conceptions of democracy whose logic and legitimacy are tied to sovereignty.

There are three ways out of this difficulty. First, one might conclude that the proper role of democratic theory for the EU is to facilitate the Union’s transition to democratic statehood by nurturing a European *demos* or constructing a decentralized federal system. On this view, there would be no need for new normative models of

democracy. Second, one might conclude that the *sui generis* critique of the EU is overdrawn: while the EU is different enough to require permanent new institutional models of democracy, it is not different enough to require a new normative conception of democracy. On this view, sufficiently clever institutional design would reconcile the EU with traditional democratic ideals. These two positions, as we have seen, reflect what many *sui generis* critics and EU democratic theorists in fact conclude. Remarkably, even those most concerned with how the Union's unique polity affects democracy see little need to question democracy's meaning. I have argued that the EU really is a new political animal, locating its novelty in a configuration of rule incompatible with modern democratic theory's conceptual architecture of sovereignty. This view suggests a third way forward: pushing the *sui generis* critique even further to question both the institutional form of modern democracy and its meaning in the era of globalization.

On this view it is necessary to determine what democracy means within this new configuration of rule before it will be possible to work out how democracy can be implemented in the EU. Thus ongoing debates about whether existing EU institutions are sufficiently democratic or whether some proposed mechanisms, procedures, or institutional reconfigurations would be more or less democratic than existing ones seem off the point—not because making the EU more democratic is unimportant or because it is already democratic enough but because the available criteria of democratic legitimacy are inadequate and inappropriate for assessing democracy within the EU. Preserving the vocabulary and analytic framework of democratic deficits, which conceive democracy as a problem for the EU, perpetuates the conceptual limitations imposed by our present understandings of democracy. We need to take seriously that the EU poses a problem for democratic theory, that its existence highlights the spatial, historical, and normative limitations of our present understandings of democracy. Institutional innovations will not suffice, especially when they remain committed to ideals of popular sovereignty that changing circumstances render incoherent. This new approach does not entail rejecting or ignoring the important work of theorists who have been struggling with this problem; it does, however, require a critical focus on the normative assumptions underlying that work and their feasibility under emergent conditions of rule.

Critics might object that this critique breaks no new ground, or that what new ground it breaks is speculative and controversial. The *sui generis* critics of EU democracy have already identified the inadequacy of democratic models tied to the state, while sovereignty's role in democratic theory and its status in contemporary Europe remain highly contested. This article's contribution lies in its synthesis of these two concerns. It deepens and extends the *sui generis* critique by showing that democracy's ties to the sovereign

state are normative as well as empirical, and it shows concretely how the contemporary configuration of rule in Europe departs significantly from the normative/empirical conception of sovereignty on which modern democratic theory depends. These claims will no doubt be controversial, but that fact does not speak to their validity or their utility in addressing the problem of democracy in the EU and beyond.

The merits of this perspective become even clearer when considered in connection with the wider debate on democracy in an age of globalization of which they are properly a part. I maintain that the EU poses challenges for democratic theory because it departs from the configuration of rule on which sovereign democracy depends. In this departure the EU is typical of a wider cluster of phenomena we can loosely call "globalization." I cannot undertake a sustained analysis of globalization here; let us follow Rosenau in stipulating that "any technological, psychological, social, economic, or political developments that foster the expansion of interests and practices beyond established boundaries are both sources and expressions of the processes of globalization."<sup>10</sup> Globalization is transforming the configuration of rule in Europe and beyond, heralding tectonic shifts akin to those from which the Westphalian order emerged. The rapid evolution of the EU from trade community to constitutional polity of polities is emblematic of this trend; it is both an instance of and a response to globalization. Other familiar examples include the rapidly expanding governance role of international organizations like the UN, the International Criminal Court (ICC), and international financial institutions (IFIs) like the IMF, WTO, and World Bank, as well as that of transnational corporations (TNCs) and of nongovernmental organizations (NGOs) of various kinds.

These accelerating trends, as we have seen, problematize many of the core ontological and epistemological assumptions of the social sciences. They also trigger demands for supranational governance. While in many respects the EU exemplifies a broader trend affecting democracy, its example must be treated with caution: it is easy both to under- and over-estimate the importance of the EU case for understanding democracy's contemporary predicament. Its relevance gets understated because the intense focus on specific European institutions and "deficits" sometimes obscures the generality of the case, which I have argued consists in its departure from the Westphalian configuration of rule. Its importance gets overstated when we accept too quickly that the EU provides "the best available case" of the quandary posed for democracy by internationalization, interdependence, and governance.<sup>11</sup> The EU is an important, but also potentially misleading, case—important because of its unparalleled efforts to democratize transnational politics, misleading because it has done so in part by replicating and adapting familiar democratic forms. Besides, the importance of

the case does not make it typical. More common are functional governance regimes—the ICC, IMF, WTO, and World Bank are exemplary but by no means exhaustive of this category—created by states to establish transnational authority. Also increasingly commonplace is authority exercised by TNCs, by some international NGOs, and by other non-state actors. The extreme diversity of such entities and forms of governance highlights the various ways in which the current configuration of rule challenges democracy. The EU and the IMF, for instance, are both systems of governance that deviate from the Westphalian democratic template, but in very different ways. Connecting the European debates with wider discussions of democracy and globalization shows the need for an account of democracy sufficiently general and flexible to comprehend institutions as diverse as the EU, the UN, the ICC, IFIs, NGOs, TNCs, and other non-state actors. An EU fully democratic on any of the models surveyed here would still face all the same challenges posed to states by such entities and the structures of governance they represent.

The EU case also provides a caution. The models surveyed here propose an expansion and reworking of popular sovereignty through institutional innovation. Cosmopolitan theorists advocate similar global solutions.<sup>112</sup> The EU is in certain respects the easiest case for cosmopolitan democratic schemes: in Europe all member states conform (or did) to the liberal democratic model; it remains in important respects “territorial” (though not sovereign); membership of the EU is voluntary; cultural differences (in global comparison) are minimal; and, the idea of “Europe” has some romantic and historical basis. That the EU’s democratic credentials have been so roundly denounced by scholars and met with profound indifference and even disdain by citizens should therefore give pause to advocates of cosmopolitan democracy. Besides, the kind of democracy envisioned by many EU and cosmopolitan democratic theorists seems ill-suited to address some key concerns of global democracy in the era of globalization, including: economic and environmental governance; global economic injustice; democratization of the range of governance entities surveyed above; reducing conflict and promoting peace; advancing sustainable democracy and development; and, devising effective means for legitimate humanitarian intervention. Global popular sovereignty and its associated democratic forms seem unhelpful in resolving such concerns because—to underscore the article’s main point—there is no antecedently defined, unproblematically appropriate political community that can play the normative role of sovereign in resolving them. The problem is not to find or recreate the sovereign, as many theorists imagine, but rather to come to grips with a world in which democracy can no longer presume that one exists. Cosmopolitan democracy on a statist model would have all the same democratic deficits that currently plague the EU, only more so.

In this essay I have argued that the EU poses a challenge for democratic theory because it departs from the sovereign configuration of rule on which all modern democratic theory is predicated. In this the EU is singular but not unique. Locating this challenge within the broader debate on global democracy highlights the breadth and extent of this challenge and vivifies the need for a new perspective. Space prevents me from proposing, even in outline, an alternative conception of democracy that might address these myriad challenges.<sup>113</sup> In conclusion I simply want to reiterate that the concept of sovereign democracy adumbrated here clarifies and deepens our understanding of why and how changes associated with globalization and the emergent configuration of rule are problematic in Europe and beyond. Globalization is not just a problem of scope or scale; supranational democracy is not just a question of detaching democracy from its territorial moorings. Globalization demands that we reconsider what democracy means; in this respect the debates on democracy in Europe are both salutary and sobering.

## Notes

- 1 Schmidt 2005, 767.
- 2 Nothing in the substantive argument that follows hinges on the categorization or the labels attached to the categories (there is significant overlap).
- 3 See, e.g., Beetham and Lord 1998a, 1998b; Grande 2000; Greven 2000; Héritier 1999; Lord 1998; Scharpf 1999.
- 4 E.g., Crombez 2003, Moravcsik 2002, Zweifel 2002.
- 5 Majone 1998.
- 6 E.g., Scharpf 1997, 1998, 1999; cf. Beetham and Lord 1998a, Crombez 2003, Greven 2000, S. Newman 2000, Zürn 2000.
- 7 N.b.: secondary does not imply “less important.”
- 8 Hooghe and Marks 1997, 2003, Marks, Hooghe and Blank 1996.
- 9 E.g., Beetham and Lord 1998a; Decker 2002; Grande 2000; Greven 2000; M. Newman 1996; Raik 2004; Schmidt 2004, 2005; Wincott 1998.
- 10 Peters and Pierre 2004.
- 11 E.g., Laughlin 2003; MacCormick 1995, 1999; Mancini 1998; Pogge 1997; Walker 2003; Weiler 1994, 1995, 1998, 2001.
- 12 E.g., Andersen and Eliassen 1996; Beetham and Lord 1998a; Decker 2002; Grande 2000; Habermas 2001; Lord 1998; Lord and Beetham 2001; Majone 1998; Mancini 1998; Scharpf 1999; Weale 1998; Weiler 1995, 1998.
- 13 It should be noted that this approach is, at a practical level, both straightforward and illuminating. It addresses real and important problems with a pragmatic and reformist orientation. My point is not to suggest that those who have adopted this approach

- are wrong or naïve; it is that adopting it limits our analytic leverage with respect to important questions about the nature of democracy in the EU and beyond.
- 14 Moravcsik 2002, 622; cf. Zweifel 2002.
- 15 It is no doubt curious that the term “democratic deficits” has been restricted almost completely to discussion of the EU when it might just as well apply to domestic democratic regimes, but it hardly follows that we should therefore deny the problem to which it refers.
- 16 For an overview see Kariel 1970.
- 17 See Lehning 1998, 358.
- 18 Schmitter 2000, 16–7.
- 19 *Ibid.*, 15.
- 20 Schmitter 1998, 28.
- 21 For additional discussion of the EU’s *sui generis* character see (among others) Beetham and Lord 1998a, 1998b; Bellamy 2003; Bellamy and Castiglione 1998, 2000; Bohman 2004; Christiansen 1998; Costa, Jabko, Lequesne and Magnette 2003; Decker 2002; Eriksen and Fossum 2000a, 2002; Føllesdal 2004; Greven 2000; Hérítier 1999; Jachtenfuchs 1998; Koslowski 1998; Kuper 2000; M. Newman 1996; Pauly 2000; Schmidt 2004; Weale 1998; Weiler 1995; Zürn 2000, 2004.
- 22 Pauly 2000, 1.
- 23 Beitz 1991, Manent 1997.
- 24 Kuper 2000, 163.
- 25 Beetham and Lord 1998a, 6.
- 26 *Ibid.*, 27–33.
- 27 Lord 1998, 15.
- 28 Bellamy and Castiglione 2003, 22.
- 29 Zürn 2000, 188.
- 30 *Ibid.*, 210; cf. Greven 2000.
- 31 Føllesdal 1998, 2–4.
- 32 Christiansen 1998, 102.
- 33 M. Newman 2000, 4.
- 34 Bellamy and Castiglione 2000, 68.
- 35 Eriksen and Fossum 2002, 2.
- 36 *Ibid.*, 7.
- 37 Decker 2002, 263.
- 38 Cf. Friese and Wagner 2002, Pauly 2000.
- 39 See Goodhart 2001.
- 40 Pauly and Grande 2005, 15–6.
- 41 *Ibid.*, 15.
- 42 MacCormick 1999, 95.
- 43 Pauly and Grande 2005, 16.
- 44 Bartelson 1995, Beitz 1991, Held 1995, MacCormick 1999, 125, 35.
- 45 Philpott 2001.
- 46 E.g., MacCormick 1999, M. Newman 1996, Pauly and Grande 2005, Walker 2003, Zürn 2000.
- 47 Cf. Krasner 1999, Mann 1993.
- 48 Kratochwil 1986.
- 49 Burch 1994.
- 50 Bodin 1992, Hobbes 1968.
- 51 Cited in Onuf 1991, 426.
- 52 Spruyt 1994.
- 53 See Elazar 2001, Hinsley 1986, Murphy 1996.
- 54 Kobrin 1998, 384.
- 55 Habermas 2003, 87–8.
- 56 See Bartelson 1995.
- 57 Beck 2004; see also Cerny 1996, Taylor 1996, and, in the EU context, Sbragia 2003.
- 58 Habermas 1995, Hirst and Thompson 1996.
- 59 Locke 1960, Pateman 1988, 39ff.
- 60 Though not in *all* the people, at least not initially; see Goodhart 2005, Mills 1997, Pateman 1988.
- 61 Yack 2001, 522.
- 62 Schmitter 2004, 13.
- 63 Weiler 2001, 56.
- 64 Rabkin 2005; Rossiter 1961.
- 65 Cf. Held 1996.
- 66 See Yack 2001, 522.
- 67 Held 1995, 223–5, Zürn 2000.
- 68 Manent 1997, Näsström 2003, Roermund 2003, Yack 2001, 522–3.
- 69 Nationalists would later reverse this argument, claiming that the territory of the national state should be adjusted (always only enlarged, it seems) to encompass all of the members within the sovereign state belonging to the nation.
- 70 Cf. Zacher 1992.
- 71 Bartelson 1995.
- 72 Laughlin 2003, 85. This claim must be distinguished from the often heard claim that states are dying or in retreat; Strange 1996, 1997. States might well be thriving, and they might retain control, authority, and legal independence and recognition (Mann 1993, Weiss 1998), but this does not mean they retain sovereignty in the relevant democratic sense.
- 73 Näsström 2003, 812.
- 74 Aalberts 2004.
- 75 E.g., Held 1995.
- 76 Cf. Held 1991.
- 77 Schmitter 2000.
- 78 *Ibid.*, emphasis added; cf. Grande 2000.
- 79 E.g., Hérítier 1999; Lord and Magnette 2001, 2004.
- 80 Lord and Magnette 2004, 189.
- 81 Hérítier 1999, 280.
- 82 Howse and Nicolaidis 2001, 1, 10.
- 83 E.g., Føllesdal 1998, Howse and Nicolaidis 2001, Kraus 2004, Landy and Teles 2001.
- 84 Elazar 2001, 50.
- 85 Stepan 1999, 32.
- 86 Choudry 2001. I consider the democratic arguments made by some republican theorists for federal arrangements below.

- 87 Habermas 2001, 15–6.  
 88 Ibid., 16.  
 89 Habermas 2003.  
 90 Eriksen and Fossum 2000b, 7.  
 91 Ibid., 16.  
 92 Ibid.  
 93 Ibid., 20–1.  
 94 Eriksen 2000, 62.  
 95 Eriksen and Fossum 2004, 442ff.  
 96 Ibid., 445–6.  
 97 Cf. Bellamy and Castiglione 1998, 2000; Weiler 1995.  
 98 Eriksen and Fossum 2004, 455.  
 99 Eriksen and Fossum 2000b, 2.  
 100 Bellamy and Castiglione 2000, 71.  
 101 Ibid., 80–1  
 102 Bellamy and Castiglione 2003.  
 103 Bellamy 2003, 170–1.  
 104 Bohman 2004, 321.  
 105 Ibid., 323–4.  
 106 Ibid., 325–7.  
 107 Ibid., 329.  
 108 Ibid., 334.  
 109 See Thaa 2001.  
 110 Rosenau 1997, 361.  
 111 Jachtenfuchs 1998, 38.  
 112 E.g., Habermas 2003, Held 1995.  
 113 I have attempted to do so in Goodhart 2005.

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