

Legitimacy and Acceptance in the European Union

by Hans-Georg Stork*

Dieter Grimm, legal scholar and former judge at the German constitutional court, in his book "*Europa ja – aber welches? Zur Verfassung der europäischen Demokratie*"¹ ([1]) collects a number of essays on the problem of democratic legitimacy and the general acceptance of procedures and decisions agreed and taken under the EU treaties and EU law. The following remarks (by a non-jurist) are on issues discussed in the first two of these essays, also published separately as [2] and [3].

Given that their author is a renowned expert on constitutional law it is not surprising that their main focus is on constitutional aspects. Briefly, the argument is as follows: early European Court of Justice (ECJ) decisions gave the (then EEC-) treaties a quasi constitutional status by interpreting them strictly in line with the objective of achieving the Common Market. This has gradually narrowed the scope of democratic policy- and law-making both at the European and member-state levels, thus thwarting the broad acceptance among EU citizens of the role and function of EU bodies. In a nutshell: the larger the democratic deficit in terms of lack of legitimacy, the lower the level of acceptance of the EU as a political entity sui generis.

Three questions arise, independently of this particular EU context. Firstly, what is democratic legitimacy and how does it come about? Secondly, what is acceptance in relation to political systems and how does it come about? And finally, thirdly, how strong is the correlation between the democratic legitimacy of political bodies on the one hand and their acceptance by the general public on the other hand, really? In each case one should ask how all this relates to a multinational and supranational entity like the EU.

*(h-gATcikon.de); This note has been motivated by a talk given by Dieter Grimm in May 2016.

¹*Europe yes - but which Europe? On the State of European Democracy*

Legitimacy (democratic)

Answers to the first question are legion and at least in a first approximation comparatively straightforward, presumably also because what is at issue can, to a certain extent, be formalised. A near-at-hand formalisation (in Germany) are paragraphs 1-3 of Article 20 of the German Basic Law. They represent the quintessence of a development that commenced some 300 years ago with the onset of the European "*Age of Reason*".

Its key sentence reads: "*All state authority is derived from the people*". That same paragraph of Article 20 also explains how this ought to happen: "*It (state authority) shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.*" Popular sovereignty that is, division of powers with – in Anglosaxon terms - "*checks and balances*", as basic principles of the democratic order.

Like all formalisations also this one is an abstraction. But unlike mathematical representations of laws of nature it is, as it were, a synthetic abstraction. It denotes a mental construct that only attains its true meaning through all the people's doings in their communal life. It is a sort of specification of a programme that needs to be suitably implemented.

Probably the most problematic part of this specification is its main clause: "*All state authority is derived from the people*" Giving it substance beyond the usual election and voting mechanisms is not an easy task, even at the level of the nation state, as is well known. Who is the people? Understanding "*the people*" as the ultimate source of state authority, different answers have been given to this question at different times. For instance women did for a long time not belong to it. Or individuals were given different *weight* as regards their belonging to *the people*. The Prussian *three-class franchise system* comes to mind. The voting age has been lowered several times. And active members of our societies who have not formally been naturalised are still deprived of full voting rights. But even so, even if membership is somehow limited one may argue that state authority is derived from at least a subset of *the people*. That state authority should be derived from the *entire people* apparently is not a requirement.

As pointed out, paragraph 2 of Article 20 also specifies the agents of state authority as belonging to the legislative, executive, and judicial branches of government. In a final analysis these agents are legitimized through elections by (subsets of) the people to make decisions for the benefit of the people, and to make sure they are being realised. Whether all the people should benefit from their decisions and their realisations is not laid down. However, some agents are obliged under oath of office to protect the people from harm.

Hence in a democracy the people, the *demos*, or at least subsets thereof, is the only "*source of legitimacy*" of state authority - to use the technical term in the

title of [3] – and consequently of the power of its agents. Insofar this is still the above mentioned synthetic abstraction. In most states we nowadays consider democratic it has in one way or another been fleshed out by means of pertinent institutions. Without doubt, the parliament is the most important one of these. By virtue of its members, elected by the people, it is supposed to provide, as it were, a forum in the image of *the people*. It represents *the people's* opinions and interests, inter alia through initiating and passing laws, resolutions and the like, as well as the ratification or non-ratification of international treaties.

Yet *the people*, the source of legitimacy, often loses its weight in real-world politics. Grimm makes this quite explicit in the essays in question. In [2], p1055, for example, he writes:

„The role of the parliament within the ongoing process of forming opinions and articulating interests is becoming even weaker. Already in the member states, this process leaves much to be desired because of the widespread tendencies within politics, of adopting scientific approaches and taking account of international contexts, that counteract parliamentarianism.“²

In other words: even at the level of individual member states the actions of parliaments are not at all exclusively determined by the (statistically smoothed) opinions and interests of their electorates. On the contrary, the higher their level in a state's political structure, the more they are being influenced by powerful special interests. They often have recourse to constraints ostensibly resulting from an increasing interdependence of world affairs and world trade („*globalisation*“) and considerably narrowing the leeway for political decisions („*there is no alternative*“). Furthermore, parliamentarians themselves often lack relevant technical competencies (which is not necessarily to be held against them) or access to consultancy under their direct control. As a result, political decisions are frequently based on preparatory work done by non-parliamentary so called *think tanks* and commercial consultancy firms („*outsourcing*“) whose independence of special interests – for instance in the corporate world or the financial "industry" - amplified through extensive lobbying, cannot be sufficiently guaranteed. Equally, if not more questionable, is the use of expertise provided by the executive branches of government.

It can therefore not be denied that presumably in all countries of the industrialised world the implementation of the formal model of democracy does not take sufficient heed of the principle of popular sovereignty, to be realised through parliaments (the *homomorphic images* of their electorates). They turn into *elitocracies*, where powerful groups, aside from parliaments (and govern-

²„Noch schlechter ist es mit der Einbettung des Parlaments in einen fortlaufenden gesellschaftlichen Meinungsbildungs- und Interessenartikulationsprozess bestellt. Dieser lässt schon in den Mitgliedstaaten viel zu wünschen übrig, weil die Großtendenzen der Verwissenschaftlichung und Internationalisierung der Politik dem Parlamentarismus entgegenwirken.“

ments!) and uncommitted to any electorate, emerge that exert considerable influence on decision-making political bodies, in the interest of their clients or themselves. These *elites* are inter alia mostly defined by great private wealth, howsoever acquired. Developments in the USA, but not only there, come to mind, where democracy – at the very least on the federal level – has largely assumed the characteristics of a *plutocracy*. In Germany, in addition, "politics" seems to capitulate to a *mercatorocracy*, judging from the chancellor(esse)'s bon mot of a "market compliant democracy" - 2011 a candidate for the "ugliest word of the year".

Surely, these tendencies - cautiously dubbed by Grimm "*scientification and internationalisation of politics*"³ - have been in existence for a long time. And parliamentary representation of the people has since the beginnings in the 18th century of modern democracies always had the objective not only to render decision-making processes in communities as efficient as possible, but also to make sure the respective *power elites* had their say in them, to their advantage, that is. On the other hand the development of contemporary democracies did include the codification of actionable civil rights (e.g., *Basic Rights* in the German Basic Law), based inter alia on the idea of the "*equality of all before the law*". The strict separation – in theory – of judicial powers from the other two powers (legislative and executive) was a key prerequisite for the *rule of law* and *legal certainty* within a society, valuable assets that, however, have always been and increasingly are in jeopardy. Recent examples include the erosion of various forms of writs (e.g., *habeas corpus*) in the United States and the growing surveillance and intelligence gathering activities on the part of so called security agencies.

If – as already noted in passing and subsequently argued – solving the problem of the legitimacy of political decision-making in a nation state context is not as straightforward as it may at first glance appear, then how much more difficult will it be if we move on to the level of a confederation of states such as the EU?

True, the EU features structures that do represent a sort of division of powers: a European Parliament, the EU Commission with executive functions, and the European Court of Justice (ECJ). However, as Grimm emphasizes in [3] (in particular), the *Council of Ministers* and the *European Council* (of heads of state and/or government) were, and still are, the actual sources of legitimacy, also with regard to the existence and modus operandi of said EU institutions. It has been on the governments and – qua ratification – the parliaments of the member states, contractually to agree on the construction, furnishing and maintenance of the "*EU building*". Hence they consider themselves the actual representat-

³*Verwissenschaftlichung und Internationalisierung der Politik*

ives and guardians of the interests of *their people* within this federation of states. And it rests on the national governments and parliaments to relinquish sovereign rights, for instance when transborder matters are at issue for which the individual states in a *Common Market* lack the competencies and capabilities.

It is arguably one of the main points (if not the main point) of Grimm's critique of the current situation of the EU that losses of sovereignty not only result from political decisions but above all from the jurisdiction of the ECJ. According to Grimm, the latter is one of the causes of developments that are commonly termed *neoliberal*. This concerns in particular competition law. For instance "*The ban on state subsidies as stipulated by the treaties*" ([2], p1048), and ECJ rulings by which this interdiction "*not only holds for private enterprises but also for public social services*"; and furthermore: "*public welfare considerations that would justify not to subject certain services and benefits to market forces, did not matter at all*"⁴ (ibid.) (A striking example is the conspicuous dismantling of public pension and health-care systems in many member states, in some cases effectuated using downright brutal methods. Public transportation and utility infrastructures as well as cooperative and communal financial services provide further examples.)

While the nation state's sources of legitimacy are already quite weak (see above) the ECJ jurisdiction, according to Grimm, weakens them further or makes them entirely irrelevant, this being the case not only regarding European politics but also in relation to the scope for politics at the level of the member states. The priority of the European treaties and the ensuing secondary law gives them, as it were, a quasi constitutional status. Thus the Community institutions *Commission* (executive) and *Court* (judiciary) may assume a plenitude of power not necessarily in line with the spirit and intent of the treaties. Consequently, the European Union can exert considerable pressure on its member states that is hard to withstand. "*Whatever the constitution stipulates*", Grimm writes, "*is no longer subject to political decision-making. It is no longer a political issue but a premiss of politics. Even elections cannot affect it.*"⁵ ([2], p1051) And referenda cannot do it either. The Greeks in 2015 had to learn it the hard way (albeit in a different factual context). The powers-that-be in the *Roman Empire* already knew it: *pacta sunt servanda*.

Grimm's above quoted remark regarding the "*weakened role of the parliament*" refers, by the way, to the EU parliament. Apart from the weaknesses national parliaments have already been diagnosed with, it manifests the additional flaw

⁴das „in den Verträgen enthaltene Verbot staatlicher Beihilfen“ ([2], p1048) und die vom EuGH veranlasste Anwendung dieser Vorschrift „nicht nur auf privatwirtschaftliche Unternehmen, sondern auch auf öffentliche Einrichtungen der Daseinsvorsorge“; und weiter: „die Gemeinwohlgründe, aus denen bestimmte Leistungen dem Markt entzogen waren, spielten dabei keine Rolle“

⁵Was in der Verfassung geregelt ist, ist der politischen Entscheidung entzogen. Es ist nicht mehr Thema, sondern Prämisse der Politik. Es kann auch durch den Wahlausgang nicht beeinflusst werden.

of not living up entirely to its *raison d'être* of being a representation of the people. Nevertheless, over time, the EU parliament, as Grimm notes in [3], has been invested with more and more competencies: a mere advisory body in the original *Economic Community (EEC)*, it obtained substantial rights in the EU law-making process, under the *Lisbon Treaty*. While in the old EEC its members were delegated by the national parliaments, the direct ballot, agreed in 1976 and for the first time practised in 1979, brought about a significant boost in its legitimacy. The key competence of a parliament, however, to initiate law-making, is not yet within its remit. This is still a prerogative of the *Commission*. And the *Council of Ministers* still plays the main role in decreeing EU-specific law (*regulations* and *directives*, that is).

The shortcoming of not being a true representation of the people is largely due to the fact that there is actually no such entity as a "*European people*". As already argued, the concept of "*a people*" is a problematic one even in the context of the individual (nation) state. Yet the *collective conscious* knows of a French people, a Danish people, a German people, and so on, in spite of the vagueness of the *people concept*. And indeed, European history has resulted in a strong congruity between people and state, at least partly reinforced by the majority languages spoken in the respective territories.

In a way, the public perception of Europe today does not greatly differ from what it was like in the second half of the 19th century. A *European public*, in the sense of media paying attention to substantial issues concerning Europe as a whole and its overarching political structures, is wanting in practically all member states. At best it exists in the world of economics, in intellectual circles and among artists and scientists. (The latter, in particular, have always had a European if not global reach.) And only when, as in times of crises, the "*going gets tough*" on European stages, European themes may come to the fore, but mostly in a rather superficial manner and often with strong negative connotations regarding players that do not belong to the respective home team.

Presumably owing inter alia to the lack of a European public, transcending all language barriers, there is also no truly *European scene of political parties*. To date there are no EU-wide political groupings that jointly with suitable media could engage the general public in genuinely European decision-making processes. The current (more or less) informal groups of the EU parliament do not make up for this deficiency. Whether initiatives such as DiEM25, of the economist and straight talking former Greek finance minister, Yanis Varoufakis, are conducive to remedying this situation, remains to be seen.

Grimm does not seem to be in favour of further strengthening the role of the parliament on the EU stage with a view to reducing the legitimacy deficit brought about by the constitutionalisation of the treaties. Yet he acknowledges

its key function “to counterbalance the dominance of national interests in the Council and the dominance of technocratic tendencies in the Commission”⁶ ([3], p333). A cautiously optimistic conclusion, after all. It may well be justified given that the parliament, some restrictions notwithstanding, is indeed a sort of supervisory body to which the Commission is accountable.

By contrast, already before the Euro was introduced as bank money in early 1999, a governing body – the so called *Eurogroup* - was established that is not answerable to any parliament, European or national. Its authority seems to lack any legitimacy, as gradually became evident when the *financial and economic crises* gained momentum in 2008 (subject to different appraisals in different member states). The futility of any resistance to this authority was hinted at above, with the example of the *Greek “crisis”* in 2015. Grimm does not mention the Eurogroup in either of the essays at issue. The Lisbon Treaty contains two articles pertaining to it, that make its informal nature explicit. Its members, the finance ministers of the *Eurozone* countries, meet regularly and may – if deemed helpful - invite representatives of the *European Central Bank* (ECB) to attend. In view of the importance of public finance and budget issues for the weal and woe of entire populations, it is indeed astounding that such issues are being discussed and decided upon in a sphere quasi devoid of democracy. In actual fact, decisions taken by this group have rather adversely affected the lives of many people in Europe. Surprisingly, Grimm, in his discussion of “*acceptance*” seems to take no notice of this.

Acceptance – what, who, what and how?

It is a multi-faceted concept indeed and one may wonder if it is at all possible to establish a direct link between a deficit in democratic legitimacy within a political system on the one hand, and the broad acceptance of political decisions within that system on the other hand.

This statement implies short answers to two questions: (1) What shall be accepted? Answer: political decisions within a political system. (2) Who shall accept? Answer: a large majority of those who are affected by these decisions. But there are at least two additional questions: (3) What is “*acceptance*”, actually, what does it mean and how can one recognise it? And: (4) How does it come about, how can it be brought about?

Postulating a direct link between democratic legitimacy and acceptance assumes that those affected more readily accept political decisions if they have a say in making them - for instance via elected representatives - than without

⁶als Gegengewicht gegen die Dominanz nationaler Interessen im Rat und die Dominanz technokratischer Tendenzen in der Kommission

their participation. In a way they themselves have made the decision. “*Acceptance*” can then be expressed in different ways: satisfaction, not wanting more, fulfilled expectations and hopes, but also to “*swallow the self-administered proverbial pill*”, and to acknowledge majority decisions. Non-acceptance becomes manifest in the emergence of movements that aim to fundamentally change the existing order, or – in the extreme case – to destroy and replace it with a new one. Psychology, crowd psychology and the social sciences, above all, provide the dimensions needed to locate the *desideratum* “*acceptance*”.

For the EU as for all political entities, said postulate means that they would be all the more acceptable the more democratic they were: if in a final analysis the legitimacy of their institutions and agents were based on the will of the people affected by them, and if these people were free and had the opportunity to effectuate changes in political structures, contents and personnel, should that be deemed necessary and wanted by a majority. This form of self-determination is, as it were, the theory, and if political practice lived up to it we would probably have attained a utopian state.

However, a political praxis approximating this theory can presumably at best exist in small, manageable groups. By contrast, implementing democratically legitimised processes within societies of millions of people, meeting the needs of a large majority, is obviously a Herculean task, as also argued in the preceding section. Besides, one may assume that for most individuals in such societies a participation in the political process boils down to casting the occasional ballot in sporadic elections (if at all). Hence for most people the results of this process seem to be based on remote volitional acts they have little or nothing to do with. Insofar, for most people there is hardly a difference between being a citizen and being a (ruler’s) subject; hardly a difference between their perception of democratic legitimacy and the divine right of kings.

If it were not for the media, literally the mediators between worlds: for example the parochial, personal worlds of most people and the big wide worlds of the *political class* (and other so called elites) on various levels of their activities (starting from grass-root initiatives, via parties, parliaments, governments, up to “*Europe*” and the world). It is the media, the proverbial *Fourth Estate* in a democratic state, that derives from the dynamics within the political class and its wide world an image of reality that goes way beyond the everyday reality of most people; it creates connections between their small worlds and the big events and grand discussions. It is the media – still mostly television, radio, press of all sorts, but increasingly blogs on the Internet and so called social networks – where approval or rejection is being expressed in a large variety of forms. It is clearly the media who – on their part only legitimized by the basic right to *freedom of speech and the press* – not only represent (more or less) the sen-

timents reigning among the people, but also exert a strong influence on these sentiments – not always with the soundest and most ethical methods.

The makers and *powers-that-be* of the media public are those who accept and reject, not the peoples, no matter if the nation or Europe is at stake. (Polls like the so called *Eurobarometer* seem to confirm this; they reflect the way certain issues are taken up by the media.) Politics thus does not have the problem of gaining the approval of *the peoples* but of the *opinion-leaders* in the media (also an “*elite*” of sorts).

That may be understood when Grimm writes with regard to the 1992 Maastricht Treaty and the acceptance or disapproval of the EU: “*At the same time it (the Maastricht Treaty) was to raise Europe to a »new stage in the realisation of an ever closer union of the peoples of Europe«. The EC became the EU, the currency union was decided. As it turned out, however, the peoples of Europe were not prepared for it. The consent politics assumed to build on had been a consent to an economic community that had long since been left behind.*”⁷ ([2], p1052)

Was poor *public relations* (formerly known as *propaganda*, still earlier as *propaganda fide*) to blame? Most certainly it was the lack, as already noted, of a genuinely European public as a forum for discussion and forming opinions. As far as regards the general public it was presumably not due to the *constitution-alisation of the treaties*. According to Grimm, this had long since happened but hardly been taken note of. One may suspect though, that for many of the responsible politicians “*things*” (they themselves had cooked up) “*were getting too hot*”, and for whatever reasons and motives they lacked the resolve or ability to convince a broad media public of the merits of the European project.

Events since have not cooled “*things*” off, on the contrary. In many respects the play on the European stage has not been very convincing. Not the least because the actors on this stage play a part on their national stages diametrically opposed to the European part. It is the performance of the actors, not so much the legitimacy consistence of the underlying script that catches the eye of the critics. Trite negative reports on that are more rewarding than to focus on the positive aspects of the play as a whole and to give them due regard. And yet, these aspects are, as Grimm emphasizes, quite conspicuous: “*There is a highly plausible rationale for Europe because the advantages inherent in a Europeanisation cannot be gained differently. The reason for that is the growing number of transborder problems that politics is expected to solve but that can no longer be solved within the narrow confines of the European nation states. The widening gap between the range of*

⁷Zugleich wollte er (der Maastricht Vertrag) Europa auf eine »neue Stufe bei der Verwirklichung einer immer engeren Union der Völker Europas« heben. Aus der EG wurde die EU, die Währungsunion wurde beschlossen. Wie sich zeigte, waren die Völker Europas darauf aber nicht vorbereitet. Die Zustimmung, auf die sich die Politik noch glaubte stützen zu können, war Zustimmung für eine Wirtschaftsgemeinschaft gewesen, die längst überschritten war.

*action of powerful globally operating private actors and the range of action of a single polity can only be closed by internationalising public authorities.”*⁸ ([2], p1053)

Here, however, criticism from “*the Left*” concurs with Grimm’s critique of the early jurisdiction of the ECJ: said internationalisation (through, more or less rigorously: EU, NAFTA, WTO, IMF, etc.) is under the same *neoliberal spell* that enabled those *globally operating private actors* to wield their power in the first place, and that still makes their power grow. It opens up for them opportunities to let their interest in maximizing profits prevail over public bodies that are committed to the public good, via – as the grapevine has it – courts of dubious legitimacy (viz. TTIP). Grimm seems to acknowledge this when he writes: “*It is the point of Community wide regulations to constrain, in the interest of the common good, the power of transnational actors by imposing common rules. And that is within the remit of politics.*”⁹ From that he infers: “*A regression of the EU to the Common Market would therefore not be compatible with the reasons for insisting on legitimacy.*”¹⁰ ([2], p1054)

“*Left critique*” admonishes, inter alia and presumably rightly so, that the political task Grimm identifies is not or hardly being tackled. Whether this is a consequence of the doubtlessly existing deficits in formal legitimacy is a different question. At the very least, however, transnational actors should be denied participation in designing the rules that are supposed to constrain their powers. As explained in the previous section this is not or not always the case.

While such criticism from *the Left*, of the current state of the EU, may well be called constructive, opponents from the “*Right*” tend to paint the picture as black as can be, and through vague appeals to a kind of tribal instinct they call for a re-nationalisation of sorts. Some of them can justifiably be described as proto-fascists. Using scapegoats they try to foster hostile attitudes *among the people* and pretend to be on the side of the *little people* on social issues, but, in reality only worry about the privileges of the professional middle and owning classes. Moreover, not only do they not question the neo-liberal so called “*re-forms*” but they even advocate to aggravate them. What the consequences of a re-nationalisation of entire common policies would be, they do not tell us.

⁸Es gibt eine Begründung für Europa, die hohe Plausibilität besitzt, weil die Vorteile, die eine Europäisierung verspricht, auf andere Weise nicht zu haben sind. Der Grund ist die wachsende Zahl grenzüberschreitender Probleme, deren Lösung von der Politik erwartet wird, aber im engen Rahmen der europäischen Nationalstaaten nicht mehr möglich ist. Zwischen dem Aktionsradius machtvoller, global wirkender privater Akteure und dem Aktionsradius der staatlichen Politik öffnet sich eine Kluft, die allein durch die Internationalisierung öffentlicher Gewalt geschlossen werden kann.

⁹Es geht bei der Vergemeinschaftung darum, die Macht transnationaler Akteure im Gemeinwohlinteresse Regeln zu unterwerfen, und das ist eine politische Aufgabe.

¹⁰Die Rückbildung der EU zum Gemeinsamen Markt wäre also mit dem Legitimationsgrund nicht vereinbar.

“What needs to be done to raise the level of acceptance of the EU?”¹¹, Grimm asks. His answer, assuming a direct link between legitimacy and acceptance: “If the legitimacy problem of the EU consists in the fact that the executive and judiciary branches have become independent of the will of the member states that support them, and if decisions of high political import are made in a non-political mode, then it must be made sure that this independence be curbed and political decisions be made in a political mode.”¹² ([2], p1057)

There is no doubt: solving the legitimacy problem, as Grimm points out, is eminently important. Decisions of high political impact have to be taken in a political mode. But in a final analysis, it is to take the right decisions that matters. Decisions, for instance, that open up social perspectives for a large majority of EU citizens; decisions that are not based on the assumption that good economic governance is tantamount to increasing shareholder value. Presumably, for such decisions the political mode is a necessary but certainly not a sufficient prerequisite.

One may therefore suggest that *the acceptance of the EU by the peoples of the EU* does not necessarily hinge on solving the legitimacy problem (the complexity and subtlety of which may not be understood by more than a fraction of the people ultimately concerned), but more so for instance on tangible successes of *European policies addressing social and solidarity issues*. Such policies hardly exist.

As long as the socially and/or economically deprived of the EU societies can with greater or lesser justification be persuaded that their real or alleged troubles are somehow occasioned “*by Europe*” (or “*the Euro*”, or the “*EU bureaucracy*, etc.), there will be no broad acceptance of “*the EU*” by its peoples (societies, masses). And along with it rightist pipers will have an easy and destructive tune to play, perhaps a variant of: “*Erst kommt das Fressen, dann kommt die Moral*”.¹³

It is potentially even more destructive, however, to build up and demonize an external enemy as a *catalyzer of integration and “acceptance”*, assuming a scary enough enemy helps closing the ranks and makes the populace put up with all sorts of hardships (as in times of war). Perhaps it is (also) the EU’s ambition to organize a *common foreign and “defense” policy* framework that motivates Grimm’s opinion that the EU “has long since grown out of an Economic Community” ([2], p1057). The rhetoric on the part of the EU bigwigs accompanying

¹¹Was muss dann geschehen, um die Akzeptanz der EU zu erhöhen?

¹²Wenn das Legitimationsproblem der EU darin besteht, dass sich ihre exekutiven und judikativen Instanzen vom Willen der sie tragenden Mitgliedstaaten stark verselbständigt haben und Entscheidungen von hohem politischen Gewicht in einem unpolitischen Modus fällen, dann muss dafür Sorge getragen werden, dass die Verselbständigung begrenzt wird und politische Entscheidungen in einem politischen Modus getroffen werden.

¹³“First comes the feeding, then comes morality.” (Bertolt Brecht, Three Penny Opera)

these ambitions does not bode well. Instead of bogeymen and an EU army, and independently of any (necessary) solution of the legitimacy problem, there must be a generally comprehensible and acceptable "*wherefore*" (e.g., *prosperity* instead of *austerity*) of integration, and the clearly discernible will to attain this goal. It would be disastrous to rely instead on constructing ostensibly ominous threats in order to bring the populace to heel so that more and more items can be ticked off on a neoliberal agenda.

Unfortunately, that union of states which has *grown out of an Economic Community* evidently lacks the instruments and procedures that could turn it into a *social and solidary community*. As long as this is not wanted or not deemed doable (likely due to the non-existence of a European public) at least the *currency union* should be abandoned (regrettably). One could envisage returning to an updated version of the European Monetary System (EMS) of 1979.

But effective measures should be taken that could lead to a harmonisation of living conditions throughout the EU; measures that go beyond the belief in equilibrating market forces, and also beyond the existent "*development aid*" paid out from the regional and structural funds.

Furthermore, research should be initiated at the Community level with a view to controlling the growing inequality within (and between) EU societies (inter alia brought about by "*technological progress*" and the ensuing *substitution of labour with capital*), surely one of the reasons why many of their citizens more or less distinctly feel disadvantaged compared to their compatriots. (A European economic order constituting new forms of ownership of capital would probably be an almost utopian ultimate achievement.)

One may of course wonder if the EU is an *Economic Community* after all, a community that is, which as a whole creates what it needs to *sustain its life*. One of the possible answers is "*yo*" (neither yes nor no). It is rather a *community of economies*. In the EU there are, Eurostat's aggregates and the *Common Market* notwithstanding, still as many economies (or gross domestic products) as there are member states, with as many input-output relations (*current accounts / trade balances*) and ensuing competition at the member level. (Who will be *World/European Champion in exports*?)

Admittedly, there are EU wide competition rules that outlaw state subsidies to enterprises should this entail market-distorting effects ([2], p1048). Yet this ban apparently does not prevent member states from improving, apparently in accordance with EU law, their export capabilities (also dubbed "*competitiveness*") through: tax advantages, "*flexibilisation*" of labour conditions, wage dumping, low-wage job markets, subcontracted labour, precarious jobs (also dubbed "*reforms*", e.g., *German Agenda 2010*), et cetera, a modern form of *mercantilism*. It would be greatly appropriate though, if "*the externalities of national policies af-*

fecting other member states were dealt with at the higher European level only“¹⁴ ([3], p. 335). Unfortunately, up until now this does not happen with the required determination. As another example one may think of the tacit acceptance of German export surpluses that for a long time have been exceeding the admissible limit.

A true *Economic Community* would have one gross domestic product, and competition would take place between enterprises and perhaps regions und communes, not between individual states. But then this kind of Community would *de facto be a (federal) state, with one social and economic order binding for all.*

If, for whatever reason (for instance constitutional considerations as in [3], p334), we do not want this kind of federation, should we then not call the EU by its proper name: *Common Market* with a customs union, still, but now partially with a common currency and all sorts of accompanying measures, financed through "membership fees"?

And should we not, at least for the time being, yet indefinitely, leave it at that, but *without a common currency and its high potential for conflict?* And also without the explicit ambition to achieve an "ever closer union of the peoples of Europe" and a remake in whatever form of a European "defence community"? As regards the power of transnational stakeholders it may well be the case that restraining it in the interest of the common good, by now calls for globally effective strategies. Maybe it is already too late for that. In view of the centrifugal forces within our Union, however, let us save what can be saved and make the best of it.

References

- [1] Grimm, Dieter: Europa ja – aber welches? Zur Verfassung der europäischen Demokratie. C. H. Beck, München 2016, ISBN 978-3-406-68869-0.
- [2] Grimm, Dieter: Europa: Ja – aber welches?. Merkur 68 (787), 2014
- [3] Grimm, Dieter: Auf der Suche nach Akzeptanz - Über Legitimationsdefizite und Legitimationsressourcen der Europäischen Union. Leviathan, 43. Jg., 3/2015, S. 325 – 338

¹⁴... wenn die Externalitäten nationaler Politik für die übrigen Mitgliedstaaten nur auf der übergeordneten europäischen Ebene bearbeitet würden.