

# 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*"<sup>1</sup> ([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*.

Irrespective of this specific EU context, three questions arise. 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 connection between the democratic legitimacy of political bodies on the one hand and their acceptance by the population on the other? In any case, one should ask how all this relates to a multinational and supranational entity such as the EU.

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

<sup>1</sup>*Europe yes - but which Europe? On the State of European Democracy*

## Legitimacy (democratic)

The answers to the first question are legion and, at least to a first approximation, comparatively simple, presumably also because the problem at hand can be formalised to a certain extent. An obvious formalisation (in Germany) are paragraphs 1-3 of Article 20 of the German Basic Law. They are the quintessence of a development that began around 300 years ago with the advent of the European "*Age of Reason*".

The key sentence reads: "*All state power shall emanate from the people.*" The same paragraph of Article 20 also explains how this is to happen: "*It (state power) shall be exercised by the people in elections and referendums and by special legislative, executive and judicial organs*". In other words, popular sovereignty, separation of powers with - in Anglo-Saxon parlance - "*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 the actions of people in their life together. It is a kind of programme specification that needs to be implemented in a suitable way.

Probably the most problematic part of this specification is its main clause: "*All state power shall emanate from the people.*". Giving it substance beyond the usual election and voting mechanisms is not an easy task, even - as is well known - at the level of the nation state. 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. Women, for instance 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 situation is even worse when it comes to embedding parliament in an ongoing social opinion-forming and interest articulation process. This already leaves much to be desired in the member states, because the major trends towards the scientification and internationalisation of politics work against parliamentarism.“<sup>2</sup>*

In other words, even at the level of individual member states, the actions of parliaments are by no means exclusively determined by the (statistically smoothed) opinions and interests of their electorate. On the contrary: the higher up they are in the political structure of a state, the more they are influenced by powerful special interests. They often invoke constraints that allegedly result from the increasing interdependence of world affairs and world trade ("*globalisation*") and considerably narrow the scope for political decisions ("*there is no alternative*"). In addition, parliamentarians themselves often lack the relevant expertise (which they cannot necessarily be blamed for) or access to consultancy services under their direct control. As a result, political decisions are often based on the preliminary work of extra-parliamentary so-called think tanks and commercial consultancies ("*outsourcing*"), whose independence from special interests - such as the corporate world or the financial "*industry*" - cannot be sufficiently guaranteed, reinforced by extensive lobbying. Equally, if not more questionable, is the use of expertise provided by the executive bodies of the government.

It is therefore undeniable that the principle of popular sovereignty, which is to be realised by parliaments (the homomorphic images of their electorate), is probably not sufficiently observed in all countries of the industrialised world when implementing the formal model of democracy. They are transformed into elitocracies in which powerful groups emerge outside of parliaments (and governments!) and without ties to an electorate, exerting considerable influence

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<sup>2</sup> „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.“

on political decision-making bodies in the interests of their clients or themselves. These elites are usually characterised, among other things, by great private wealth that has been acquired in whatever way. Developments in the USA come to mind here, but not only there, where democracy - at least at federal level - has largely taken on the characteristics of a *plutocracy*. In Germany, too, "politics" seems to be capitulating to a mercatocracy, if you look at the Chancellor(esse)'s *bon mot* of "*market-compliant democracy*" - a candidate for the "*ugliest word of the year*" in 2011.

Certainly, these tendencies - cautiously described by Grimm as the "*scientification and internationalisation of politics*"<sup>3</sup> - have been around for a long time. And since the beginnings of modern democracies in the 18th century, parliamentary representation of the people has always had the aim of not only organising the decision-making processes in the communities as efficiently as possible, but also ensuring that the respective *power elites* have a say, to their advantage. On the other hand, the development of contemporary democracies also included the codification of enforceable civil rights (e.g. *Basic Rights* in the German Basic Law), which are based on the idea of "*equality of all before the law*", among other things. The - theoretically - strict separation of judicial power from the other two powers (legislative and executive) was an essential prerequisite for the *rule of law* and *legal certainty* in a society, valuable assets that are, however, repeatedly and increasingly jeopardised. The most recent examples are the erosion of various forms of legal rights (e.g. habeas corpus) in the United States and the increasing surveillance and intelligence gathering by the 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 easy as it might appear at first glance, how much more difficult will it be when we move to the level of a confederation of states such as the EU?

It is true that the EU has structures that represent a kind of separation of powers: a European Parliament, the European Commission with executive functions and the European Court of Justice (ECJ). However, as Grimm emphasises in particular in [3], the *Council of Ministers* and the *European Council* (of Heads of State or Government) were and are the actual sources of legitimacy, also with regard to the existence and functioning of the aforementioned EU institutions. The governments and - through ratification - the parliaments of the Member States were responsible for contractually agreeing the construction, equipment and maintenance of the "EU building". They thus see themselves as the actual representatives and guardians of the interests of their peoples within this confederation of states. And it is up to the national governments and parliaments

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<sup>3</sup>*Verwissenschaftlichung und Internationalisierung der Politik*

to cede sovereignty rights, for example when it comes to cross-border matters for which the individual states in a common market lack the competences and capabilities.

It is arguably one of the main points (if not the main point) of Grimm's criticism of the current situation of the EU that losses of sovereignty are not only caused by political decisions, but above all by the case law of the ECJ. The latter, according to Grimm, is one of the causes of developments that are generally labelled *neoliberal*. This applies above all to competition law. For example, "*the ban on state subsidies laid down in the Treaty*" ([2], p. 1048) and the case law of the ECJ, according to which this ban "*applies not only to private companies but also to public social services*"; and further: "*public interest considerations that would justify not subjecting certain services and benefits to market forces play no role at all*".<sup>4</sup> (ibid.) (One striking example is the conspicuous dismantling of public pension and health-care systems in many member states, which in some cases is being carried out using downright brutal methods. Public transport and supply infrastructures as well as co-operative and municipal financial services are further examples).

The already weak national sources of legitimisation (see above) are further weakened or rendered completely irrelevant by the case law of the ECJ, not only with regard to European policy, but also with regard to the Member States' scope for political action. The primacy of the European treaties and the resulting secondary law gives them a status similar to that of a constitution. The Community institutions, the *Commission* (executive) and the *Court of Justice* (judiciary), can thus exercise a wealth of powers that do not necessarily correspond to the spirit and intention of the treaties. As a result, the European Union can exert considerable pressure on its Member States, which is difficult to resist. "*What the Constitution prescribes,*" writes Grimm, "*is no longer subject to political decision-making. It is no longer a political question, but a premise of politics. Not even elections can change that.*"<sup>5</sup> ([2], p1051) And referendums can't do that either. The Greeks had to learn this the hard way in 2015 (albeit in a different factual context). The rulers of the Roman Empire already knew this: *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 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 in-

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<sup>4</sup>das „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“

<sup>5</sup>Was 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.

vested 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 some ways, the public perception of Europe today is not very different from that of the second half of the 19th century. A *European public sphere* in the sense of media attention to key issues affecting Europe as a whole and its overarching political structures does not exist in practically all member states. It exists at best in the world of business, in intellectual circles and among artists and scientists. (The latter, in particular, have always had a European if not global reach.) And only when the “*going gets tough*” on the European stage, as in times of crisis, do European issues come to the fore, but usually rather superficially and often with strong negative connotations towards actors who do not belong to the respective home team.

It is probably partly due to the lack of a European public sphere across all language borders that there is also no truly *European scene of political parties*. So far, there are no EU-wide political groups that, together with suitable media, could involve the general public in truly European decision-making processes. The current (more or less) informal groups of the EU Parliament cannot compensate for this shortcoming. It remains to be seen whether initiatives such as DiEM25 by economist and straight-talking former Greek finance minister Yanis Varoufakis can remedy this situation.

Grimm does not appear to be in favour of further strengthening the role of the Parliament on the EU stage in order to reduce the legitimacy deficit resulting from the constitutionalisation of the treaties. Nevertheless, he recognises its key function “*to counterbalance the dominance of national interests in the Council*”

and the dominance of technocratic tendencies in the Commission".<sup>6</sup> ([3], p333). A cautiously optimistic conclusion, after all. It may well be justified because, despite some restrictions, Parliament is indeed a kind of supervisory body to which the Commission is accountable.

In contrast, even before the introduction of the euro as bank money at the beginning of 1999, a governing body - the so-called *Eurogroup* - was set up, which is not accountable to any parliament, neither European nor national. Its authority appears to lack any legitimacy, as gradually became apparent when the financial and economic crisis came to a head in 2008 (which was assessed differently in the individual member states). The futility of any resistance to this authority was indicated above with the example of the *Greek "crisis"* in 2015. Grimm does not mention the Eurogroup in either of the two essays at issue here. The Lisbon Treaty contains two articles on this group that make its informal nature clear. Its members, the finance ministers of the *eurozone* countries, meet regularly and can - if they deem it appropriate - invite representatives of the *European Central Bank* (ECB) to attend. Given the importance of public finances and budgetary issues for the weal and woe of entire populations, it is indeed astonishing that such issues are discussed and decided in a space quasi devoid of democracy. In fact, the decisions of this group have had a rather negative impact on the lives of many people in Europe. Surprisingly, Grimm does not seem to take any notice of this in his discussion of "*acceptance*".

## **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 further 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 their participation. In a way they have made the decision themselves. "*Acceptance*"

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

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 manifests itself in the emergence of movements that aim to fundamentally change the existing order or - in extreme cases - to destroy it and replace it with a new one. Psychology, crowd psychology and, above all, the social sciences provide the dimensions required to locate the *desideratum* “acceptance”.

For the EU, as for all political entities, this postulate means that the more democratic they were, the more acceptable they would be: if the legitimacy of their institutions and actors were ultimately based on the will of the people affected by them, and if these people were free and had the opportunity to bring about changes to political structures, content and personnel if this was deemed necessary and desired by a majority. This form of self-determination is the theory, so to speak, and if political practice lived up to it, we would probably have reached a utopian state.

However, a political practice that comes close to this theory can probably only exist in small, manageable groups at best. In contrast, the implementation of democratically legitimised processes in societies with millions of people that meet the needs of a large majority is obviously a Herculean task, as was also argued in the previous section. Moreover, it can be assumed that for most people in such societies, participation in the political process is limited to the occasional vote in sporadic elections (if at all). Therefore, for most people, the outcomes of this process appear to be based on distant acts of will with which they have little or nothing to do. In this respect, 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 weren’t for the media, literally the mediators between the worlds: e.g. the small, personal world of most people and the big, wide world of the political class (and other so-called elites) at the various levels of their activity (starting with grassroots initiatives, parties, parliaments, governments, right through to “Europe” and the world). It is the media, the proverbial *Fourth Estate* in a democratic state, that derive from the dynamics within the political class and its wider world a picture of reality that goes far beyond the everyday reality of most people; they create links between their small worlds and the big events and discussions. It is the media - still primarily television, radio, press of all kinds, but increasingly also blogs on the Internet and so-called social networks - in which approval or disapproval is expressed in a variety of forms. It is clearly the media - for their part only legitimised by the fundamental right to *freedom of opinion* and *freedom of the press* - that not only (more or less) represent the pre-

vailing sentiments in the population, but also exert a strong influence on these sentiments - not always using the most sound and ethical methods.

The *movers and shakers* of the media public are the ones who accept and reject, not the peoples, whether it is about the nation or Europe. (Surveys such as the so-called Eurobarometer seem to confirm this; they reflect the way certain issues are taken up in the media). The problem for politicians is therefore not to win the approval of the people, but that of the *opinion leaders* in the media (also an "elite" of sorts).

This may be understood when Grimm writes in relation to the Maastricht Treaty of 1992 and the acceptance or disapproval of the EU: "*At the same time, it (the Maastricht Treaty) was intended to raise Europe to a "new level of realisation of an ever closer union of the peoples of Europe". The EC became the EU and monetary union was agreed. As it turned out, however, the peoples of Europe were not prepared for this. The consent that politicians thought they were building on was consent to an economic community that had long since been left behind.*"<sup>7</sup> ([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 sphere as a forum for discussion and forming opinions. As far as the general public was concerned it was presumably not due to the *constitutionalisation 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*" down, on the contrary. In many respects the play on the European stage has not been very convincing. Not 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 legitimising consistence of the underlying script that catches the eye of critics. Banal negative reports about it are more rewarding than focussing on and appreciating the positive aspects of the play as a whole. And yet, these aspects are, as Grimm points out, quite obvious: "*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 cross-border problems that politics is expected to solve but that can no longer be solved within the narrow confines of*

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<sup>7</sup>Zugleich 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.

*the European nation states. The widening gap between the range of action of powerful globally operating private actors and the range of action of a single polity can only be closed by internationalising public authorities.*"<sup>8</sup> ([2], p1053)

Here, however, criticism from "the Left" concurs with Grimm's critique of the early rulings 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 gain their power in the first place and that allows their power to grow. It gives them the opportunity to enforce their interest in maximising profits through public institutions that are committed to the common good, and - as the grapevine has it - through courts of dubious legitimacy (viz. TTIP). Grimm seems to recognise this when he writes: "*Communitisation is about subjecting the power of transnational players to rules in the interests of the common good, and that is a political task.*"<sup>9</sup> 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.*"<sup>10</sup> ([2], p1054)

"Left-wing criticism" criticises, among other things and probably rightly so, the fact that the political task identified by Grimm is not or hardly ever addressed. Whether this is a consequence of the undoubtedly existing deficits in formal legitimacy is another question. At the very least, however, transnational actors should be denied participation in shaping the rules that are supposed to limit their power. As explained in the previous section, this is not or not always the case.

While such criticism of the current state of the EU from the left can certainly be described as constructive, opponents of the "right" tend to paint the picture as black as possible and call for a kind of renationalisation through vague appeals to a kind of tribal instinct. Some of them can justifiably be described as proto-fascists. Using scapegoats, they try to stir up a hostile attitude in the population and pretend to be on the side of the little people on social issues, but in reality only care about the privileges of the professional middle and propertied classes. Moreover, not only do they not question the so-called neoliberal "reforms", they

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<sup>8</sup>Es 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.

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

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

even favour their intensification. What the consequences of renationalising entire common policies would be, they do not tell us.

*"What needs to be done to raise the level of acceptance of the EU?"*<sup>11</sup>, Grimm asks. His answer, assuming a direct link between legitimacy and acceptance: *"If the EU's legitimacy problem is that its executive and judicial bodies have become highly independent of the will of the Member States that support them and take decisions of high political weight in an apolitical mode, then it must be ensured that this independence is limited and that political decisions are taken in a political mode."*<sup>12</sup> ([2], p1057)

There is no doubt that, as Grimm emphasises, solving the problem of legitimacy is of eminent importance. Decisions of major political significance must be made in a political mode. Ultimately, however, it is important to make the right decisions. Decisions, for example, that open up social prospects for a large majority of EU citizens; decisions that are not based on the assumption that good economic management is synonymous with increasing shareholder value. Presumably, the political mode is a necessary but certainly not a sufficient prerequisite for such decisions.

It can therefore be assumed that the acceptance of the EU by the peoples of the EU does not necessarily depend on solving the legitimacy problem (the complexity and subtlety of which may only be understood by a fraction of the people ultimately affected), but rather on tangible successes of European policy in relation to social and solidarity issues. There are hardly any such policies.

*As long as the socially and/or economically disadvantaged in EU societies can be convinced, with more or less justification, that their real or supposed problems are somehow caused "by Europe" (or "the euro" or "EU bureaucracy" etc.), there will be no broad acceptance of "the EU" by its peoples (societies, masses). And this gives the right-wing pipers an easy and destructive song to play, perhaps a variant of: "Erst kommt das Fressen, dann kommt die Moral".*<sup>13</sup>

However, it is potentially even more destructive to build up and demonise an external enemy as a *catalyst for integration and "acceptance"*, assuming that a sufficiently fearsome enemy will help to close ranks and make the population put up with all kinds of hardships (as in wartime). Perhaps it is (also) the EU's ambition to organise a *common foreign and "defence" policy* framework that leads Grimm to believe that the EU has *"long since outgrown an economic community"* ([2], p. 1057). The rhetoric of the EU bigwigs that accompanies these ambitions

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<sup>11</sup>Was muss dann geschehen, um die Akzeptanz der EU zu erhöhen?

<sup>12</sup>Wenn 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.

<sup>13</sup>"First comes the feeding, then comes morality." (Bertolt Brecht, Three Penny Opera)

does not bode well. Instead of bogeymen and an EU army, there must be a generally comprehensible and acceptable "*what for*" (e.g. *prosperity* instead of *austerity*) of integration, irrespective of a (necessary) solution to the legitimacy problem, and a clearly recognisable will to achieve this goal. It would be disastrous to rely instead on the construction of supposedly ominous threats in order to make the population compliant so that more and more points on a neoliberal agenda can be ticked off.

Unfortunately, the union of states that *emerged from an economic community* obviously lacks the instruments and procedures that could turn it into a *socially aware community of mutually supportive states*. As long as this is not wanted or not considered feasible (probably because of the non-existence of a European public), at least the *monetary union* should (unfortunately) be abandoned. One could imagine returning to an updated version of the European Monetary System (EMS) of 1979.

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

In addition, research should be initiated at Community level in order to get a grip on the growing inequality within (and between) EU societies (due, among other things, to "*technological progress*" and the associated *substitution of labour by capital*), certainly one of the reasons why many of its citizens feel more or less clearly disadvantaged compared to their compatriots. (A European economic order that constitutes new forms of capital ownership 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*?)

Of course, one may wonder whether the EU is an *economic community* at all, i.e. a community that as a whole creates what it needs to live. One of the possible answers is "*yo*" (neither yes nor no). It is more a *community of economies*. In the EU, despite the Eurostat aggregates and the *Common Market*, there are still as many economies (or gross domestic products) as there are member states, with as many input-output relations (*current accounts / trade balances*) and resulting

competition at member state level. (Who will be the *World / European export champion*?)

It is true that there are EU-wide competition rules that prohibit state subsidies to companies if these have market-distorting effects ([2], p. 1048). However, this prohibition apparently does not prevent the member states from improving their export capability (also known as "*competitiveness*"), apparently in accordance with EU law, through: Tax advantages, "flexibilisation" of working conditions, wage dumping, low-wage labour markets, temporary agency work and subcontracts, precarious jobs (also called "reforms", e.g. the German *Agenda 2010*), et cetera, a modern form of mercantilism. However, it would be very appropriate if "*the externalities of national policies that affect other member states were only dealt with at the higher European level*".<sup>14</sup> ([3], p. 335). Unfortunately, this is still not being done with the necessary determination. Another example is the tacit acceptance of German export surpluses, which have long exceeded the permissible limit.

In a genuine economic community, there would be a single gross domestic product and competition would take place between companies and perhaps also regions and municipalities, not between individual states. But then such a community would *de facto* be a (federal) state, with a social and economic order that is binding for all.

If, for whatever reason (e.g. constitutional considerations as in [3], p. 334), we do not want this kind of federation, should we not call the EU by its proper name? *Common Market* with a *Customs Union*, still, but now partly with a common currency and all sorts of accompanying measures, financed by "*membership fees*"?

And shouldn't we leave it at that, at least for now but indefinitely, albeit *without a common currency and its high potential for conflict*? And even without the explicit ambition of an "*ever closer union of the peoples of Europe*" and some form of redesign of a European "*defense community*"? As far as the power of transnational actors is concerned, it may well be that limiting it in the interest of the common good now requires globally effective strategies. Maybe it is already too late for that. But given the centrifugal forces within our Union, let us save what can be saved and make the best of it.

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<sup>14</sup>... *wenn die Externalitäten nationaler Politik für die übrigen Mitgliedstaaten nur auf der übergeordneten europäischen Ebene bearbeitet würden.*

## 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