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On the Legitimacy of Political Communities

A General Approach and Its Application to the European Union

Abstract:

The paper consists of two parts. The first part deals with the normative legitimacy of political communities, such as states and confederations, in general, i.e. their acceptability in light of reasonable standards of efficiency, common good, and justice from the viewpoints of their members on the one hand (internal legitimacy) and their social surroundings on the other (external legitimacy). The requirements of both aspects of legitimacy are specified in a twofold way: as normative ideals and as minimum standards. As to the latter, a political community's legitimacy minimally requires that it effectively guarantees the fundamental human rights of its members and complies with certain basic precepts of a peaceful and generally beneficial international order. On this basis, the second part scrutinizes the legitimacy of the European Union with regard to its internal and external aspects. This attempt leads to a mixed result. Even though the EU can certainly be regarded, by and large, as a desirable project, it also suffers from a number of considerable defects that weaken its legitimacy.

1. Introduction

A *political community*, as conceived of in this paper, is an organised territorial social union with a sufficient extent of political autonomy to enable it to regulate its internal affairs covering important aspects of the life of its members in a binding way and to dissociate itself from the external social world by excluding non-members at its discretion. This notion of a political community seems narrow enough to exclude voluntary political associations, such as political parties, which are of no significance in the present context, and also broad enough to cover a variety of political organisations, such as dukedoms, states, empires, and confederations, including the European Union.

Political communities are real phenomena of the social world which may be described as empirical facts as well as results of social action which are subject to normative evaluation. Accordingly, it is necessary to distinguish between their actual development on the one hand, and their legitimacy on the other. Usually, the *development* of political communities is a complex social process driven by a variety of causes, including social power struggles revolving around partial

interests rather than reasonable arguments. Yet, in whatever way a political community may actually develop, it needs a sufficient degree of *legitimacy* in order to maintain its existence. A political community's demand for legitimacy manifests in diverse *normative claims* which are raised vis-à-vis its order: first, the claim of its representatives and officials to the binding force of their decisions; second, the claim of its members and denizens to the appropriateness of its norms and practices; and, third, the claim of its neighbours and surroundings to the bearableness of its external effects (see Kliemt 1985).

The concept of legitimacy, however, possesses a notorious ambiguity according to which it may be interpreted in a descriptive as well as in a normative sense. Consequently, the question of the legitimacy of political communities may take two different forms: on the one hand, the *empirical* question of whether a political community is actually accepted by the relevant groups, and, on the other, the *normative* question as to the conditions under which a political community, if at all, appears acceptable for good reasons (cf. Kliemt 1980, 32ff.). In the following, I am going to deal with the second, normative question from two perspectives, a general and a particular perspective. First, I want to identify the general requirements which any political community ought to meet in order to be deemed legitimate; then, using this as a basis, I will discuss the particular case of the legitimacy of the European Union.

2. The Legitimacy of Political Communities

2.1 Fundamentals of the Legitimacy of Political Communities

In order to make the subject of my following considerations a bit clearer, I should point out the fact that descriptive and normative legitimacy, in spite of their conceptual difference, are interrelated. A political community has *actual legitimacy*, if it finds acceptance on the part of its members and neighbours that is sufficient for its long term existence (see Weber 1972, 122ff.). The fundamentals of this legitimacy are not appropriate normative standards, but the actual beliefs and attitudes of the community's officials, members and neighbours, regardless of whether these beliefs appear rational or irrational from a critical viewpoint. An enlightened public, however, will enter into a reflective discourse in order to scrutinize these beliefs regarding their reasons. As a result, people may be inclined to adjust their actual beliefs to those which they deem generally acceptable after careful consideration. This raises the question as to the normative requirements that a political community has to meet in order to be acceptable to its members and neighbours. This question is about a community's *normative legitimacy*, its acceptability in the light of reasonable normative standards (see Kliemt 1985, 223ff.).

The *normative standards* for the evaluation of social affairs and orders in general and political communities in particular may be divided into three categories which, by and large, run parallel to Kant's well-known distinction be-

tween technical, pragmatic, and moral guidelines of human conduct: efficiency, common good, and morality or justice (Koller 2002, 44ff.). Let me explain my understanding of these concepts briefly.

From the viewpoint of *efficiency*, social affairs, practices and orders are judged with regard to their *utility* in the light of the *actual preferences* of the individuals concerned in the context of the respective *status quo*. Although there is no complete agreement on how individual preferences may be aggregated to a generally collective preference function, two criteria of social efficiency appear highly plausible and are widely accepted: first, the *Pareto-Principle*, according to which a social state of affairs is deemed efficient if it cannot be changed in a way that is to the benefit of at least one of the individuals concerned without thereby worsening the situation of others; and, second, the *Kaldor-Hicks-Principle*, which identifies a state of affairs as efficient if this state, compared with its feasible alternatives, makes some individuals so much better-off that they could compensate all those who fare worse (Buchanan 1985, 4ff.; Coleman 1988, 67ff.).

In contrast to efficiency, the *common good* is usually conceived of as the collective interest or welfare of a community as a whole rather than a mere aggregate of the utilities of its individual members. Thus, considerations of common good require an *impersonal perspective* that abstracts from the actual preferences of individuals and aims to judge communal practices and projects in the light of well-considered shared interests of all members, including future generations. The question as to the standards which may guide these considerations, however, is pretty controversial and unclear (Koller 2002). Nevertheless, there seem to exist some widely acknowledged features of a community's well-being that may serve as middle-range indicators of common good: its *self-assertion* within its social and natural surroundings, and its social *cohesion* which requires a basic consensus on the main principles of its social order. Admittedly, these features are very vague and open to various interpretations.

Considerations of *morality* and *justice* attempt to judge social affairs, practices and orders regarding their *general acceptability* to all people concerned from an *impartial point of view*. Thus, the starting point for moral considerations is a presumed *initial situation of equal standing* (rather than the status quo), and their measure of evaluation is the *generally shared basic interests* of the people concerned, such as their basic needs (rather than their actual preferences). The resulting normative standards may roughly be divided into two kinds: on the one hand, the precepts of *universally binding morality*, which generally apply to all humans vis-à-vis each other, and, on the other hand, the requirements of *justice*, which always refer to certain constellations of social interaction and, therefore, generate duties and rights only for those people who are involved in these constellations. In fact, there is a large variety of such constellations and corresponding demands of justice. In order to illuminate them, it is helpful to differentiate between various kinds of justice each of which applies to a particular elementary form of social action. In my opinion, there are good

reasons for a classification into four different kinds: distributive, contractual, political, and corrective justice (Koller 2003, 238f.).

Distributive justice applies to social affairs where a number of people have a common claim to certain goods or a common obligation in view of particular burdens. Such affairs—let us call them *communal relationships*—require a just distribution of the goods or burdens under consideration, a distribution that is acceptable to all parties involved from an impartial point of view. The basic demand of distributive justice is that all members of a community ought to have an *equal share* of the respective goods and burdens unless there are generally acceptable reasons for an unequal distribution.—*Contractual justice* refers to *voluntary exchange relationships*, i.e. agreements among independent individuals on a reciprocal transfer of private goods or services. It demands that such agreements are to the benefit of all parties involved. This requires *fair exchange conditions*, which particularly include the following: that all parties are sufficiently informed about the relevant facts and capable of rational decision so that they can pursue their well-considered interests, that the agreements do not come about through misleading and fraud, and that no party has the power to dictate the terms of exchange exclusively.—*Political justice* focuses on *power relationships*, i.e. the use of authoritative power backed by force. In order to be just, such relationships must be *in the well-considered interest of all parties*, including the governed, which requires that any authoritative power must be aimed at legitimate ends and exercised in an impartial way based on general rules.—*Corrective justice* is tailored to *wrongness relationships*, i.e. situations resulting from a wrongdoing which requires appropriate correction. In general, there are two types of corrective measures, namely compensation and punishment, each of which is subject to various requirements of *proportionality*.

It is clear that the three sorts of normative considerations—efficiency, common good, and morality, including justice—are not separate, but different partial aspects of a *comprehensive evaluation* of social affairs. This leads to the question as to how they are related to each other and how they may be combined. This question is particularly important if the various aspects are in conflict rather than leading to the same results. For such cases, there is a simple rule. It says that the fundamental requirements of morality and justice have priority over the common good, and that significant needs of common good ought to take precedence over efficiency. This rule, which is widely acknowledged in principle, even though not always easily applicable in practice, can be explained by the fact that considerations of morality and justice usually have a much weaker motivational force than the needs of the common good, which themselves are actually often dominated by the striving for efficiency. This order of the different aspects as to their motivational strength makes it necessary to reverse their normative ranking order. Otherwise morality and justice would remain completely ineffective, and also the common good would be in a difficult position (cf. Kliemt 1990, 25ff.). The *priority of morality and justice* provides me with a good excuse so that, in the following, I will leave efficiency and common good aside and mainly concen-

trate on morality and justice. On this point, I now turn to the issue of the moral requirements that a political community must meet in order to be legitimate.

2.2 Requirements of the Legitimacy of Political Communities

The search for the conditions under which political communities, i.e. their orders and practices, may be deemed to be legitimate presupposes the idea that the *existence* of such communities is not merely an empirical fact, but *normatively acceptable* too. This raises the more fundamental question as to the justification of the formation of relatively independent and separate societal communities. Since I cannot enter into a thorough discussion of this question, I shall restrict myself to a brief sketch of my position. In my view, the formation of political communities is a sort of ‘moral division of labour’ which people deploy in order to cope with problems of collective action, because personally or locally limited social unions enable them better than unrestricted relationships to establish social arrangements that effectively enforce individual rights and duties and facilitate generally beneficial projects of social cooperation (Koller 2007).

Moral division of labour means that people enter into particular social networks which endow them with *specific moral rights and duties* towards each other, rights and duties which exceed the fully universal moral precepts that apply to all individuals regardless of their social relationships. A paradigm case of such a network is a family whose members owe to each other a much greater extent of care and support than strangers. So the moral division of labour aims at supplementing the precepts of universal morality, which cannot demand very much, with additional and more demanding duties applying to individuals involved in special relationships in order to help them to cope with their existing problems through mutually beneficial arrangements of social cooperation. A common and expedient practice for achieving this goal is the formation of *communities* which oblige their respective members to mutual solidarity and, thereby, also dissociate themselves from their social surroundings. Of particular importance are *political* communities that differ from other forms of community by the fact that they dominate most other communities within their territorial domain due to their far-reaching powers of compulsory regulation of social affairs. Understood in this way, the plurality of separate political communities, into which the social world is divided, is not illegitimate *per se*, but may even be required from a moral point of view (Koller 2001). This thesis, however, does not imply that all actually existing political communities are legitimate. Their normative legitimacy depends on more substantial requirements.

In this context, I would like to emphasize again that a political community’s legitimacy has two sides: an internal and an external side. A community’s *internal legitimacy* is the *acceptability of its basic order to its members*. I assume that, today, it is widely agreed on that a political community, in order to be acceptable to its members, has to satisfy the requirements of efficiency, common good, and justice at least to a certain extent, even though the interpretation of these requirements may greatly diverge. By contrast, the *external legitimacy* of

a political community is the *defensibility of its practices vis-à-vis its social surroundings*, particularly other political communities and their members. However, the question as to whether political communities, especially states, require external legitimation is a contested issue. Even though most authors seem to be inclined to take an affirmative position, there are still some advocates of 'international realism' who think that the external behaviour of states is neither capable nor in need of any normative justification (cf. Donnelly 1992). I want to plead for a *differentiated moralism*, which, in principle, affirms the need for an external legitimation of political communities within certain limits (cf. Lord 2005).

I just want to mention two reasons for the contention that states, with regard to their behaviour towards other nations, are subject to certain demands of morality and justice. First of all, when we look at the *real practice of political discourse*, it turns out that political communities are usually judged not merely with regard to their internal affairs, but also in view of the external effects of their practices, even though the evaluations of their members often differ from those of the outsiders. For example, the rulers of a state who wage a war against another state habitually justify this step by arguing that it was not only necessary to protect their country's legitimate interests, but also provoked through the aggressive behaviour on the part of the other state. Likewise, those who condemn a state that wages a war usually accuse its rulers not only of the sacrifices they impose on their own population, but also of the fact that they violate the legitimate interests of the opposing nation. Secondly, it appears obvious that a state of nature in the international sphere, i.e. a state of permanent strife and insecurity resulting from an anarchical system of sovereign states, is a great moral evil which ought to be counteracted as far as possible through an effective international order. Even though the voice of morality is certainly not strong enough to initiate such an order, it is indispensable, since morality and justice are needed to articulate the *ideal of a peaceful and just world* as a guideline for endeavours to achieve a better global order. Moralising international politics, however, has certain limits too. In my view, it cannot be reasonably expected of a nation to comply with demands of international morality and justice that would be binding under the ideal condition of their general compliance, if, by doing so, this nation would have to sacrifice its fundamental interests, such as its interests of self-preservation and self-assertion against international competition (cf. Buchanan 2004).

On the basis of these considerations, I want to formulate the moral requirements of the legitimacy of political communities in a first approximation quite generally as follows: A political community is *normatively legitimate*, if and insofar as its essential rules, institutions, and practices, scrutinized from an impartial viewpoint, are (i) *internally acceptable* in the sense that they are to be accepted by each member as binding, and (ii) *externally defensible* in the sense that they cannot be reasonably rejected as impermissible by the community's social surroundings. Since these requirements can be met to varying degrees, they are to be understood not as strict conditions, but rather as *regulative ideas*,

on the basis of which a political community may be judged as more or less legitimate or illegitimate. Of course, one's judgement will highly depend on one's understanding of the requirements, which, admittedly, are pretty vague and abstract. In order to explain my own understanding briefly, I am going to propose two possible interpretations of each requirement: first, a highly demanding interpretation as a *normative ideal*, and, second, a much weaker interpretation as a *minimum standard*.

A political community's *internal acceptability* requires that its basic rules, institutions and practices are in the well-considered interest of all members. In other words, a political community is internally acceptable if its order appears better or at least not significantly worse for each of its members than any feasible alternative when considered from an informed and impartial viewpoint. I assume that such an order, in the *ideal case*, would have to accord with all plausible principles of efficiency, common good, and morality, including the fundamental demands of *social justice*, namely legal equality, civil liberty, democratic participation, equal opportunity, and economic equity (Koller 2003). As I interpret these demands, they cannot easily be met. In fact, most political communities, including presently existing states, do not even come close to them. Anyway, since it does not make much sense to raise the threshold of legitimacy to such a high level that it never will be met, it appears necessary to weaken the requirement to a degree that can be demanded *realistically*. I think there is one plausible and widely acknowledged *minimum standard* that any political community ought to satisfy in order to be legitimate: it must effectively guarantee the fundamental *human rights* of its members, including their social and economic rights (see Kliemt 1988; 1995, 75ff.).

The *external defensibility* of a political community means that its practices appear to be tolerable for other communities and their members. This requires that these practices do not have negative external effects that appear impermissible in consideration of the interests of all people concerned from an impartial point of view. So a community's practices must be generalisable in the sense that they appear generally acceptable, even if they were adopted by all communities. I assume that this requirement, in its *ideal* interpretation, implies the following demands of *international justice*: respect for the equal political autonomy of other nations to the extent that such autonomy appears generally possible; participation in impartial international institutions which, as far as possible, work to ensure the peaceful resolution of international conflicts and the protection of human rights all over the world; compliance with the principles of fair trade so that all nations can derive appropriate benefit from international markets; and limitation of the consumption of natural resources to an extent that is compatible with their sustainable use to the benefit of all people, including future generations. In reality, however, we have become accustomed to the fact that all these requirements are frequently neglected by virtually all nations, if they are able to do so. Nevertheless, I suppose, most people would agree that a nation that wants to be acknowledged by others as legitimate has to comply with some *minimum standards*, including the following: it must not pursue a foreign

policy that qualifies as colonialist or imperialist, not promote or support foreign governments that excessively violate the human rights of their denizens, and not make use of extremely unfair practices of international trade at the expense of other people.

So much for the requirements of legitimacy of political communities. Even if my sketch may have provoked more questions than it has provided answers, it should give an approximate impression of my approach to political legitimacy. So I hope that it provides a sufficient basis for my following attempt to scrutinize the legitimacy of the European Union.

3. Legitimation Problems of the European Union

3.1 The Internal Legitimacy of the European Union

In this context, it is neither possible nor necessary to recapitulate the development of the European Union (see Arndt 2006, 9ff.; Cini 2007, 13ff.). In order to avoid any misunderstanding, however, I would like to mention that I am using the term *European Union* (EU) not in its strictly legal sense, but, in accordance with ordinary language, in the broad sense which refers to the entire system of cooperation among European states that has developed since the *Treaty establishing the European Coal and Steel Community* in 1951 with all its regulations, institutions, and procedures (see Arndt 2006, 2).

The project of European integration derives its enduring attractiveness and gravity mainly from two driving forces that, by and large, operate in harmony: These forces are, on the one hand, the manifest interest of the countries involved in taking benefit from the establishment of a common market, and, on the other, the noble ambition to overcome the traditional rivalry and often bloody conflicts among European nations through a stable order of peaceful cooperation. Both motives already appear in the *Paris Treaty* of 1951, whose preamble declares that the contracting parties were “convinced that the contribution which an organised and vital Europe can make to civilisation is indispensable to the maintenance of peaceful relations”, and that, furthermore, they were “anxious to help, by expanding their basic production, to raise the standard of living and further the works of peace”, finally resolving “to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared”. This declaration, if taken seriously, is a paradigm case of the justification of a political community that accords to the requirements of legitimacy previously mentioned, covering both the internal and the external aspect.

In the course of its ongoing widening and deepening, the EU has successively set itself more far-reaching goals, that may roughly be divided into two sorts: political and economic objectives. The *political objectives* include in particular the maintenance of peace, the preservation of liberty, democracy, and the rule of

law, the protection of human rights, cooperation in combating criminality, and the striving for a common foreign and security policy. Among the constantly expanding number of the EU's *economic objectives* we find, without regard to their chronological and systematic order, the following: establishing a free trade system, preserving rural regions, creating a single economic market, achieving a harmonious and sustainable development of all member countries, stimulating employment, ensuring sufficient social security, enforcing gender equality, fostering economic growth, increasing the competitiveness of Europe vis-à-vis other developed regions, protecting the environment, safeguarding the quality of life and social cohesion, fostering friendship and solidarity among European peoples, and promoting education and research (cf. Urwin 2007; Phinmore 2007).

Unlike previous forms of large political communities, whose emergence was almost always driven forward by means of military force, the community of European states has come about exclusively through *voluntary contractual agreements* concluded by the participating states in their own well-considered interest. A further significant novelty is the *openness* of the EU to all European countries that meet the economic, political, and legal prerequisites of membership. Up until now, the EU has demonstrated a remarkable capability for adjusting its institutional system to the growing demands of regulation resulting from its widening and deepening. Through a sequence of fundamental treaties, such as the *Treaties of Rome* (1957), the *Treaty of Brussels* (1965), the *Single European Act* (1986), the *Treaties of Maastricht* (1992), *Amsterdam* (1997), *Nice* (2001), and, perhaps, the recent *Treaty of Lisbon* (2007), it has developed a rather complex system of institutions and procedures that is certainly not perfect, but, by and large, rather effective. An important part of this system, for example, is the *European Court of Justice* which has taken the role of a rather powerful independent guardian of European law; and there is also some prospect that the *European Parliament* may develop into a stronger democratic counterweight to the *European Council* and the *Commission*. Last but not least, the entire system appears to be based on principles which, in theory, appear well-founded, such as the *principle of subsidiarity* as a guide-line for the division of responsibilities among the EU and its member states, and the *supremacy of the Community law* over national law that warrants the legal unity of the EU (Holzinger et al. 2005, 19ff.; Arndt 2006, 41ff.; Cini 2007, 137ff.).

In consideration of these facts, it is fair to regard the EU as a highly successful venture of political community formation. In my opinion, its most significant *merits* with regard to its *internal affairs* lie in the following policy areas: (a) peace, human rights and security, (b) economic integration and market order, and (c) culture and identity. For the sake of brevity, I shall just recount what I deem to be the main merits of the EU in a shorthand fashion.—*Peace, human rights and security*: The EU has developed an effective system of peaceful conflict resolution among its members through procedures that combine the search for compromises with binding decision-making; it has improved the human rights by obliging its member states to comply with the European Convention of Human Rights; it has created a common citizenship that grants all

citizens a number of rights, including the right to free movement throughout the Union; it has diminished the previous economic inequalities among its member countries through the single market as well as redistributive measures; and it also has taken successful steps to improve law enforcement and criminal prosecution by strengthening its system of *Police and Judicial Co-operation in Criminal Matters* (Arndt 2006, 141ff.; Greer 2006, 47ff.).—*Economic integration and market order*: The EU has been greatly successful in creating a single market whose well-known four freedoms (goods, workers, capital, and services) increase competition and thereby stimulate economic efficiency and growth; and it has issued a largely effective order of market competition that, by and large, is equally enforced in all member states (Arndt 2006, 179ff.; Egan 2007).—*Culture and identity*: The EU has made great efforts to promote and strengthen the awareness of a common European culture and identity through arranging and supporting contact, exchange programs and cooperative networks among citizens of different European countries on many levels; and it has facilitated the emergence of a European civil society by stimulating an enormous proliferation of associations and networks among people from all over Europe concerned with manifold political, economic, social, and cultural issues (McLaren 2007).

These achievements, however, should not blind us to the fact that the EU, as far as its internal legitimacy is concerned, does suffer from significant *deficits* too (see Follesdal 2005). These include some control deficits, the well-known democratic deficit, and, in my opinion even more important, a gross social deficit. Since these shortcomings have been extensively discussed in public, I may restrict myself to a brief summary.

Control deficits: The efficient functioning of the institutional system of the EU has been increasingly weakened through its successive widening, because its central institutions, particularly the European Council and the Commission, have gradually been impaired in their capability of decision-making by the growing number of member states. In this respect, the EU has actually become *too large* already. After the failure of the *Treaty Establishing a Constitution for Europe* and the current set-back of the *Lisbon Treaty*, it remains an open question as to whether the EU will be able to achieve a new institutional arrangement which may cope with this problem. On the other hand, however, the EU also appears *too small* in face of the growing political challenges that have resulted from the ongoing process of *globalisation*, such as the destruction of the natural environment in general and global warming in particular, the worldwide migration streams, and the decline in wages, working conditions and social services resulting from international economic competition. In view of these challenges, the EU will have to increase its willingness to join suitable forms of international cooperation and global governance that may be capable of dealing with such matters. Apart from these major control deficits, the EU may also be blamed for some minor failures of its internal politics, such as its tendency for excessive regulation in order to standardize the markets of goods and services, while it has been largely ineffective in setting uniform standards in the spheres of labour, social security, and taxation. An especially horrific example is the Euro-

pean *agricultural policy* which is not only absurd from the viewpoint of economic efficiency, but also ecologically problematic and indefensible in the international context. There is some hope, however, that this policy will be changed in the near future.

Democratic deficit: The debate about this issue is so wide-spread that it will suffice to recall the major concerns. One is that the EU is *too distant from its citizens* in the sense that its decision-making processes are not subject to an informed and critical public discussion, and its institutions are doing too little to convey its decisions and activities to the citizens. Another, closely related point maintains that the unequal strength of the lobbies who exert an influence on the EU institutions behind the scenes lead to a *biased preference* for the interests of enterprises, business-people, and well-off groups in comparison with those of workers and ordinary people. Furthermore, there is the complaint that the division of powers among the European Commission and the Parliament is highly unbalanced at the expense of democratic participation, so that the populace has little reason to pay attention to the Parliament and is even discouraged from being committed to European politics at all. Insofar as these concerns are true, which they certainly are to a certain degree, one may wonder whether it is possible to cope with the democratic deficit of the EU through a reform of its institutions alone, without the existence of a strong *European civil society* that, as a critical public, seems to be necessary in order to make democracy work on the European level (see Follesdal 2006; Holzinger et al. 2005, 89ff.; Eising 2007; Chryssochoou 2007; Haller 2008).

Social deficit: In my view, the most significant shortcoming of the present stage of the European integration is the discrepancy between the highly advanced development of the common market on the one hand, and the *insufficient cooperation in the spheres of social security, labour law and tax policy* on the other. Whereas the member states have always succeeded in agreeing on the steps leading to a single market, such as the opening of their national economies, the liberalisation of economic competition, the privatisation of public companies, the standardisation of their finance policies, and the establishment of a common currency, they have been greatly ineffective in issuing binding *minimum standards concerning the protection of workers, social security and taxation* (Holzinger et al. 2005, 181ff.; Giubbione 2006; Falkner 2007). Consequently, the member states have been exposed to an intensifying struggle to maintain the competitiveness of their national economies, which has not only weakened the position of employees and minor business people, but also undermined the financial basis of national social security systems. As a result, the large companies have achieved rapidly growing profits, that have lead to an enormous increase of income for well-off groups, particularly investors and managers, while the lower classes, such as workers, employees, and many ordinary people, have experienced significant losses through their shrinking real incomes, the weakening of workers' rights, the diminishing bargaining-power of trade unions, the reduction of social transfer payments and public services, the social exclusion of low-qualified people, and the failing integration of immigrants (Attac 2006).

Even though these results do not provide a sufficient reason for denying the internal legitimacy of the EU, they do necessitate a critical assessment of its past development to the effect that both its institutional order and its real practice call for correction. Now, I want to take a glance at its external performance.

3.2 The External Legitimacy of the European Union

Let me first recap the *declared aims* of the EU as to its external policy and its role in international affairs. In this context, it is useful to differentiate between two aspects: its general foreign and security policy on the one hand, and its commercial and trade policy on the other. As to its *general foreign and security policy*, the EU has always understood itself as an expanding peace project which, due to its efforts to strengthen liberty, legality and democracy in Europe, is intended to guarantee security and stability on the continent, and, thereby, contribute to global peace. More demanding objectives of foreign security policy have been beyond its reach, because it has lacked both the powers and the means for pursuing them. At the time being, however, there are growing tendencies to strengthen the *Common Foreign and Security Policy* of the EU, its second pillar, which is mainly directed towards achieving the following objectives: to safeguard the common values and fundamental interests of the Union, to strengthen both its own security and international security, to promote international cooperation, to develop and consolidate democracy, the rule of law, and respect for human rights (Howorth 2005; Arndt 2006, 309ff.; Dover 2007).

In contrast to its weakness in matters of foreign security policy, the EU plays a major role in the sphere of *foreign commercial and trade policy*, because it does not only obligate its member states to a *Common Commercial and Trade Policy*, but also represent them in these matters on the international level. In general, the trade policy of the EU has been devoted to the objective of driving forward the liberalisation of international trade and global markets through bilateral and multilateral agreements. So the EU is a very important player in the *World Trade Organisation* (WTO), where it is responsible for negotiating the international trading rules concerning goods (GATT), services (GATS), and intellectual property (TRIPs) on behalf of its member states (see Meunier and Nicolaides 2005). A main objective of the EU's declared foreign trade policy is to promote the economic development of poor countries through their preferential treatment. Accordingly, it has issued a number of special programs concerning trade with developing countries. One of them is the so-called *Generalised System of Preferences* (GSP) that aims to facilitate the import of particular goods from developing countries through a non-reciprocal reduction of tariffs. Furthermore, the EU supports the export of medicines to poor countries in order to make these goods available to their denizens at affordable prices, while its program *Everything But Arms* (EBA) limits the arms trade with those countries. Last but not least, the EU has declared it will submit its external trade to the consideration of social acceptability, environmental responsibility, and sustainable development (Edwards 2005; Smith 2007).

All these goals of the EU's foreign policy, including its foreign trade policy, appear defensible, as far as their form is concerned. They may even be taken as a model of how the justification of the external legitimacy of a large political community should look. And when the external policy of the EU is judged in the light of its real effects on the international order, it also seems to deserve a positive assessment. Its most important achievement is the fact that it has contributed significantly to the *maintenance of world peace* and the *international protection of human rights*. For example, there are good reasons to believe that, in the time of the Cold War, the EU was an important factor for the political stability of Western Europe, which itself was a precondition of the fact that a hot war could be prevented. In sum, there are at least three points that can be put forward for the merits of the EU in international affairs: first, its enormous *attractiveness* which has encouraged a great number of European states to transform their national political orders to democracy and the rule of law in order to qualify for the membership of the EU; second, its *exemplariness* as a successful model of regional integration of states, which provides a promising perspective also for other regions in the world; and, third, its important contribution to the *protection of human rights* as a result of the fact that the EU has obligated its member states to the compliance with the *European Convention of Human Rights* (Linklater 2005; Merli 2007).

Apart from these points, the EU plays a relatively useful role within the contemporary international system. As an "economic giant, political dwarf and military worm" (Edwards 2005, 61), it is highly immune to imperialist ambitions, while at the same time representing a certain counterweight to other global powers that tend towards a more aggressive pursuit of their national interests. Furthermore, it must be admitted that, in the context of the present international system, the EU by and large is a cooperative and reliable party that is not only committed to constructive participation in many international and global institutions, but also willing to take part in new forms of transnational politics in order to cope with urgent problems facing humankind, such as the *International Court of Criminal Justice* (Hill and Smith 2005, 388ff.; Holzinger et al. 2005, 215ff.).

On the other hand, however, the foreign policy of the EU also includes a number of *negative features* which diminish its claim to external legitimacy to a certain extent. The most problematic area is its *commercial and trade policy vis-à-vis poor countries*, that makes a mockery of its declared objective to support the economic development of these countries through their preferential treatment. In reality, its commercial relationships with developing regions greatly deviate from this objective: Like other wealthy regions, such as the USA and Japan, the EU has pursued mainly the interests of its own economy without caring about the legitimate interests of developing countries. I shall illustrate this assessment by a few exemplary observations, since I cannot discuss the matter in detail.

The questionable practice of the EU's foreign commercial and trade policy is clearly manifest in the context of the present *world trade system*. This system

is based on various sorts of international agreements which include, on the one hand, bilateral agreements among individual states, and, on the other, multilateral agreements in the context of the WTO, such as GATT, GATS, and TRIPs. I shall restrict myself to the latter. Even though the WTO grants each member state an equal vote, it is characterised by considerable differences of power between rich and poor nations resulting from their unequal means for representation, expertise, and lobbying. Accordingly, the economic superpowers, such as the USA and the EU, have much more influence on both the rules of international trade and the decision-making processes within the WTO than developing countries have. Due to this fact, the superpowers have succeeded in urging the developing countries to open their national markets for imports, while they themselves have maintained a number of arbitrary practices of protectionism, such as prohibitive tariffs and non-tariff trade barriers for finished products and manufactured goods from developing regions, as well as enormous subsidies for their own exports to developing countries (see Jackson 1997, 247ff.). That the EU has achieved a great mastery in using such practices has been revealed by a detailed inquiry by *Oxfam International*, which shows that, in the light of a *Double Standard Index* comprising ten criteria, the EU shields its market against imports from developing countries even more than any other rich nation, including the USA (Oxfam 2002, 95ff.).

As a result, the present world trading system operates to the benefit of the European economy, while it inflicts gross harm on the poor regions of the world. For it provides open access to their markets for European firms, while getting the national economies of the poorer nations into trouble, because the floods of cheap imports from Europe, supported by the EU through significant subsidies, are ruining the agricultural and industrial producers in poor countries. Furthermore, the EU's prohibitive tariffs and non-tariff trade barriers against the import of manufactured and finished products are preventing poor countries from developing their economies to a more advanced stage, so that they are forced to stick with selling raw materials and semi-finished products for little profit. Consequently, this system is a major cause of the fact that most of the world's poorest regions gain little benefit from the liberalisation of global markets or are even losing out because of it (Oxfam 2002, 64ff.; Küblböck and Strickner 2006).

There are also various complaints about further aspects of the European external economic policy which I can recount here in a shorthand fashion only: One complaint concerns the dubious role of the EU and its member states in the global finance institutions, namely the *International Monetary Fund* and the *World Bank*, whose lending conditionalities, devoted to the idea of free markets, often lead to disastrous effects on the economic and social development in borrowing countries because their governments, in order to comply with those conditionalities, are forced to take rigid cost-cutting measures in the provision of public goods on the one hand, and to open their markets for foreign companies on the other (Stiglitz 2002; 2003). Another criticism emphasizes Europe's share of the responsibility for the hopeless debt crisis from which many poor countries have suffered, which is due to the practices of the international credit

system that the wealthy nations manage in their own interest (Hertz 2004). Furthermore, one may also highlight the fact that all wealthy regions, including Europe, are causing considerable harm to poor peoples through their wasteful use of environmental resources without paying them appropriate compensation (Wuppertal Institut 2005). The EU can also be accused of its unwillingness to take sufficient measures against the often scandalous and exploitative practices of transnational companies of European origin in developing countries (Oxfam 2002, 175ff.). And perhaps, one should not forget the hostile and humiliating treatment to which the EU submits the citizens of its Eastern neighbour countries when they want to enter its territory.

4. Conclusion

My reflections on the legitimacy of the European Union lead to a mixed result. If the EU is judged against the background of the requirements of internal and external legitimacy mentioned in the first part, it can certainly be regarded, by and large, as a desirable and legitimate, perhaps even requisite form of political community building. Yet, the EU also contains a number of considerable deficits that undermine its legitimacy. Its internal legitimacy is particularly weakened through the growing social and economic inequalities that result from a biased politics of market liberalisation that is not backed by a supporting social policy. And the EU's external legitimacy is diminished through its unfair practices in its commercial and economic relationships with developing countries at the expense of the global poor.

References

- Arndt, H.-W. (2006), *Europarecht*, 8th ed., Heidelberg: C. F. Müller.
- Attac (2006), *Das kritische EU-Buch. Warum wir ein anderes Europa brauchen*, Wien: Deuticke.
- Buchanan, A. (1985), *Ethics, Efficiency, and the Market*, Totowa, NJ: Rowman & Allanheld.
- (2004), *Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law*, Oxford: Oxford University Press.
- Cini, M. (2007), *European Union Politics*, 2nd ed., Oxford: Oxford University Press.
- Chrysochoou, D. N. (2007), "Democracy and the European Polity", in: Cini 2007, 359–374.
- Coleman, J. L. (1988), *Markets, Morals and the Law*, Cambridge: Cambridge University Press.
- Donnelly, J. (1992), "Twentieth-Century Realism", in: T. Nardin and D. R. Mapel (eds.), *Traditions of International Ethics*, Cambridge: Cambridge University Press, 85–111.

- Dover, R. (2007), "The EU's Foreign, Security, and Defence Policies", in: Cini 2007, 237–252.
- Edwards, G. (2005), "The Pattern of the EU's Global Activity", in: Hill and Smith 2005, 39–63.
- Egan, M. (2007), "The Single Market", in: Cini 2007, 253–270.
- Eising, R. (2007), "Interest Groups and the European Union", in: Cini 2007, 202–221.
- Falkner, G. (2007), "The EU's Social Dimension", in: Cini 2007, 271–286.
- Follesdal, A. (2005), "The Legitimacy Deficits of the European Union", *The Journal of Political Philosophy* 14(4), 441–468.
- (2006), "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik", *Journal of Common Market Studies* 44(3), 533–562.
- Giubboni, S. (2006), *Social Rights and Market Freedom in the European Constitution. A Labour Law Perspective*, Cambridge: Cambridge University Press.
- Greer, S. (2006), *The European Convention on Human Rights. Achievements, Problems and Prospects*, Cambridge: Cambridge University Press.
- Haller, M. (2008), *European Integration as an Elite Process. The Failure of a Dream?*, London–New York: Routledge.
- Hertz, N. (2004), *I.O.U. The Debt Threat and Why We Must Defuse It*, London: Harper Perennial.
- Hill, C. and M. Smith (2005) (eds.), *International Relations and the European Union*, Oxford: Oxford University Press.
- Holzinger, K., C. Knill, D. Peters, B. Rittberger, F. Schimmelfennig and W. Wagner (2005), *Die Europäische Union. Theorien und Analysekonzepte*, Paderborn: Schöningh.
- Howorth, J. (2005), "From Security to Defence: the Evolution of the CFSP", in: Hill and Smith 2005, 179–204.
- Huffs Schmid, J. (2006), "Mailand, Maastricht, Lissabon. Das Scheitern der neoliberalen Integrationsstrategie", in: Attac 2006, 72–92.
- Jackson, J. J. (1997), *The World Trading System. Law and Policy of International Economic Relations*, 2nd ed., Cambridge/MA–London: MIT Press.
- Kliemt, H. (1980), *Zustimmungstheorien der Staatsrechtferigung*, Freiburg–München: Alber.
- (1985), *Moralische Institutionen. Empiristische Theorien ihrer Evolution*, Freiburg–München: Alber.
- (1988), "Ethische Grundlagen der Sozialstaatlichkeit. Eine interessenbasierte Rechtfertigungsskizze", *Zeitschrift für Wirtschaftspolitik* 37, 283–298.
- ([1987]1990), "On Economics and Ethics", in: idem, *Papers on Buchanan and Related Subjects*, München: Accedo, 9–36.
- (1995), *Solidarität in Freiheit. Von einem liberalen Standpunkt*, Freiburg–München: Alber.

- Koller, P. (2001), "Die moralische Relevanz staatlicher Grenzen", in: K. G. Ballestrem (ed.), *Internationale Gerechtigkeit*, Opladen: Leske + Budrich, 109–130.
- (2002), "Das Konzept des Gemeinwohls. Versuch einer Begriffsexplikation", in: W. Brugger, S. Kirste and M. Anderheiden (eds.), *Gemeinwohl in Deutschland, Europa und der Welt*, Baden-Baden: Nomos, 41–70.
- (2003), "Soziale Gerechtigkeit—Begriff und Begründung", *Erwägen Wissen Ethik* 14(2), 237–250.
- (2006) (ed.), *Die globale Frage. Empirische Befunde und ethische Herausforderungen*, Wien: Passagen.
- (2007), "Solidarität und soziale Gerechtigkeit", in: H.-J. Große Kracht, T. Karcher and C. Spieß (eds.), *Das System des Solidarismus*, Berlin: LIT, 179–205.
- Küblböck, K. and A. Strickner (2006), "WTO und Entwicklungszusammenarbeit. Die EU als globaler Freihändler", in: Attac 2006, 269–283.
- Linklater, A. (2005), "A European Civilising Process?", in: Hill and Smith 2005, 367–387.
- Lord, C. (2005), "Accountable and Legitimate? The EU's International Role", in: Hill and Smith 2005, 113–133.
- McLaren, L. (2007), "Public Opinion and the EU", in: Cini 2007, 375–390.
- Merli, F. (2007), "Rechtsprechungskonkurrenz zwischen nationalen Verfassungsgerichten, Europäischem Gerichtshof und Europäischem Gerichtshof für Menschenrechte", in: *Bundesstaat und Europäische Union zwischen Konflikt und Kooperation, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 66, 392–422.
- Meunier, S. and K. Nicolaidis (2005), "The European Union as a Trade Power", in: Hill and Smith 2005, 247–269.
- Oxfam (2002), *Rigged Rules and Double Standards. Trade, Globalisation, and the Fight against Poverty*, Oxford: Oxfam International.
- Phinnemore, D. (2007), "Towards European Union", in: Cini 2007, 30–45.
- Smith, M. (2007), "European Union External Relations", in: Cini 2007, 225–236.
- Stiglitz, J. (2002), *Globalization and its Discontents*, London: Penguin Books.
- (2003), *The Roaring Nineties*, London: Penguin Books.
- Urwin, D. W. (2007), "The European Community: From 1945 to 1985", in: Cini 2007, 13–29.
- Weber, M. (1972), *Wirtschaft und Gesellschaft*, ed. J. Winckelmann, 5th ed., Tübingen: Mohr Siebeck.
- Wuppertal Institut (2005) (ed.), *Fair Future. Begrenzte Ressourcen und globale Gerechtigkeit*, ed. Wuppertal Institut für Klima, Umwelt, Energie, München: C.H. Beck.