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INTERNATIONAL QUARTERLY EDITION

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Events across the Atlantic have evoked mixed feelings in Europe. For a long time, many people on the Old Continent believed that the United States was a kind of laboratory in which they could observe their own future in the making. But the turmoil of the past four years – intensified by the excruciating months before and after the presidential election – have turned that belief on its head. Now pundits on every news channel here are trying tirelessly to analyze and debate how this venerable democracy and its formerly so lively civil society took such a wrong turn. How did the USA end up in its present state of division and disorientation?

Will a new president's four-year term in office be enough to heal the wounds? We wish Joe Biden and Kamala Harris the best of luck; above all we pledge our support for American society as it tackles this Herculean task.

Europeans are hoping for a constructive reset in their partnership with the USA. This is the case even though it is becoming clearer all the time that in the emergent new world order the EU will have to play a much larger and more independent role than before. President Macron has talked about strategic autonomy; however, there should be no doubt that the world's future can be assured only through a solid multilateralism built on trust – one in which the USA again will need to play a crucial role. But in the meantime, the EU will have to work through its own problems. Among other topics, this issue highlights some questions concerning the social dimension of the EU as well as its institutional underpinnings. It has become ever more difficult to overlook the Union's serious deficits in social welfare, especially when they worsen inequality in the living conditions of its members and stir discontent with the services that the Union provides to its weaker countries. The new political initiative to revitalize the Charter of Social Rights as a basis for every sphere of policymaking represents a significant step forward. Still, the subordinate role of social desiderata in the Union's treaties poses a formidable barrier on the road toward genuine social equalization, which in turn seems indispensable to achieving durable pan-European solidarity. In any case, based on the Old World's history and its numerous crises, European social democracy has concluded that there cannot be stability in any society where social inequality is out of control, causing a large and perhaps growing segment of the population to experience socio-economic insecurity. That is an insight that might prove as useful to the New Continent as it has been to the Old.



Thomas Meyer

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The (Un)social EU and its Hideous Birth Defect

If we are to believe the 2009 Lisbon Treaty's account of the European Union's main declared goals and pay heed to its own normative political self-portrait as well as to the issue areas that constitute its primary responsibilities, then as an institution it would have to be a well-developed social democracy offering a comparable level of service-provision throughout all of its member-states. That is the unequivocal aspiration of the Treaty; indeed, at least on paper, its spheres of responsibility broadly conceived and the fundamental rights it recognizes all trace back to that same set of goals. But even a cursory glance at reality shows that the very opposite is true: Despite the ever-renewed great debates and initiatives on this topic, the Union is still miles away from being a Europe-wide social democracy. In their everyday lives the citizens of the socially best-endowed countries have scarcely any inkling of this gap between reality and aspiration. It is only the ebb and flow of labor migration from eastern and (especially) southeastern Europe and the social misery of countries like Greece in the aftermath of the euro crisis that occasionally give the broad public a glimpse of this deficit, which is in truth life-threatening for the EU. Only during really major crises, when the continued existence of the Union itself hangs in the balance, does this deficit become an issue for Europe as a whole. But then soon enough the issue recedes into the shadows once more. In this way the EU – to the dismay of its friends – seems to offer solid support to the oft-heard polemical remark that it has gotten itself into a neoliberal jam.

What are the causes of this basically absurd predicament? They are far from being political coincidences. The institutional edifice of our European »regional state« (Vivien A. Schmidt), which specifies almost everything down to the last detail, is based on a foundational treaty that makes the regrettable tendencies noted above almost inevitable. The treaty provides for a »social pillar« that is given major billing in the EU's list of principles and declaration of goals. Yet it delegates the realization and detailed design of that social pillar entirely to the emergence of consensus and qualified majorities in the Council of Ministers for Social Affairs. In other words, the protection of social rights and the fate and specific provisions of social security are always dangling from the silken thread of a rather unlikely convergence of the member states on all the decisive issues involving the social welfare state. That convergence is improbable for many reasons, including everything from regional and electoral politics to ideology. In sharp contrast to that state of affairs, when it comes to the goals and procedures intended to fulfill the liberal pipedream of a unified market covering the entire Union, everything is so precisely nailed down in its constitution that it seems almost foreordained that every last obstacle standing in its way automatically will be eliminated. In case of doubt, that quasi-automatic result will follow from the interaction between the Commission and the European Court of Justice, which is hermetically sealed off against outside influences. The airtightness of those proceedings is thus assured even when the EU Parliament or some recalcitrant member-country would prefer

to protect a given economic sector from external competition in order to serve social policy interests.

The former judge on the Federal Constitutional Court and expert on Europe, Dieter Grimm, has demonstrated convincingly that this kind of legal self-immunization of market dominance has been consolidated by two trends that would defy correction today, even though they insulate, once and for all, vital issues concerning the EU's identity from transparent political processes. For one thing, all of the rules concerning the common market in Section II of the European Treaties (Treaty on the Functioning of the European Union), which really should have to remain accessible to the ongoing legislative process, are elevated to the rank of constitutional law. The European Court of Justice »normalized« and cemented the implications of this viewpoint in two high-profile cases from 2008, both of which touched on labor law and neither of which was contested by the member-countries.

The architecture and design of the EU thus ensure that the European house has been plunged into a serious predicament associated with its built-in economic liberalism. The actual drawback of this grievously flawed state of affairs is that it cannot be corrected even if the EU were to democratize further by expanding considerably the rights of its parliament and then generating lopsided majorities in favor of a more robust social welfare state across the entire Union. That is the case because parliament lacks access to the Union's »constitution.«

Can the Union escape from this trap, which otherwise could mean its demise? Surely it has become obvious in the course of the last few problem-plagued years, which have taken us from the euro crisis to the corona pandemic and past all of the other stumbling blocks in between, that there are increasing socio-economic disparities between the member states and that the latter have sapped the reserves of solidarity within the Union and shaken the underpinnings of its already ramshackle edifice. True, the grand euphoric goal of integration stipulated in the Treaties of Rome of 1957 – i.e., that the member countries should »converge ever more closely« – has gained official status in the Maastricht Treaty of 1993. Yet »social coherence,« the idea that the living conditions and social security of all Union citizens should approximate to one another enough so that solidarity can be assured, is constantly invoked. Indeed, it is also de facto the Union's life insurance policy. This much is certain: A common market that, instead of protecting people, mainly divides and winnows them out, will not be able to sustain the painstakingly attained community-building work over the long run. Any and every crisis to come will pose an existential threat to the cohesion of the whole edifice.

The main deficiency of the European constitution, the institutional asymmetry between what its »supranational« institutions are allowed to regulate on their own (Commission, Parliament, Court of Justice) and so-called »intergovernmental« matters that require the consent of the member-states was already codified unambiguously in the founding document of the Community, the Treaties of Rome. »Negative integration,« the creation of a single market via the dismantling of national borders and regulations, always has taken precedence over »positive integration,« or correction of that market though the expansion of social rules applied all across Europe

(Fritz W. Scharpf). Before the Treaty's text could be written back in 1957, the six founding members had to settle a dispute over the relationship between the market and social policy. The representatives of France pleaded for the most far-reaching commonality possible in the Treaty, to be attained through the adoption of binding regulations on social welfare policy. They argued that it would be dysfunctional for the common market if each country were allowed to determine for itself the level of its own social policies. The most generous countries, they urged, would be at a disadvantage in the competition over costs, for example on the issue of equality of the sexes and thus also of wage costs. The German representatives withheld their agreement, pointing out that, after all, every one of the member countries was an advocate of a social market economy so each of them could decide for itself how it wished to translate the additional economic gains from the enlarged market into social services. They reasoned that »ever closer convergence« of the community surely would not be able to call a halt at the threshold of social welfare policymaking. The Germans generally prevailed in their demand that the Treaty of Rome should grant the Union as little authority as possible over social welfare issues, yet that very success ended up dashing their hopes for the future. The reality is that social policy has remained the poor relation of the community's politics to this very day, just as it was from the very beginning: Despite much grandiloquent rhetoric about its goals, its actual resources are scanty.

The resulting balance sheet is dismayingly one-sided and unequivocal. The hundreds of social regulations that have been enacted basically all provide guarantees that there will be a single wage structure. That, in turn, is supposed to contribute to the smooth functioning of the common market. The list begins with gender equality, intended to prevent low wages for women. It continues with some very expensive provisions concerning health and safety in the workplace and guarantees of the freedom of movement of employees and of financial support for them. The package also includes mutual recognition of different training systems and professional qualifications, and covers even leaves of absence and paid vacations. All these items are good and worthwhile, but based on them alone European social policy does not even touch the core issues of equal social provision: leveling out social insurance across countries, legislating comparable minimum wages and unemployment compensation, and establishing basic social security, health insurance, and pension payments. Of course, no one should expect uniform social policies in the Europe of the 27, because the EU includes five different types of social welfare systems, each of which obeys its own logic. Nevertheless, in principle it should be possible to harmonize the outcomes in respect both to their scope and the relative level of service-provision in each case.

But that will not fly when it comes to the core issues of social security outside the world of work. But what stands in the way of pan-European convergence in social welfare? Besides the institutional framework we have already examined, there are several obvious factors that hamper the governments of the member-countries when they attempt to capitalize on the potential for consensus or qualified majorities in favor of a progressive social policy all across Europe. First, there is ideological

aversion felt by governments of a (neo-)liberal persuasion. Then the more generous (Scandinavian) countries worry that commitments at the EU level might later hem them in. Contrariwise, low-wage countries fear that costly EU regulations might sweep aside their modest cost advantages entirely. In addition, all of them figure that the voters will reward them for better social services in the next election, and they would rather cash in that reward in their own countries rather than see it evaporate in far-off Brussels. To extricate Europe in enduring ways from its institutional predicament requires nothing less than a fundamental revision of the European treaties. However, such a project unfortunately would confront the same obstacles that have already blocked generous social welfare policy.

As things now stand in the EU, there is ultimately only one promising way forward. We need political mobilization to make full use of the minimal maneuvering room available in the member-countries themselves and in the institutions of the EU. Recently, two such initiatives, both quite ambitious, have been launched in Brussels. First, in 2017, there was an effort to install a »European pillar of social rights« that would entail common self-imposed obligations on the part of the European Parliament, the European Council, and the Commission. Second, in April of this year, the Commission fired an opening salvo in support of a pan-European unemployment reinsurance scheme (SURE). If it should happen that both initiatives are carried through successfully and in the sense intended, then that would indeed be a major step forward that will ignite real hope.



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One Step Forward and Two Steps Back

The European narrative must be radically renewed

The European Union's proposed recovery plan (»Next Generation EU«), designed to help repair the consequences of the worst economic crisis since 1929, amounted to the unprecedented sum of around 1.5 trillion euros, following the positive outcome of the European Council deliberations of April 23. Furthermore, unusually, the plan has been incorporated into the Multiyear Financial Framework for 2021-2027, which was supposed to have been negotiated by the member-states in the summer of 2020. In line with the von der Leyen plan of May 27, 500 billion in subsidies, earlier announced by Angela Merkel and Emmanuel Macron on May 19, were to be supplemented by an additional 250 billion euros of conditional loans that would be financed on the global market.

But that is not the end of the story. Several more meetings of the European Council will be needed to achieve the requisite unanimity. Nevertheless, this important decision would signify a historic step forward in respect to European integration. Prior to the coronavirus crisis, debates about the EU budget moved in a narrow range between countries that did not want to contribute any more than 1.0 % of GDP and the most pro-European member countries which insisted on 1.2 %. Thus, the current political agreement stands in sharp contrast to the numerous crises endured by the Union (affecting the economy, social affairs, and migration) between 2010 and 2016, which brought disintegration and triggered an aggressive, extremist wave of populism.

Furthermore, because the new Commission Plan will not go into effect until 2021, the jockeying for position on recovery strategy tools is quite complex. For that reason, other measures already have been put in place this year: a precautionary line of credit (ECCL) from the already-existing European Stability mechanism (ESM) to shore up the health care system (230 billion euros), the new SURE unemployment insurance program which will provide financial support for reduced hours work (200 billion), the new guarantee fund of the European Investment Bank to aid small and medium-sized businesses (250 billion), and – last but not least – the European Central Bank's new quantitative easing policy (between 750 billion and 1 trillion). It looks as though the never-realized grand design of Jacques Delors for a »European Keynesianism« may be on track. But is it realistic to expect this great step forward towards a more united Europe eventually to reach its goal?

How did all this become possible? Certainly, the dismal story of Brexit was one essential prerequisite, while – paradoxically – the failure of the European Council in February was another. In its aftermath we witnessed a wide-ranging, successful mobilization of experts, intellectuals, and civil society, with outstanding personalities like Jürgen Habermas at the forefront, committed to a genuine turnabout. What is impressive here is that, in contrast to the prudence of the Juncker Commission, the new EU Plan is neither contingent nor full of unrelated but attractive ornaments, like a Christmas tree. It could strengthen the structural and load-bearing pillars of the Union for generations to come. This is especially true of the stabilizing role played by the EU budgetary policy for 2021–2027, the greening of fiscal policy, and parliamentary control.

Will the revived German-French leadership and the engagement of EU institutions be strong and mutually reinforcing enough to give Europe sufficient momentum to succeed? We should not fail to single out some of the leading figures of those key institutions: Ursula von der Leyen at the Commission; Christine Lagarde at the European Central Bank (ECB); David Sassoli in the European Parliament; and Charles Michel on the European Council.

Despite the consensual decision by the European Council in April, many skeptical opponents of European integration already have begun to work against it.

The most serious dangers in this regard come from right-wing nationalists and populists. The good news is that we now know how to weaken both opponents. The parties of the extreme right, discredited by nationalist rhetoric in northern and

southern Europe, appear traumatized, confused, and incapable of mounting a fight against the innovative decision in favor of a greener, more social, more solidarity-minded Europe. Hungary and Poland are on the defensive since they are not part of the euro zone. Nevertheless, the constant vilification of the EU and Germany in many countries, including by the Five-Star Movement in Italy (apropos of the migration crisis), might continue to have fallout upon public opinion. Thus, for example, the polling agency Eurobarometer discovered that China and the USA are considerably more likely to be perceived by Italians as aid-donors than is Europe! It is hard to say whether national publics such as Italy's have turned against Europe due to the real suffering of their populations or to the manipulation of opinion.

A progressive Italian government would have the courage to push back against the population's intensely hostile attitude toward the conditionality of EU programs. Such a government would take stock of where Italy stands today and address the ancient Italian bureaucratic muddle, which includes, but is not exhausted by, flight to tax havens. We should also remember that these deficiencies are not limited to southern Italy, as is often thought. And why shouldn't independent personalities (in Italy, for example, such as Mario Draghi, Ignazio Visco, and Mario Monti) be asked for advice so that they can act as a central oversight committee for the correct and efficient use of European subsidies and loans?

Public debates reveal sharp differences between the member-states of the northern EU and their southern counterparts on the issue of how to pay for the rescue package. It would be a mistake to reduce this division to a split between net payers and net recipients, given that Italy has been a net contributor since the eastern expansion began in 2004. By the same token, it is unfair to portray the Nordic countries as misers, since they are the ones most committed to freedom, transparency, social welfare, and peace. Yet in contrast to the asymmetric financial crisis of 2010-2016, it is impossible to hold any one European country responsible for the current symmetrical corona crisis, which was caused by a virus originating in China. Still, it is true that the consequences are asymmetric. For that reason perhaps, the argument that subsidies from the fund must flow to the hardest-hit areas and sectors and that long-term credits should be issued to make sure the already heavily-indebted southern countries don't bear an undue burden have not gone over well in Sweden, Denmark, Austria, and, most notably, the Netherlands.

These small but relevant member-states are facing a dilemma. They could support a stronger European Union, realizing that their economies will recover only if all of Europe recovers; in other words, they would understand that a continent-wide upturn is the only feasible political response to a dangerous global competition dominated by the USA and China. The other option is to give in to populist nationalism. It is possible that the right-wing Dutch liberal premier, Mark Rutte, expected this rejection of previously accepted commitments. He combines attraction to the neighboring United Kingdom with a domestic agenda shaped for more than a decade by national populism, all of this topped off by fear of the »other« Incidentally, the latter generalization does not apply to one member of Rutte's coalition government, the left-liberal party D66. Such a nationalist perspective is shared

by the conservative Austrian chancellor from the Austrian People's Party, Sebastian Kurz, even though his party is allied with the Greens. But it is astonishing to find two Social Democratic prime ministers, Kjell Stefan Löfven in Sweden (along with his finance minister Magdalena Anderson) and Mette Fredriksen in Denmark, who likewise refuse to take responsibility for Europe's post-corona recovery. Their apparent parochialism ignores the fact that the Commission's May 27 plan is not just about generosity, but also about their own national interest in averting a collapse of the single market. Even though they largely benefit from it, they forget that the attractiveness of the EU market is due to its 450 million consumers and the political will to maintain international autonomy (where it is emerging).

The nationalist temptation attracting certain social democracies in times of crisis is very troubling. If it should prevail, it would be the saddest news for the memory of Willy Brandt, Jacques Delors, and the many Scandinavian and European citizens who worked for decades to reconcile social democracy and the European Union. For that matter, many of the same people transformed the famed »Scandinavian model« into a powerful lever that they could use to shape a social, solidarity-minded, and more internationally independent EU. Weak and exhausted leadership cadres, inward-looking parties, fragile coalitions, and a growing populist menace make it harder for these »leaders« to resist the temptation to practice »welfare egoism,« a defensive and short-term trend that has been better managed in other countries, including Germany.

As yet there is no indication that the democratic nationalism of Johann Gottlieb Fichte or the social nationalism of Ferdinand Lassalle is being revived in Scandinavian garb. Still, we do seem to be witnessing an illusory throwback to pre-Bad Godesberg »national ways.« So, if the Party of European Socialists in the European Parliament is to be more than an empty shell in which the parties disagree even over fundamentals, it should at least summon up the courage to conduct an open internal debate.

The persistence of this trend would be very worrisome, since it would underpin a profound, sophisticated form of social democratic depoliticization, one that neglects the main stakes of the present hard times: to wit, getting conflict-laden globalization under control, a step that implies the economic survival of European unity, and dealing with an increasingly dangerous world – all dilemmas that can no longer be solved by relying on the old instrument of the nation state, not even in its strongest form. Today's national-minded social democrats may be recalling that some of the socialist leaders of the interwar era focused all their attention on the recovery of their national economies while ignoring the impending tragic global catastrophe. But unless their views and policies dovetail more closely with those of the German leadership, these myopic leaders might drift farther away from any political awareness of Europe and the world. This social democratic »depoliticization« – indifference to the main global political stakes – best illustrates what kinds of risks may arise.

Even though the historic turning-point toward greater European unity became possible due to the key role of the German coalition government and especially

the pressure exerted by the SPD, a third form of opposition is emerging from the complexity of German democracy. The German EU presidency in 2020 will face the challenge of grappling with this kind of opposition because von der Leyen's »unprecedented« stimulus initiative was approved by consensus. Now, the coalition is facing opposition not only from the far right, but also by counterforces from within the CSU and the FDP.

To the surprise of many who know Andreas Voßkuhle, his final decision as president of the German Constitutional Court on May 5 was clearly intended to set limits to the European project. To many pro-EU elites and to »ordinary« people in all the European countries (including Germany), it came as a shock, except to the Hungarian and Polish regimes as well as the extreme nationalist parties in every country, which of course welcomed it enthusiastically.

For comparative research on regional cooperation and/or integration, this is not surprising; instead, it offers an opportunity to clarify the institutional evolution of the EU. As far as the Constitutional Court in Karlsruhe is concerned, the EU is and must remain a confederation of sovereign states, which means that the »disproportionate« solidarity of the European Central Bank with other European nations violates the German constitution. ECB president Christine Lagarde has defended the independence of the ECB, a provision that – paradoxically – Germany itself demanded in the context of the treaty negotiations on the Economic and Currency Union and Maastricht (1988–91). And a formal reminder by the Von der Leyen Commission about the supremacy of the European Court of Justice was sent to the German Court. But none of that made much of an impression on the authors of the »verdict« of Karlsruhe.

It is true that the EU is not a federal state in the making. It is a regional association of neighboring states with certain federal and constitutional features entangled with intergovernmental bodies and procedures. Yet during the coming months this »verdict« will hover like the sword of Damocles over the entire EU recovery program. It can be addressed only by a clear expression of political will.

The numerous reactions of Germans and Europeans in a position to render judgments about the Karlsruhe verdict underscore its evident conflict with Germany's de facto leadership of the EU Council and EU Commission, which supports the innovative recovery policy via a more »federal« budget. The unanswered question is: What kind of confederated or federal regional organization will the EU become? Should some of the already-achieved federal features such as the common budget be strengthened or gradually dismantled so as to create a softer regional unit more like MERCOSUR, ASEAN, or a revived European Free Trade Association (EFTA)?

The German presidency of the EU during the second semester of 2020 not only offers a historic opportunity to clarify the scope and size of the European economic recovery policy by compromising on a wise balance between credits and subsidies, and between risk-sharing and risk-limitation, but also to shape the future of the EU. Logically, this will have to be done in parallel with the Union's strategic orientation and political decisions regarding its place and role in an unpredictable and rapidly

changing global system. Issues to be addressed include the EU's relations with China (Leipzig summit), the post-Brexit UK, Africa, and the post-election USA. And all this must happen in a world profoundly shaken by the consequences of the pandemic.

The problem is that there is a link between the internal consolidation of the euro zone (as a prerequisite) and international strategic autonomy. The context is still favorable for progress in constructing Europe, but that will rest on solid and converging interests. However, the effort to move forward in the ways proposed here certainly will require a new, mobilizing narrative to be shared by the largest number of member-states: Europe as both a shield protecting our common interests and as the driving force behind our values and standards worldwide. In short, Europe will establish a frame for global governance amid unpredictable global disorder.

The preconditions for progress in this sense are that the economic recovery plan:

- is approved by the European Council through consensus while retaining the scope and ambitions of the plan announced between April 23 and May 27;
- is implemented efficiently by the member-states, including Italy and Spain (which in turn will presuppose transparency, a fight against corruption, administrative rationalization as well as European coordination); and
- is closely linked to the »Green Deal« and digital economy.

Europe will be strong enough to compensate for the current deficit in global governance through multilateralism (for example, through the United Nations, the World Trade Organization, and the World Health Organization) when it comes to combatting pandemics, financial instability, climate change, and other transnational challenges.

Should the historic decision of the European Council either not be implemented or get downgraded or even canceled, a severe crisis will loom over the euro zone before the end of 2020. Spain and Italy could leave the Union as early as 2021 while the Economic and Currency Union could fall apart by 2022. All of those disasters inevitably would be followed by a crisis in the single market and its subsequent unraveling, likely culminating in something like a traditional free trade zone.

Why must the European Union narrative be radically renewed? Only by emphasizing the political relevance of the euro in the present dangerous global context will we be able to halt the trend toward disintegration and questioning of the EU, and the drift toward a kind of revival of the failed EFTA of the Sixties. Here, it is crucial to get both the North and the South on board. A collapse of the euro zone would entail many worse things than what has happened heretofore. All Europeans would run the risk of becoming marginalized victims of a global confrontation between the USA and China or Russia. No European country has a future without the euro zone and the internal market. As we celebrate the 75th anniversary of the end of the Second World War and the founding of the United Nations, it is a good time to ask: How might Habermas' idea of a European social and democratic model foster a more just and peaceful global governance? One should expect the German presidency to present evidence that national interests in the 21st century only can

be defended in tandem with European interests through stronger cooperation. This means we must underline the European conditions that must be met to encourage national economic success and highlight the universal implications of European unity.



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The Charter of Human Rights and Social Europe

A short time ago, the Charter of Fundamental Rights of the European Union was able to celebrate its ten-year anniversary. Nomos Press has now published a brilliant new book on this important project of European unification, authored by Former SPD Bundestag deputy Jürgen Meyer and Sven Hölscheidt. The new book explains in profound and fascinating detail both the origin story of the Charter idea as well as the controversies at the convention and the increasing significance of independently established fundamental rights for citizens of the European Union.

A good 40 years after the Treaties of Rome went into effect, the realization dawned on political decision-makers that the union of the nations of Europe had to mean something more than just completion of the internal market. They saw that this project needed to be based on values. United Europe should be something more than a technocratic scheme for free commerce in commodities, capital, and services; instead it should be a community of laws bound by values.

In 1999, the German government, then a »red-green« coalition of the SPD and Green Party that also happened to hold the EU presidency that year, took the initiative to call for a convention to work on a European Charter of Human Rights. The EU summit, held June 3 and 4, issued the »Cologne Mandate« to list and draw attention to all of the rights enjoyed by people in the EU that the EU Treaties, the jurisprudence of the European Court of Justice, and international conventions recognize. This mandate was deliberately formulated in cautious terms since forces skeptical of the EU did not want to acknowledge the EU as an independent source of protection for basic human rights. Chaired by former Federal President Roman Herzog, the Charter convention began its work in early 2000 with 62 delegates from national parliaments and the European Parliament. The German Bundestag was represented by Jürgen Meyer (SPD) and Peter Altmaier (CDU).

This inaugural European convention very quickly developed its own dynamic. The parliamentarians did not want merely to put existing rights on display in a catalogue; rather, they wanted to elaborate a canon of rights suited to the contemporary world. They succeeded. With 50 rights and liberties included in the Charter, people

in the EU would henceforth enjoy the world's most comprehensive protection of their lifestyles. Once the European Treaties of Lisbon went into effect in December of 2009, the Charter of Fundamental Rights became applied legally not only to the actions of EU institutions, but to those of the member-states as well. After some initial hesitation the European Court of Justice by now has begun using the Charter as a basis for its decisions. Furthermore, the European Charter of Fundamental Rights is a reference point for legal developments around the world.

We often hear it said that the people of Europe share the same values. Nevertheless, there are widely varying notions about the nature and extent of the rights to which people are entitled. Meyer and Hölscheidt do an impressive job of describing the many controversies at the convention about what should be regarded as a fundamental value and what not.

One such dispute already swirled around Article 1 and the question of whether the »dignity of the human being« should be conceived only as a principle or as a basic right. In the aftermath of the experiences in which human dignity was flouted by colonialism, slavery, the Nazi regime, and the gulags, human dignity is considered the paramount right of every human being, regardless of age, gender, or citizenship. The European Court of Justice has in fact made the »dignity« of a person the criterion for verdicts it has rendered concerning homophobia, the right of asylum, and social welfare support. As in the German Basic Law, the first sentence of the EU Charter states, »Human dignity is inviolable.«

Article 2 postulates that »everyone has the right to life.« The question is, when does life begin and when does it cease? There is no consensus answer about this in Europe as a whole. Therefore, matters such as the protection of an embryo or the right to euthanasia were left to the discretion of the member-states as questions which could not be answered by the entire EU. Still, Europeans are of one mind about abolishing the death penalty. That too can be regarded as a message sent to countries outside the EU, including both China and the United States. The same can be said of the prohibition against torture and the reproductive cloning of human beings. On those points Europe differs even from its so-called friends in the world.

Article 5 forbids human trafficking, slavery, and forced labor. Many of the convention's members believed that those prohibitions were superfluous, because such practices supposedly no longer exist in Europe. Far from it! Human trafficking in the sex industry, contractual slavery in the financial sector, and serfdom among the support staff of certain embassies do exist right in the middle of the EU.

Meyer and Hölscheidt present a highly knowledgeable reconstruction of the controversies surrounding the Charter chapter on »freedom, equality, and solidarity.« Article 8 offers the very perspicacious postulate that »everyone has the right to the protection of personal data concerning him or her.« Such information can be used for commercial purposes only if the person in question consents. Everyone has the right to information about such data and can insist that mistakes in it be corrected. In short, the EU's Charter transforms its battle with Facebook and other platforms into a matter of fundamental rights. Here, too, Europe operates differently from many other countries in America or Asia.

Article 10 proclaims that »everyone has the right to freedom of thought, conscience, and religion.« Authoritarian forces inside the EU and still more all around us in the east and south trample these fundamental rights underfoot. The freedom to conduct science (Article 13) is also imperiled, as evidenced by a Hungarian higher education law that forced the international university in Budapest to close.

Article 14 asserts that »everyone has the right to education and to have access to vocational and continuing training.« Since the EU does not have much responsibility for education policy, this postulate is directed mainly at the member-states. Still, Brussels does play a supporting and coordinating role here through the resources of the European Centre for the Development of Vocational Training which are disbursed by the European Social Fund.

»Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment, and to provide services in any member state.« So reads part of Article 15. At the convention, many participants demanded a »right to work,« a prerogative firmly anchored in the constitutions of some member-states. But the effort to get such a right approved did not succeed.

Conservatives at the convention set a high value on a basic right to »entrepreneurial freedom« (Article 16) and the right to property (Article 17). The European People's Party delegation made those two articles the condition for their acceptance of the entire Charter. Thus, the criticism that entrepreneurs as a professional group were privileged vis-à-vis other professionals faded away. Finally, the demands that only »legally acquired« property ought to be protected and that property ownership should be anchored in social obligations were both blocked by the resistance of liberal-conservative forces.

On the other side of the ledger, progressive forces, rallying around the representative of the German Bundestag, Jürgen Meyer, were able to push through the inclusion of a stand-alone chapter on »solidarity.« Thus, solidarity was ranged alongside freedom as an »indivisible and universal« value. For the EU that step was not always a matter of course, because social policy was widely understood as an issue for national politics. At the EU level it took a long time for social rights to be acknowledged as such. True, the Treaty of Rome (1959) already mentioned the improvement of living and working conditions for »labor.« At the time it was believed that the effects of the common market and freedom of movement for labor would suffice as means toward those ends. Due to resistance by Great Britain it was not possible to include an EU-level labor law remit in the Maastricht Treaty. It wasn't until Tony Blair ratified the European Social Charter that new provisions for social protection could be incorporated into the Treaty.

At the convention, conservative forces tried their hardest to keep the solidarity chapter out or at least to water it down. They thought that social rights would be the entering wedge for all kinds of new demands and services. Furthermore, they argued, the EU has no remit here and should not make any promises. In this way Great Britain and Poland lobbied for and ultimately got an opt-out in the form of Protocol Number 30 to the Charter. They want to recognize social rights only to the extent that these already exist at their respective national levels. That point

of view had its effect and encouraged others as well. Consequently, in most of the social rights detailed in the »solidarity« chapter you will find a cross-reference which amounts to a restriction. Social rights are to be deemed valid only »in accordance with Union laws and national laws and practices.« Hence, the Charter fulfills something closer to an enabling function for social partners and the member-states, implying that they should organize measures of social protection themselves.

Resistance against the rights of employees

All of the goals in the solidarity chapter were questioned or challenged by conservatives and neoliberals. For instance, in Article 27, employees and their representatives have a right to information in a reasonable time, although the original demand was for »effective« information. Whereas the European Council's European Social Charter still mentioned »co-determination,« this Charter is silent about it. There were fierce debates over Article 28, which describes the right of the parties in a collective bargaining negotiation »in case conflicts of interest should arise to take collective action (...) including strike action.« Conservatives argued that the right to strike should be justified only at the national level and that, in case of need, they also wanted to include in the Charter the right to impose a lockout. Here, however, the Social Democrats drew a red line and called into question the entire outcome of the conference. Their intransigence was also necessary against the backdrop of decisions by the European Court of Justice that assigned a higher priority to the free movement of goods in the internal market than to the right to strike (see the cases of Laval and Viking).

In respect to the »right of access to a free placement service« (Article 29), Peter Altmaier (CDU) asked why this service should be free of charge, while Her Majesty's representative considered the whole thing to be unworkable in Great Britain.

Article 31 states: »Every worker has the right to working conditions which respect his or her health, safety, and dignity (...) and to limitations upon maximum working hours, to daily and weekly rest periods, and to an annual period of paid leave.« Conservatives got up in arms about the demand for »equal pay for equal work.« They thought the newspapers would write that the EU wanted to regulate wages.

There have been disputes in the EU for years about maximum weekly working hours as well as about mandated rest periods. At the convention some delegates opined that people should get to decide for themselves whether they wanted to work more than 48 hours per week. In the meantime, the EU has approved a whole series of guidelines on working conditions, including some applying to specific groups such as youth, mothers, sailors, and contract workers.

The Charter also establishes rules to protect children and youth. Accordingly, child labor is prohibited in the EU, although there was no agreement on a statement concerning the age at which »youth« begins. The age of 15 does not appear in Article 32.

Article 34 occasioned some lively debates due to its observation that »The Union recognizes and respects the entitlement to social security benefits and social services.« Conservatives harbored serious doubts about whether these items were

worthy of being included in the Charter or whether they should be thought of as fundamental rights at all. Peter Altmaier (CDU) feared the looming threat of harmonization of national social security systems and legally enforceable claims as a result of European Court of Justice decisions. The right to a minimum wage could not be included in the Charter.

According to Article 37, EU policies must encourage a »high level of environmental protection« and ensure »sustainable development.« At that time, climate protection was not yet a prominent enough issue to be mentioned in the text. There were two factions of equal size that opposed each other on the demand expressed in Article 36 for, »access to services of general economic interest.« The constitutions of the member-states did not provide any prototype for this article, although Slovenia was the first European country to include the right to potable water in its constitution (2016). Since the Nineties, there had been a wave of liberalizations and privatizations of basic public services that posed the risk of social divisions between those who had access to those elementary services and those who did not. To encourage the social and territorial cohesion of the EU, the progressive wing of the convention insisted that everyone should have access to such services. Many of the various EU guidelines on water, electricity, and gas supplies, sewage and waste removal, traffic and transportation services, and even the activities of public broadcasting networks were ensnared in the broader debate about what belongs in the private, profit-seeking economy and what is of general public interest.

The coronavirus crisis clearly reveals the gap between aspirations and reality. Presciently, Article 35 postulated that »everyone has the right of access to preventive health care and the right to benefit from medical treatment.« The article adds that all policymaking areas as well as the measures adopted by the EU should »[ensure] a high level of human health protection...« The last few months have made clear that we still have a long way to go. Health care systems have been starved of funding, protective equipment and medicines are unavailable, while there has been less talk than there should have been about cross-border solidarity. In the wake of the coronavirus shock, European health care policies will remain at the top of the agenda with high hopes for improvement.

The European Charter of Fundamental Rights is a milestone both on the way to a Europe of citizens and to political Union. Europe's »soul« is to be found in the core accomplishments that its civilization has achieved over the course of history and that have been safeguarded by states under the rule of law. The transnational character of human rights there is a feature unique in the world. Despite all its deficiencies, the creation of the European Union made possible a space of freedom and security the like of which will not be found elsewhere.

At the time the convention was held, in 2000, a positive mood still prevailed – a feeling that, in the wake of the fall of the Berlin Wall and the iron curtain, »Europe fortunately will be united,« as that sentiment was expressed then in a joint declaration by three EU institutions: Parliament, Commission, and Council. Neither nationalist and populist currents nor authoritarian temptations à la Viktor Orbán and Jaroslav Kaczyński were as strong then as they would later become. So from the

vantage point of the present day, it is for the best that the EU has a compass in hand, in the form of the Charter of Fundamental Rights, with a bearing toward the politics of freedom, equality, and solidarity that can be used, if need be, to correct or even impose sanctions on certain member-states when they turn their backs on the common canon of values.

Jürgen Meyer and Sven Hölscheidt deserve our gratitude for writing a first-class work of description and clarification that underscores the practical utility of all those rights and freedoms that we in the European Union can invoke. The book should be recommended to all those who have an interest in Europe's future.

Jürgen Meyer/Sven Hölscheidt (eds.); *Charta der Grundrechte der Europäischen Union (The Charter of Fundamental Rights of the European Union)*. Baden-Baden: Nomos, 2019, 5th edition. 1030 pages, 148 euros.



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Model Pupils Gone Wrong

How the EU deals with anti-liberal member states

In a by-now legendary speech delivered in 2014, Hungarian prime minister Viktor Orbán asserted that his country was an »illiberal democracy.« The hyperventilating caused by this proclamation has continued until this very day. For many commentators, including the political scientist Jan-Werner Müller, this turn of phrase is an oxymoron. In his 2019 essay *Furcht und Freiheit (Fear and Freedom)*, Müller writes: »As far as its fundamental internal structures are concerned, there cannot be any such thing as an »illiberal democracy«...There can be no democracy without basic political rights and intact pluralism in the media as well as effective legal protection for this infrastructure of collective decision-making.« In this same context Müller alludes to »the wanton destruction of democracy,« while others ascribe an authoritarian character to Hungary as well as Poland under the leadership of the ruling national-conservative Law and Justice (PiS) Party. One thing is certain: Both countries are following a decidedly anti-liberal political line in both theory and practice. That trend is confirmed by – among other circumstances – the emergency legislation passed by the Hungarian parliament at the end of March in response to the COVID-19 pandemic, which bestows on Orbán the power to rule by decree for an indeterminate length of time.

The wrangling over how to classify such regimes in political theory is reflected at the level of practical politics, particularly in the issue of how the EU ought to deal

with both of these recalcitrant member-states. Hungary and Poland have consistently violated some of the Union's basic values over the years, as set forth in Article 2 of the Treaty on the European Union (TEU): »respect for human dignity, freedom, democracy, equality, the rule of law, and protection of human rights, including the rights of persons belonging to minorities.« Incidentally, the confrontational and provocative political style of these two governments does not exactly encourage consensus-building with or understanding on the part of their Union partners. Although the EU does have a certain degree of latitude in dealing with anti-liberal member-states, in the final analysis its options are quite limited. The EU warns, threatens, and by this time has begun to use every possible legal maneuver to compel Hungary and Poland to uphold the rule of law – so often that it feels like an endlessly repeating loop. The *ultima ratio* scenario – expulsion from the Community – is not an option according to the Treaty, even assuming one wanted to do so (which is not the case). Nor would either of those countries choose to leave the EU of its own volition, at least not yet, since their financial and non-material losses both would be too great. Against the backdrop of this stalemate, a hard-to-answer question arises: In the future how will the EU want to deal with anti-liberal member-states, and – above all – how will it be able to do so? We can distinguish a variety of possible answers and scenarios based on differing institutional and motivational components.

Political will matters – and it is lacking

From an institutional perspective, by now the EU has used up its strongest legal bargaining chips already: mainly its treaty violation and suspension proceedings in line with Article 7 on the protection of the Union's fundamental values. The latter is indeed a clear political signal, but ultimately it will fail. The European Council alone – i.e., the heads of state and government of all the EU countries – is authorized to determine whether fundamental values have been flouted, and must do so unanimously. By contrast, according to Ellen Bos, a professor of comparative politics who specializes in eastern and central Europe in the EU at the Andrassy University in Budapest, treaty violation proceedings may be fairly effective at least in bringing about gradual improvements. Still, she adds, they could be applied more consistently and rapidly. Gabór Halmai, a professor of comparative constitutional law at the European University Institute (EUI) adds another objection. In the final analysis, he observes, such treaty violation proceedings will not suffice to compel those two member states to make real concessions. As he sees it, the only appropriate measures would be those that attach strict conditions to the disbursement of EU funds and provide for sanctions in case of infringements. But, he stresses, »that doesn't mean this is the long-term answer to the problem of how the EU should treat these member-states.«

Halmai is raising a higher-order problem: that the EU as a whole in many instances clearly lacks the political will to enforce legal consequences. His critique is suitably harsh: »The legal means are all available for the EU to react appropriately to violations by Hungary and Poland, but in the end almost nothing ever happens.« That tendency is also evident, the legal scholar notes, in another fact: the largest party contingent in the European Parliament, the European People's Party (EPP),

continues to be at odds internally over the issue of whether or not it wants to exclude deputies from the Hungarian governing party Fidesz. To ostracize the latter would jeopardize the stability of the strongest bloc in the Parliament. As Ellen Bos points out, »Considerations such as these often carry the day in party responses to values violations. Certainly, that is true of all party families, but especially of the EPP. And Viktor Orbán knows exactly how to make the most of that situation.« However, even though the EU has an interest in making a serious effort to break the deadlock, the political will to do so has been lacking. The EU's forbearance was revealed, according to Bos, by its members' retreat to national interests during the novel coronavirus pandemic »in the sense that, almost as a reflex, everyone thought in terms of meeting national needs and closing the borders.«

According to the experts, we should be engaging in a far-reaching debate about values instead. The fact that we have not done so in any systematic and serious way can be understood as the expression of a difficult struggle for power, especially the power of interpretation. Kai-Olaf Lang, a senior fellow at the Science and Politics Foundation, explains it this way: »Of course you could say that there are a few objective fundamental principles – a certain conception of liberal democracy – to which all states consented when they joined the EU; but you could also say that anything counts as European in this sense that is unanimously acknowledged to be so by the 27 member-states.« In this context Lang also points to the emergent self-confidence of the member-states in question, who resist what they perceive to be a paternalistic idea that they should »fall in line with« the values and principles of the more established members. Ellen Bos sees the matter in a similar way: »Hungary and Poland have cast aside the role of the model pupil who is eager to live up to Western standards as quickly as possible; instead, they want to be regarded as players on an equal footing with all the rest. However, the established member-states often have not really understood this evolution of roles.« The political scientist pleads for greater empathy on both sides in order to restore trust – at a minimum so that people can sit down and negotiate reasonably once again. For that to happen, representatives of the EU first would have to display a willingness to listen without instantly condemning what they hear. »They are often too quick to do so; the EU definitely could take a lot of concerns more seriously.«

Of course, the sticking point here lies in determining how far this process of empathy can and should go – where the desire to understand ends, where and how it must be made clear that red lines have been crossed. To the extent that the principles underlying the rule of law have been systematically weakened, freedom of the press in both Hungary and Poland has been violated, and – especially – that the rights of minorities have been under fire in those countries, this kind of motivational policymaking would be a tough balancing act. There is a lurking danger here: tolerating actions and policies that, from the standpoint of democracy, should not be tolerated would abet a kind of appeasement. Still, apart from the legal methods that the experts think should be optimized and applied even more broadly, the path of empathy appears to be the right and important one. It reinforces modest hopes for a somewhat workable coexistence on the basis of a few irrevocable values, especially

since, according to Ellen Bos, Hungary and Poland unequivocally reject any informal division of the EU into two parts. Active listening and greater willingness to demonstrate empathy on the part of the EU as an institution can be possible and sensible. Still, it can work only if it is made clear to all the participants that political empathy is to be understood exclusively as the ability to put oneself in the other's shoes. It by no means signifies that one has to endorse automatically the other's perspective.

If this premise is granted, the EU as an institution and the member-states in question will be able to bring about a rapprochement (again) on certain political issues. As Kai-Olaf Lang says, »On some issues these countries unquestionably have an interest in workable European integration.« That holds true not only for energy policy, which is especially important to Poland as a guarantee that its supplies will be secure. But also, he adds, cohesion and agricultural policies have enormous significance for both nations, »not only because they are a matter of money. I would argue that the broader background here is that, perhaps surprisingly, both Fidesz and the PiS are carrying out modernization policies in their respective countries.« In that endeavor they are dependent upon the EU. Lang even sees some potential that bilateral relations might improve gradually, and that such improvement could carry over into relations with the entire EU as well.

Finally, even the novel coronavirus crisis might help restore to the EU as an institution some of its ability to act. That would especially be the case if and when it could show that it is worthwhile to be part of this community, »and if it could mobilize resources that cannot be mobilized at the level of the nation-state,« as Ellen Bos stresses. Then, the EU as a whole perhaps would have another motivational lever up its sleeve to remind member-states emphatically that there is indeed a point at which its basic values cease to be optional and/or subject to interpretation. As the experts see it, this is also crucial because there are good reasons to worry about some other members in this regard such as Bulgaria and Romania.

Thus, the crisis between the EU as an institution and its anti-liberal member-states will defy solution for the foreseeable future, perhaps until a change in those countries' domestic politics occurs. Some observers have held a grand vision of the EU as a community of peace and shared values (however much that vision may have been tarnished by flaws and ambivalence). But it seems unlikely that such a vision can be reactivated in the short or medium term. It would appear more realistic to expect a rather modest set of arrangements among the member-states, one based on *Realpolitik*, that is cognizant of the possibilities and the limits of cooperation. Nonetheless, it is worthwhile not to abandon the position that tough fights over values are ultimately indispensable for the citizens of the European Union. In spite of their plurality, all of them can claim a right to have their human dignity respected, and their human rights, freedom, democracy, equality, and rule of law safeguarded.



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Sergio Grassi

The Epicenter of a Global Conflict

The Rivalry between America and China in Southeast Asia

There's a proverb that recently has been cited often again in Southeast Asia, and it goes like this: »When elephants are fighting, the grass suffers.« American-Chinese relations will play a central role in efforts to craft a framework for global order; ideally, the duo should help bring stability and structure to international politics. Yet during the past few years, and especially since the outbreak of the corona pandemic, they have come to symbolize the dysfunctionality of international understanding. Instead of engaging in urgently needed cooperation, they are battling more tenaciously than ever to augment their power and shape the world order. Southeast Asia is the epicenter of this conflict, which is playing out all across the globe. There, the affected countries continually endeavor to avoid having to cast their lot with one or the other of the two great powers, although they are under increasing pressure to do just that.

Under US President Donald Trump, who has been acting erratically, the center of gravity of American interests and challenges has shifted even further toward Asia. In the United States there is bipartisan agreement that China's rise constitutes the greatest challenge to the country's position of power within the international system. Accordingly, both the Trump administration and the Democratic camp (although with more nuance) view China as a revisionist actor that in the long run will strive to become the preeminent global power at the expense of the United States. In sum, the real increase of Chinese power, increasing Chinese muscle-flexing, mercantilist economic practices, and Trump's political style have all helped to provoke some drastic rethinking about how to deal with the Middle Kingdom. By this time the competitive element in the relationship has come to overshadow the cooperative aspect. That competition has become obvious in many areas, including ideology, economic and trade policy, technology, and military affairs.

Whereas Trump has cast doubt on the value of multilateralism ever since he took office, ironically enough it has been Beijing – usually committed to bilateralism – that has put itself forward as multilateralism's presumed guardian. However, during the past eight years the Chinese leadership under Xi Jinping has made it abundantly clear that it has no intention of moving toward convergence with the Western-liberal world order. At the same time, under Xi the People's Republic has abandoned its decades-long self-restraint in foreign policy and – in the form of the Belt and Road Initiative (BRI) – has launched the greatest current geopolitical and geo-economic project in the contemporary world. The BRI merges China's foreign policy with its economic-technological goals, while displaying its evolution from a regional to a global superpower. Initially, BRI infrastructure investments stirred worries in Washington because they would enable Beijing to gain strategic advantages, for example through the expansion of ports and high-speed rail lines. Yet increasingly it is investments under the aegis of the »digital silk road« that have become the focal point of Washington's security concerns.

From the world's workshop to the land of high-tech

As far as the Americans are concerned, the increasingly prominent industrial and digital policy components of the BRI go hand in hand with both the Made-in-China 2025 campaign, which they have strongly criticized, and its complement, the Internet Plus strategy. What matters to Beijing here is to encourage more indigenous innovation and technology, and to become a leader in the manufacture of quality products, since that would give the country control over value chains and data, as well as technological independence. In this regard the BRI undergirds the structural transformation of the Chinese economy, as it evolves from the world's workshop into its leading high-tech country. The BRI will also move China ahead in getting its own technical and regulatory standards established in third-country markets, thereby carving out spheres of influence in technological policymaking. By virtue of its »China Standards 2035« program, Beijing has come up with a plan specifically designed to gain influence over international standardization procedures. Institutions and technological path-dependency are to be shaped and consolidated in part to serve the interests of Chinese firms. Thus, in the future they will have to pay fewer licensing fees to US and European technology patent holders.

Aside from bilateral deals (an approach left over from the cooperative element), decision-makers in Washington, following the »United States Strategic Approach to the People's Republic of China,« are putting considerable emphasis on limiting investment and imposing export controls that cover strategic technology, ostracizing technology leaders like Huawei, »reshoring« US companies with production facilities in China, restructuring global value chains, and decoupling crucial economic linkages (the competitive element). The »China hawks« in the Trump Administration see the progress being made in Chinese industrial and technology policy as a strategic power factor endangering the United States' industrial base and its capacity to innovate, and thus – in the final analysis – the prerequisites for its military preeminence. The corona crisis and crisis management in both the United States and China have further multiplied the geopolitical friction points in their bilateral relationship rather than – as many experts had hoped – leading to a rapprochement and greater cooperation. Thus, the quest for more resilience and protection from fragile supply chains triggered by the pandemic may be reinforcing the effects of »nearshoring« and reshoring, while the accompanying propaganda duels deepen tensions.

Southeast Asia is the epicenter of the Sino-American global conflict and the crucial geopolitical linchpin in the Indo-Pacific region. It is the location of the Straits of Malacca, one of the world's most important maritime trade routes; moreover, the countries in this region must find a place to stand between the spheres of influence of the dominant powers on many issues, including especially trade and technology policies. According to some predictions the regional bloc ASEAN (»Association of Southeast Asian Nations«) will become the world's fourth largest economic area by 2030. At this point, it is hoped that the region might profit from the relocation of Chinese firms. Last but not least, the risk of a military conflict in Southeast Asia is comparatively great.

There have been numerous incidents between US and Chinese military forces in the South China Sea during the last few years, especially since Beijing began in 2010 to define that marine region as one of its »core interests« and to advance such interests in more assertive ways. Many observers around the world, but especially in neighboring states, fear that, in the worst-case scenario, such an incident might spin out of control, leading to a military conflict. There are numerous maritime territorial disputes between China and its neighbors. But in addition to those the American insistence upon freedom of navigation (as manifested in the »US-Indo-Pacific Strategy«) is colliding with China's quest to carve out an exclusive zone of influence and security in Asia while limiting as far as possible the ability of the US to intervene there. The United States' most recent response to the latter has been the »Pacific Deterrence Initiative,« which allocated more than six billion additional US dollars exclusively to the US military in the Indo-Pacific in 2021 and 2022.

Stability in jeopardy

China's assertive conduct in the South China Sea is provoking resistance not only in the United States, but also in the affected countries of Southeast Asia. Accordingly – and despite their ambivalent relationship to the United States – the latter are grateful for American »Freedom of Navigation and Overflight« operations in the South China Sea. Meanwhile, they themselves have been negotiating with Beijing over rules of conduct in the region for years. As long ago as 2016, the Philippines launched legal proceedings. The Permanent Court of Arbitration in the Hague judged Beijing's territorial claims over the South China Sea (the »nine-dashed line«) to be illegal, based on the UN Convention on the Law of the Sea (UNCLOS). In mid-2020 Indonesia's government too sent a letter of complaint to UN Secretary General António Guterres in which it invoked this same verdict. In early January of 2020, Indonesian President Joko Widodo, defying Beijing's protests, visited the Natuna Islands, which belong to Indonesia, and re-stationed some additional military forces there, because in past years frictions had arisen repeatedly over rights to surrounding fisheries. At the 36th ASEAN summit in late June, 2020, Vietnam's Prime Minister Nguyen Xuan Phuc, who also currently chairs ASEAN, criticized the fact that violations of international law were still going on and that the stability of certain regions was being jeopardized while the world was trying to manage its fight against the pandemic. Then in April of 2020, after a Vietnamese fishing boat had been sunk, apparently by the Chinese coast guard, Washington sent a warning to Beijing not to exploit the corona crisis to gain territory in the South China Sea.

ASEAN centrality

In the midst of these events, the countries of Southeast Asia (with a few exceptions) have been at pains not to submit unilaterally to the spheres of influence of either Beijing or Washington. On one hand, they do not want to incur economic disadvantages; on the other, neither do they wish to become pawns in a great-power conflict.

Instead, they would prefer to stand their ground and assert their rights as actors to shape events based on their own institutions and designs. Thus, it is not surprising that they appeal to the unity of the region, reaffirm the »centrality of ASEAN« to ensure their own security, and recently have called for greater resilience against pressure from external powers. One expression of their assertion of sovereignty, their wish to shape events, and their reaction to other countries' Indo-Pacific strategies (not to mention worries about the potentially negative consequences for their region of an escalation of the Sino-American rivalry) is a plan entitled the »ASEAN Outlook on the Indo-Pacific,« presented in June, 2019 by ASEAN and pushed by its largest member-state, Indonesia.

US prestige on the wane

A further vital interest of the ASEAN countries is in free trade treaties, especially the ratification of the »Regional Comprehensive Economic Partnership« (RCEP), which includes not only the ten ASEAN member countries but also China, Australia, New Zealand, Japan, and South Korea. Assuming that the agreement is concluded in the second half of 2020, it would give rise to the world's largest trading bloc, representing half of the world's population and a third of its collective gross product. The US is explicitly excluded from RCEP and thus far has not offered the region any alternative arrangement. In this way Trump's withdrawal (via executive order) from the already negotiated »Transpacific Partnership« (TPP) shortly after he took office in January, 2017, handed Beijing a windfall. This is the case because RCEP inevitably would tie the ASEAN countries more tightly to their giant neighbor, China, in respect to economic policies. And although the debate, and the awareness of risk associated with it, so far have not advanced very far in most Southeast Asian countries, when it comes to deciding on long-term, path-breaking technologies and standards such as those concerning the 5G network, it will be increasingly difficult for them to maintain their resolve not to decide in favor of one side or the other.

In interviews with experts in Southeast Asia, Beijing's support for the countries of that region during the pandemic is described as quicker, as well as better coordinated and more extensive, than that of Washington. Basically, the prestige of the US in this region has been further diminished during the corona crisis. Meanwhile, Beijing is working on its tattered image and has announced that it wishes to reinvigorate the idea of a »health silk road.« The goal is to create a »common destiny for humanity« alongside the »common destiny in cyberspace.« In any case there is much to be said for maintaining a good relationship between the countries of Southeast Asia and China. There are economic benefits to be gained from the size of China's market, the investment potential of development and infrastructure banks controlled by China, and quite simply from that country's geographical proximity to Southeast Asia. However, China's tough demeanor in the South China Sea stirs fears in Southeast Asia. In January, 2020 a Singapore think tank known as the ISEAS-Yusof Ishak Institute published an empirical study carried out in all ten ASEAN countries entitled *The State of Southeast Asia:2020*. The opinion surveys

in this study revealed that, if the respondents were compelled to choose between the two superpowers, 53.6% would opt for Washington. Also, 71.9% of those questioned said they were worried about China's increasing economic influence in the region, while 85.4% expressed concern about its growing political-strategic clout there.

By contrast, just 38.2% and 31.7% of the respondents, respectively, said they would welcome greater engagement by third parties like Japan and the EU in the ASEAN region. On the other hand, the EU ought to have a major interest in getting involved more deeply in economic policymaking there and supporting the freedom of navigation while seeking to de-escalate conflicts in the South China Sea. In this respect, much could be said in favor of developing a specifically European Indo-Pacific strategy, one that could be initiated by Germany (among others) and be open to dialogue with China.



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Where Does Latin America Stand Today?

These days, answering that question and writing an article about it is no simple matter. While the coronavirus pandemic did arrive in the region later than elsewhere, now it's hitting the continent with full force. According to data provided by Johns Hopkins University, by the end of August a total of just over five million people had gotten sick from the virus in Latin America. Of those, over three million were in Brazil alone. Both Mexico and Peru each tallied over a half million cases. Brazil, with over 100,000 COVID-19-related fatalities, comes in second to the USA on this tragic global ranking. And those statistics measure only the officially released tally; the estimated number of unreported cases could be many times higher, since most countries lack testing capabilities.

Although the majority of governments – with the exception of the two largest countries, Brazil and Mexico – reacted in a timely way by imposing strict lockdowns and other restrictions on public life, the virus continues to spread, case numbers are on the rise, and the region is not getting a handle on the crisis. Hospitals are on the verge of full capacity. Those in the public sector, especially, lack personal protective equipment for medical personnel, medicines, intensive care beds, and sufficient numbers of ventilators to meet demand. In this part of the world, access to adequate health care is a matter of money. After several weeks of lockdowns with no prospect that things will improve, signs of fatigue, demoralization, and sheer desperation are showing up among the populace.

The economic and social consequences are dramatic. CEPAL, the Economic Commission for Latin America and the Caribbean, predicts that the region's economy will shrink by 9.1 %, the most severe economic downturn in the last 100 years. Countless millions of people are without work or income. Malnutrition and poverty are again on the rise. The region's development is being thrown into reverse by many years. Already, some are talking of a »lost decade« for Latin America.

A catalyst for pre-existing structural problems

Still, the pandemic is not solely responsible for this situation. Instead, it has acted as a catalyst for pre-existing structural problems, mercilessly exposing the weaknesses of the prevailing neoliberal economic model, much of which rests on the excesses of an overheated extractive industry. Even before the coronavirus pandemic struck, the region's economies were contending with slow economic growth caused mainly by low prices for the raw materials that Latin America exports.

During the current crisis, the high proportion of the workforce engaged in informal employment and lacking any kind of social safety net (in some countries this sector includes over 70 % of the working population) meant that many people lost their jobs from one day to the next, rendering them penniless and driving them into poverty. But even for employees in the formal sector existing labor and union rights have been shunted aside or trimmed back during the crisis. Precarious labor and living conditions also help to explain why governments have had such a hard time slowing down the spread of the virus. Many people refuse to obey the rules of the lockdowns, because they have to leave their homes to earn money or get food from one of the distribution centers, generally organized on a neighborhood basis, simply in order to survive. »Either I die by going out and catching the virus or I die, because I stay home and starve.« This is how people in the region summarize their dilemma. In Mexico there was a street stand with a sign that read: »This stand will stay open until the owner dies of the coronavirus.«

Many countries are now receiving the bill for their failures of the last few decades. As experimental labs for neoliberalism, they have neither created good jobs, nor established fair systems of taxation, nor built functioning social welfare states, let alone financing universal systems of health care. Before the crisis hit, there were a few countries that had performed rather well in these areas, notably Costa Rica and also Uruguay, which has been ruled by a progressive coalition for 15 years. So far, both have registered relatively low numbers of cases and appear to be in a position to cushion more effectively the social impacts of the economic crisis.

Inequality and democratic deficits

Not only does the region have to hold its ground against a virus, but also against the excrescences of an economic model that has delivered enormous inequality. Latin America may not be the poorest part of the world, but in no other region of the globe is society's wealth so unequally distributed. Of the 20 countries with the most unequal distribution of income worldwide, at least eight are in Latin America. 10 %

of the population controls 70 % of the wealth. Even before the coronavirus hit, the non-profit organization Oxfam calculated that if this unequal distribution were to continue, in just a few years the richest one percent would possess more wealth than the other 99 % put together. Even during the crisis, the widening gap between rich and poor did not begin to close at all. Whereas CEPAL forecasts that by the end of the year 37 % of people will live in poverty, there are eight new multimillionaires in Latin America. According to Oxfam's calculations, the most affluent people on the continent have increased their fortunes by US-\$ 48.2 billion since March of 2020, which is equivalent to one-third of all the economic stimulus packages offered by all the countries in the region.

In the autumn of 2019, fury at these serious deficits in social policy surfaced in the form of violent social protests in Chile, the country often portrayed as a »poster child« of economic policy, as well as in Ecuador and Colombia. Most Latin American countries are governed by democracies in the formal sense, yet many people in the region are convinced that regular institutional and representative channels are insufficient to give effective expression to their discontent. Similarly to what is happening in Europe, a loss of confidence in the institutions of democracy has occurred among the Latin American population, especially vis-à-vis established political parties. Mainly, it is the young and those with little education and low incomes who have turned their backs on democracy in disillusionment, since they have little hope of social advancement.

The crisis of the left and conservative backlash

At the turn of the century development in the region still appeared highly promising though. In the course of the so-called »pink tide,« leftist and progressive parties and movements formed most of the continent's governments and launched electoral campaigns promising to achieve social justice. Today, they still – or again – form only four governments enjoying democratic legitimacy (in Argentina, Costa Rica, Mexico, and Panama). Left-wing opposition parties have had scarcely anything to offer in response to the crisis management measures taken by economically liberal and conservative governments. Like labor unions, they currently face major challenges, among them how to update their programs, rejuvenate, reconstruct, and feminize themselves, attain more diversity, and build alliances with new progressive and social movements. To bring about all those reforms, the progressive parties also will have to draw up a critical balance sheet of what they accomplished during their years in government. Most of them were able to reduce poverty during their terms in office through targeted social welfare state programs coupled with high rates of return on raw materials. In addition, the deficit in the representation of indigenous people was partly remedied, especially in Bolivia, while equal rights for women and same-sex partners were expanded. Yet the unequal distribution of wealth and the dominant economic models were barely touched. As Brazil's ex-president Dilma Rousseff said in an interview with *El País* in January, the great mistake of the left and of progressives was »to believe that there is a neoliberal consensus that must be followed.« Furthermore, extreme,

authoritarian trends in originally progressive political projects such as those of Venezuela or even Nicaragua discredited the left in the region. Conservative political actors take pleasure in depicting Venezuela as a bogeyman, while leftist actors in the region have not yet managed to develop an unequivocal position on Nicolás Maduro. Also, corruption scandals that have engulfed all of Latin America, such as those involving the semi-state-owned Brazilian oil company Petrobras and the Brazilian construction company Odebrecht, have come back to haunt left-wing parties. The defendants in such cases, charged with accepting bribes to approve overpriced construction contracts, include both left- and right-wing politicians, but the leftists have lost far more of their political legitimacy than the rightists on account of those scandals.

A swing toward the right followed hard upon the »pink tide« in the region. Even today the right-wing populists pursue a policy of social divisiveness that is aided and abetted by the fact that people are fed up with politics. The most egregious example of this is the election of the extreme right-winger, Jair Bolsonaro, as president of Brazil in October, 2018. To a great extent, his election testifies to the growing political influence of evangelical denominations. Taking root in the fertile soil of social injustice, they have started to spread rapidly throughout Latin America and especially in Brazil. During the last few years some of these denominations have broadened their social commitments to include politics with the objective of gaining acceptance for their ultra-conservative moral ideas, which are dead set against the social and legal recognition of non-traditional lifestyles and the bogeyman of an alleged »gender ideology.« Toward that end they forge alliances with right-wing, conservative parties or else establish their own.

Young and feminist

This conservative backlash coincides with the resurgence of feminist movements on the continent. In 2019 feminists all over the world adopted the dance *un violador en tu camino* (a rapist in your road) from the Chilean collective, Las Tesis. The performance pilloried sexual violence against women and highlighted the connection between domestic and state violence as well as between individual and structural violence. In previous years there had already been protests in various countries, under the rubric #NiUnaMenos (#Not one fewer) against the burgeoning problem of violence against women and high rates of femicide. According to the United Nations (UN Women), 14 of the countries with the highest rates of femicide worldwide are in Latin America and the Caribbean. Every day, 14 women are murdered in the Latin American region, usually by partners or ex-husbands. In the wake of the curfews imposed during the last few months and the forced retreat into the private sphere, domestic violence against women and femicide have once again risen sharply.

But the new generation of predominantly younger activists is not merely protesting against the high level of violence against girls and women; they are also demanding a far-reaching social transformation: social coexistence free from discrimination and sexism. They advocate greater political participation, equal opportunity in the labor market, and fewer restrictions on access to the legal termination of pregnan-

cies. The corona pandemic has affected women disproportionately by increasing both their unemployment and poverty rates, because they are especially likely to be employed in precarious work relationships or in crisis-prone sectors. On top of that comes caregiving, which is performed mostly by women.

Lessons for Europe

Although it appears that the two continents have drifted apart in recent years, there are still many reasons for Europe today – especially its progressive actors – to take a look at Latin America. Developments there make it plain to see what happens to countries when the neoliberal model of society attains a dominant position and essential public services are privatized without any corrective measures of social protection in place. Lessons for Europe can be derived from observations such as these.

In addition to the shared values and cultural propinquity between the two continents, so often invoked in the past, the future, too, will feature common interests in the reallocation of global power and in the competition among systems all over the world. Latin America and Europe can be partners; in the context of pro-democratic alliances they can discuss the present-day challenges to democracy and defend democratic values. By the same token, the region's nations (with the current exception of Brazil under Bolsonaro) have accumulated enough historical experience with their northern neighbor to make them committed supporters of a multilateral approach to international order. At a time when some of Germany's important allies are questioning multilateral pacts and institutions, the countries of the region would then be reliable allies in the quest to craft a rules-based world order.

Hence, it is in Europe's best interest to shore up the economic and social policy capabilities and long-term political stability of the democracies in the region and to offer them support in managing the impacts of the pandemic. Otherwise, the current crisis might further exacerbate pre-existing nationalist and authoritarian tendencies. Under the pretext of combating the pestilence, some troubling trends have already shown up in a few countries in which efforts have been made to weaken the separation of powers. During the pandemic the role of the military has been enhanced in practically every country, a trend that had already been emerging for several years.

Because the United States and Europe have neglected the region, it has pivoted more and more toward Asia, especially China, and this not only in matters of trade and finance. Russia, too, has expanded its geostrategic presence in the region. The United States and Europe have ceased to function as models.

The stalemated political conflict in Venezuela and the divisions within the international community over the question of whether to recognize Juan Guaidó as the country's interim president show that geopolitical power games also play out in Latin America. Well before Donald Trump took over the White House, the United States had shown little interest anymore in its »backyard.« The crisis in Venezuela desperately needs Europe's attention, not least to avoid a humanitarian catastrophe both for the population within that country and for the 1.7 million Venezuelan refugees in neighboring Colombia. Moreover, organized crime and human trafficking are gaining ever more ground along the border between Colombia and Venezuela. Also, the

peace process in Colombia needs to be kept on track by external political actors. In the shadow of the corona pandemic the leaders of social movements (*lideres sociales*) continue to be assassinated, while the implementation of important elements of the accord, such as the demand for land reform, gets pushed into the background.

Likewise, it is the interest of both continents to keep in check the region's organized crime syndicates, which now have branches in Europe as well. During these crises they have benefited from the weakness of the local states and have been able to expand their spheres of influence in neglected barrios and rural areas. In parts of Mexico and in the favelas of Rio there are cases in which organized crime has provided services for the population that the state was unable to deliver, thereby accumulating political capital. In addition to increasing cybercrime, there is another worry: that organized crime might buy its way into insolvent business enterprises on a grand scale, especially in the tourism industry, so that it can launder money.

However, Europe will not be able to secure its future influence in the region by signing accords such as that between the EU and MERCOSUR, which are of dubious benefit to either side. Instead, Europe should offer a far more comprehensive cooperative approach.



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Who Owns Amazonia?

»Contrary to what the Brazilians think, Amazonia is not their property – it belongs to all of us.« This statement allegedly was made by Al Gore, the former US vice president and indefatigable climate activist. In Brazil, it is the most often cited utterance by an American and signifies a national trauma: the assumption that there is an »international greed for the Amazon,« to cite the title of a local bestseller.

The quotation and its meaning in Brazil suggest one thing: The answer to the question about who owns Amazonia appears controversial, but in fact it is obvious. Of course, Amazonia belongs to the countries that share the Amazon basin – and Brazil is the largest of those. Therefore, two-thirds of the region known as Amazonia belongs to Brazil. And in the international system national sovereignty has a high priority. So then why is Brazil still gripped by this national anxiety? In most cases, threats to national unity emanate from movements for autonomy, as the recent example of the Catalans in Europe reminds us. But such movements for autonomy are totally insignificant in Brazil, and even those few have tended to emerge mainly in the southern part of the country.

No, in this case we are really talking about a threat *from the outside*. Al Gore's comment is not the only statement cited in Brazil as proof that a threat like this is

no figment of someone's imagination. There is an entire litany of similar quotations, among which one by France's former president François Mitterrand holds the place of honor. He declares that »Brazil must accept limited sovereignty over Amazonia.« But also, General Patrick Hughes, former head of the Defense Intelligence Agency (DIA) expressed a remarkable view: »If Brazil decides to use Amazonia and in so doing endangers the environment in the USA, then we will have to be prepared to interrupt that process.« Even Mikhail Gorbachev has had a say in the matter: »Brazil must cede portions of its rights over Amazonia to competent international organizations.«

Belief in the dangers of international meddling in Brazil is deeply rooted in the nation's consciousness on both the right and the left. To make that threat appear plausible, the indigenous people and their immense territories are always cited as exhibit A. For instance, the territory of the Yanomami in Brazil comprises 96,650 km², more than twice as large as the land area of the Netherlands. Their territory borders on Venezuela, where the Yanomami also live. If one includes their reserves on both sides of the border, Yanomami land covers 192,000 km², more than the surface area of Greece. Besides, the indigenous peoples refer to themselves as »indigenous nations.« The Brazilian military assumes that a scenario would be realistic in which the Yanomami – perhaps in response to human rights violations – declared their independence and requested international aid.

Whatever we may think of all this, the narrative of the »threat to national sovereignty« was and is well established and efficacious. On one hand, it provides an important legitimization for the Brazilian armed forces, which otherwise lack external foes. But it has also always been fundamental in defining the guidelines of Brazil's foreign policy. The discussion about limited sovereignty over cases of genocide has set off alarm bells in Brazil. For instance, when UN special envoy for the prevention of genocide, Adama Dieng, declares that genocide, war crimes, ethnic cleansing, and crimes against humanity are violations of sovereignty and adds that »sovereignty means the obligation to protect,« in Brazil that is taken as confirmation of the country's fears. One consequence has been that Brazil refuses to condemn any dictatorships at the UN and votes loyally with Russia and China. But also, when it comes to global environmental policy, especially in the context of the Framework Convention on Climate and Biodiversity, Brazil's actions consistently have been influenced by the effort to fend off any and every threat to its national sovereignty. Those defensive measures also include binding commitments in the context of the Conventions. Interestingly, the leading role in such negotiations has always been assigned to the Brazilian foreign ministry.

When forest fires in Amazonia in 2019 again riveted the world's attention on the region, the flames also rekindled the debate about national sovereignty. Jair Bolsonaro and his government reacted irritably when people described the Amazon region as »the lungs of the earth.« And when French president Emmanuel Macron even posted that, »our house is on fire ... This is an international crisis,« he was playing right into the hands of the Bolsonaro government. They responded by dismissing the alarm as a form of colonialism, and reminding the world that Amazonia belongs

to Brazil and the other countries of the Amazon basin. The controversy gave the government a welcome opportunity to change the subject by focusing on national sovereignty and European arrogance instead of on the causes of the fires. The president's ideological guru, Olavo de Carvalho, proclaimed that »Macron has succeeded in uniting Brazil behind Bolsonaro.« Of course, that is an exaggeration, but Bolsonaro certainly did succeed in strengthening the unity of the military, which is heavily represented in the government. In the aftermath a new council on Amazonia was established under the leadership of the vice-president and military man Hamilton Mourão, which henceforth will have the final say over policy toward the Amazon region. Mourão has expressed himself more discreetly than Bolsonaro, and has given assurances that in the future Brazil will combat illegal logging. If we look past the often-overheated rhetoric, one thing is obvious: An effective international response to the destruction of environmental goods, even those with global significance, is and will remain a chimera. This is especially the case, of course, because then those who are truly responsible for the climate crisis – the developed countries of the global North – would come under fire. In times of failed interventions and a multilateral system in crisis, is it truly realistic to assume that a foreign power or UN troops might intervene in the Brazil's Amazon territory? There is probably no one who believes that outside of Brazil. Still, the domestic political reverberations of any supposed threats to the country's sovereignty are tangible.

But the question »who owns Amazonia?« can be rephrased. Who actually owns the land and forests of Amazonia? And this is not such an easy question to answer. In any case ownership relations are well defined for just over half of the land area of Amazonia. About one million km² each are designated as indigenous territories and as protected areas. Together, they amount to 2,197,485 km² or 43.9 % of the surface area of Amazonia. It is hard to imagine such vast dimensions. The indigenous reserves alone constitute an area three times larger than Germany.

But outside of these areas the situation is complicated, and often described in Brazil as »land ownership chaos« (*caos fundiário*). Some 700,000 km² have no official owner at all. This is public land that has not been allocated to any person or set aside for any specific use such as for a reserve (*terras não designadas*). But there is more to the story. According to a study carried out by the Brazilian NGO Imazon, a mere 4 % of Amazonia consists of privately held land with secure land titles, whereas no proper titles exist for another 32 %. As far as the Bolsonaro government is concerned, the vast territories of the indigenous peoples and the reserves are a thorn in its side. They are legally protected from logging and large-scale land-taking. But because the environmental protection agencies have been dismantled by the government, illegal takeovers have proliferated. As the reserves are eviscerated, new facts on the ground are created that are subsequently adduced to justify changes in the legal status of the land in question. All the while, the government is attempting to distribute unallocated public lands to alleged owners. NGOs criticize this as a gigantic land grab.

Thus, the question of who owns Amazonia is a moving target. There is likely no other region of the world in which property relations are so poorly defined and so

contested. Big landowners as well as gold miners and mining companies see in the Bolsonaro government a unique opportunity to gain possession of enormous tracts of land.

The fires in Amazonia give visible expression to this process. They are not a pointless outrage against nature, but instead the prerequisites of and one stage in a land grab. There is a well-known saying according to which, »whoever deforests the land owns it.« Deforested land is valuable and sooner or later will be used for cattle grazing or the cultivation of soybeans or corn. These are not products intended to feed the local population; almost all of them are for export. And here, Europe is complicit because it imports soybeans from the rainforest. Soybeans from Amazonia are feed for Europe's meatpacking industry. In 2018, 36 % of the soybeans imported into the EU came from Brazil. »Our« agriculture thus also uses land outside of Europe, a process that has come to be called the »virtual draining of land resources.« And in this sense land in Amazonia also »belongs« to us: deforested land for the export economy. But that is certainly no reason for anyone to display pride of ownership.



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