

Newsletter

In this issue:

- Editorial
- Northern Ireland at the Edge
- The EU without the UK
- Launch of *Café Europa*
- Article 50 Litigation
- Rights in diverse societies
- Other activities

Northern Ireland at the Edge

This conference discussed options for a special status for Northern Ireland maintaining its EU membership or a Common Travel Area in Ireland, and offered an analysis of relations between the EU and other European States avoiding extensive border controls to the EU (Norway, Switzerland and Liechtenstein). Video podcasts and a policy brief are now available on the web site. *More on p. 3*



Launch of Café Europa

Café Europa is a forum for debating research and practice on law & policy in the European Union. This new initiative launches on 15 December with a debate on the impact of 'Brexit' on Higher Education and academics.

More on p. 5



Article 50 Litigation

This seminar offered reflections on the pending litigation before the UK Supreme Court on 'Brexit' from NI, UK and EU law perspectives, covering the royal prerogative, the character of EU law and the powers of the Northern Ireland Assembly

More on p.4

Call for contributions

TREUP invites blog contributions to its web page by any interested party. We aim at short pieces (500–800 words) related to the themes of our action. If interested, please contact s.clavero@qub.ac.uk, or treup@qub.ac.uk

Editorial

Message from the PI

Tensions at the Fringes of the European Union - Regaining the Union's Purpose - this is a long title of our Jean Monnet Centre of Excellence, usually abbreviated to TREUP.

The title was conceived in a session back in 2014, when we considered applying for a Jean Monnet Centre of Excellence bringing together expertise in European Union studies from the School of Law and then then School of Political Science, International Studies and Philosophy. We agreed that the European Union is in a kind of crisis, though we did not see the planned referendum on EU membership in the UK in crisis. Instead, we discussed the lack of solidarity between Member States, recently demonstrated in the inability of the Union to collectively address the international refugee crisis, as well as a loss of traction of the aim to improve living and working conditions through establishing an internal market, the difficult situation of economic and monetary union, the challenges EU citizens' rights to equal treatment in other Member States and the unresolved situation around the human rights regime to which the European Union subscribed. We also considered potential centrifugal forces, which might put an end to steady progress towards an ever closer union between the peoples of the EU's Member States, at best resulting in a variegated geometry.

While all these may seem to be separate and distinguished clusters of problems, a common perception is that at the basis of all this there is a loss of purpose to European integration. This often talk about "muddling through" as a main method of European Union integration nowadays might work eventually, however this would presuppose a sense of purpose. This sense of purpose, we think, can only be regained if the European Union recognises and acknowledges tensions between its different peoples, between politicians and peoples, between different economic actors, and between different regions within and beyond states. Neglecting such tensions would only reinforce the impression of many EU citizens that there is a fundamental tension between economic and ecological and social justice, on the one hand, and European integration in practice, on the other. The idea behind TREUP is that resolving these tensions presupposes careful analysis and recognition. Our geographical location in Ireland is at the fringes of the European Union, at the outermost Western island. Generally, it is sometimes easier to perceive processes from the fringes rather than from the centre. Being located in Northern Ireland also means that we witness the daily success of European integration in maintaining a relative peace in this part of Ireland. This enhanced perception of tensions and European integration processes, we think, enables us to contribute in unique ways to bringing forward European Union legal studies and European Union studies more generally.

Prof Dagmar Schiek, Jean Monnet ad personam Chair in EU Law and Policy

Northern Ireland at the Edge – what next after “BREXIT”?

On 15 September 2016 the Jean Monnet Centre of Excellence (TREUP) co-hosted this half-day conference with the Royal Irish Academy. For TREUP it complemented its stream Variegated Geometry, Differentiated Integration and Transnational Governance, focusing on a particularly current aspect of the EU's variegating geometry – the leaving of one of its larger Member States. Due to the focus on 'Brexit', the TREUP contribution was co-sponsored by the ESRC funded project “The UK 40 Years in the Union - Northern Ireland” within the larger project *The UK in a Changing Europe*. For the Royal Irish Academy, the conference was part of its Constitutional Conversations series, co-sponsored by Mayson, Hayes and Curran.



Opening the seminar, **Prof John Morrison** emphasised that there are still no clear answers to the many questions surrounding the 'Brexit' process or future UK/EU relation, as well as to the questions associated to the status of UK's constituent parts. The UK can learn from the experiences of other states outside the EU in order to find a solution (ideally) which accommodates the different preferences of the UK's constituent parts in relation to the European Union.

In his introduction, **Prof David Phinmore**, reminded everyone of the key question: 'What follows next?' As emphasised by David, there is no clarity as to what happens next which creates confusion. After the Brexit there might

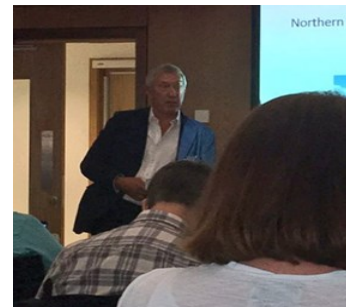
be a border with the EU (Ireland) and this raises a question as to the Good Friday agreement and its further enforcement. There is an imperative on people in Northern Ireland to both identify issues arising from BREXIT and to come up with solutions.

The first part of the seminar, 'Inside, Outside and the possibilities of “special status”' included a panel chaired by **Prof. Dagmar Schiek** and integrated by **Prof. Jo Shaw, Trevor Redmond and Ass. Prof. Dr Ulrik Pram Gad**. Taking the slogan “Brexit means Brexit”, its aim was to imagine alternatives to withdrawing Northern Ireland from the EU alongside England and Wales. The panellists explored options for such an alternative future for Northern Ireland remaining within the EU or at least having a special status which approximates EU membership. This panel triggered a specifically lively discussion from an audience combining civil servants and elected politicians from Northern Ireland and the Republic of Ireland as well as academics, citizens active in non-governmental organisations, participants from the business community and other members of the general public. A large proportion of questions and suggestions referred to the future border regime on the island of Ireland. During this discussion, it was clarified that the need to conduct border controls would arise if the free movement of persons between a non EU Member State UK and the EU Member State Ireland is restricted. However, even if free movement of persons is guaranteed, control of vehicles transporting goods would remain necessary in the absence of a common customs tariff between the UK and Ireland.

In the second part of the seminar, **Prof. Sieglinde Gstöhl** and **Prof. Christine Kaddous** discussed the alternatives to EU membership, focusing on the

experiences of Switzerland and Liechtenstein (Dr Ulf Sverdrup, Director of the Norwegian Institute of International Affairs, had to cancel his participation on short notice due to illness). All three of these states have in common their membership in the European Free Trade Association (EFTA), while Liechtenstein and Norway are two out of three EFTA members of the European Economic Area (EEA). The discussion of this panel was more subdued, in recognition of the complexity of negotiating a future trade relationship with the EU. It was stressed that the UK will not automatically remain a member of the EEA after leaving the EU. Although the EEA agreement does not contain an explicit clause on withdrawal, membership in the EEA is clearly linked to membership either in the EU or the EFTA (Article 128 EEA Agreement). Accordingly, the fact that there was no

refer-



endum on EEA membership would not have any impact on the UK's position in this regard.

The conclusions by **Rory Montgomery** took an optimistic tone: while it has to be acknowledged that the UK's withdrawal from the EU harbours uncertainty and related dangers, especially due to the paucity of information from the UK government, it was submitted that past experiences of small countries such as Liechtenstein indicated that flexibility for small territories has in the past been demonstrated by the EU and its predecessors.

Article 50 Litigation

This seminar, led from the School of Law's Centre for European and Transnational Legal Studies and the Human Rights Centre, and sponsored by Jean Monnet Centre of Excellence TREUP, attracted a great deal of interest and was well attended by Queen's staff and post-graduate students, stakeholders and other members of the public on ADD DATE

The panel included four experts in the area from the QUB School of Law: Prof. Chris McCrudden, Dr. Alex Schwartz, Prof. John Morison and Prof. Dagmar Schiek, and was chaired by Dr. Billy Melo Araujo.

Prof. Chris McCrudden is, next to Professor Gordon Anthony, one of the two colleagues from the School of Law at QUB who complete the team of barristers representing a cross-community group of applicants in the NI High Court and the Supreme Court (Agnew and others). In his presentation, he summarized the arguments developed on behalf of the applicants in relation to the four main issues referred for decision by the Supreme Court, focusing on the underlying question of the extent to which the UK Constitution recognises a notion of constitutional pluralism, and the implications of developments since 1972, with different constitutional norms arising both from EU norms and devolution.

Dr Alex Schwartz explored the extent to which analogies can be drawn with the Supreme Court of Canada's decision to patriate the Constitution, where the Court held that by, constitutional convention, amendments to the Constitution required a substantial degree of provincial consent. He concluded that, even if there is a strong parallel, the analogy breaks down, first because Canada is a formal federation and, second, because no popular vote was involved in that case. While in Canada the balance was pushed back in favour of the provinces, devolution in the UK is still quite young and there is no tradition of a federal state.

Prof. John Morison gave his reactions from three different perspectives. As a constitutional lawyer, he expressed his strong reaction against the resurgence of sovereignty ideas. This is a bipolar idea of sovereignty of judges and the Parliament, where the judges are viewed as a 'salvation' and where sovereignty is understood in terms of popular sovereignty. As a governance theorist, he stated that all this litigation seems to be a futile exercise to escape from international requirements and norms, arguing that decisions about the future relationship between the UK and the EU should not be decided in the national courts. Finally, as a governmentality scholar, Prof Morison stated that there is no such thing as sovereignty, only individual exercises of power acting in the day to day routine of governing, as 'government' has been displaced by 'governance'.

Prof. Dagmar Schiek explored three issues: 1) Article 50

procedure, 2) Whether national legislation is sufficient to truly convey EU derived rights and 3) Whether the UK would have to leave the EEA via Article 127 separately or might even remain in the Internal Market as a default option after BREXIT. One question which could trigger a reference to the European Court of Justice is whether the UK can change its mind during this process, and unilaterally revoke its notification under Art. 50. The parties in the Miller litigation agreed that this was not an option, and Prof. Schiek supported this view, referring to a teleological interpretation of Article 50 TFEU: the provision stresses consent throughout, and also provides that rejoining the EU is based on Article 49, not 50. However, the central role of consensus in Article 50 TEU also means that the EU institutions and the UK can agree to reverse the withdrawal process. Accordingly, the process is not irreversible. Such a result would also contradict the Treaties' general tendency to prioritise the progress of EU integration. Nonetheless, the UK cannot unilaterally withdraw the withdrawal notification, which is also the reason why the notification as such weakens the rights derived from EU law for UK citizens. Regarding the question whether the joining of and withdrawing from the EU were truly matters of national law only, she emphasized that the quality of EU rights is such that national law cannot fully replicate its effects. Thus, withdrawing from the EU will change the position of UK citizens. the question of whether the UK remains a member of the EEA, with the consequence that it also remains within the Internal Market even after withdrawing from the EU. Finally, on the question of whether the UK remains a member of the EEA, with the consequence that it also remains within the Internal Market even after withdrawing from the EU, Prof Schiek argued that the EEA presupposes the EU or EFTA membership of all its members, making it very unlikely that withdrawal from the EEA can be independent from withdrawal from the EU.



The EU without the UK: Implications & Legal Consequences of BREXIT (26 November 2016)

TREUP members **Dr. Marek Martyniszyn**, **Dr. Dieter Pesendorfer** and **Prof. Dagmar Schiek** contributed to this conference at Warsaw University with papers about the future of competition law, the Banking Union and the free movement of persons, respectively. The conference represented one of the activities of an ongoing partnership between the University of Warsaw Faculty of Law and Administration and Queen's University Belfast School of Law. As part of this partnership, there will be a follow-up conference in September 2017 at Queen's University Belfast entitled: "BREXIT? -15 months on: Socio-legal perspectives on substantive proposals".

Dr. Pesendorfer's paper 'European financial markets integration, Brexit, and the re-making of a European financial center' explored key theoretical aspects behind the strategic decisions that the EU and the UK face in the Leave negotiations and how different options might affect the future of financial markets integration in Europe.

Dr Martyniszyn investigated the possible Brexit's implications on the area of competition law and policy with a paper entitled 'Brexit and competition law: challenges and implications'. The paper concludes that, regardless the final terms of a Brexit, the scope for regaining sovereignty in this area is modest as UK firms trading in the EU market must comply with competition laws.

Prof. Dagmar Schiek presented a paper exploring possible futures of the link between free movement of persons and equal treatment beyond EU membership. While EU institutions have stressed that access to the Internal Market in a post-Brexit scenario will not be possible without maintaining the free movement of persons, the paper highlights how the Internal Market also fosters forms of labour mobility based on unequal treatment. It also explored the questions of the extent to which the strict link between equal treatment and free movement be strengthen, and how can such link be maintained in a new relationship between the EU and the UK.

Prof Schiek also had the honour of closing the conference and announcing the follow-up conference in this partnership, which should focus on substantive responses to legal challenges by the UK's withdrawal strategy, of which we hope to know more by the time the call for papers will end (May 2017).

Café Europa

Café Europa is meant to be a monthly informal forum organized by Queen's University Belfast's Jean Monnet Centre of Excellence TREUP in which to air matters of research and practice around law and policy of the European Union. Its first edition welcomes academic and research staff across QUB to share their thoughts and ideas about the consequences of Brexit on their work. We encourage any ideas for future emanations of this action.

'What does Brexit mean for higher education and academics?'

Thursday 15 December, 2pm MST
0G/009

Prof Richard English (Pro-Vice Chancellor for Internationalisation and Engagement)

Dr Inmaculada Higuera (Research and Enterprise Directorate)

Prof Dagmar Schiek (Jean Monnet ad personam Chair EU Law & Policy, School of Law)



Rights in Diverse Societies: Gender, Migration and Ethnopolitics in the EU

This workshop, held in Queens University Belfast on 18-19 November, brought together researchers from across the continent to discuss new and emerging areas of research in these fields. Scholars presented work on a broad range of issues and challenges currently facing Europe, including the design of inclusive peace settlements and institutions, citizenship in diverse settings and recognition of minori-

ties. Delegates heard evidence from a host of cases from Kosovo to Turkey, Romania and Ireland.

Organised by the Ethnopolitics, Global Justice & Human Rights, and Women & Politics specialist groups of the Political Studies Association (PSA) with the generous funding by the PSA Pushing Boundaries award and support from TREUP, the workshop drew together these three strands of research to host a lively forum for debate and exchange of ideas, between and across these fields. In addition to presentations of theoretical and empirical research, the workshop heard from a figure at the forefront of practice in diversity, human rights and inclusion with a keynote address

from Les Allamby, Chief Commissioner of the Northern Ireland Commission for Human Rights. In a wide-ranging speech the Commissioner addressed the pressing topic of: 'The role of a National Human Rights Institution where human rights are a contested space'. On the workshop's final day, John Coakley touched on a number of the workshop's core themes in a keynote speech on the gender dimension to ethnopolitical mobilisation in Europe. Drawing the workshop to a close, organisers Timofey Agarin and Birgit Schippers reflected on a productive two days that generated new ideas, networks and potential future collaborations.

Other activities by TREUP members

- Prof David Phinnemore** addressed the Irish Government's 'All-Island Civic Dialogue' on Brexit on the issue of a bespoke arrangement for Northern Ireland (2 November 2016) and presented on the challenges of Brexit for Northern Ireland at a seminar at the Foreign and Commonwealth Office (9 November 2016). He also gave evidence on Brexit to the Committee for the Executive Office at the Northern Ireland Assembly (21 September) and on Brexit and UK-Irish Relations to the House of Lords European Union Select Committee on (17 October).
- Prof. Dagmar Schiek** was been interviewed on Radio 4's "Today" programme on the options for a special status for Northern Ireland after "Brexit" (30 November). She also gave evidence to the House of Commons's Northern Ireland Affairs Committee in their inquiry on the land border between Northern Ireland and Ireland (23 November 2016). The session is on parliament tv (<http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/news-parliament-2015/land-border-ev2/>) She had already given evidence to the same committee on 3 February 2016, exploring the potential impact of leaving the EU on Northern Ireland (<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/northern-ireland-and-the-eu-referendum/written/30924.html>), this was cited in the Committee's final report (<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmniaf/48/4802.htm>)
- Prof Brice Dickson** wrote a piece on the implications of Brexit for human rights for a book which is being published in Japan (in Japanese) entitled 'Cultural Diversity in International Human Rights Law'. It is being added to an article he wrote for a Japanese journal, which is being reprinted in the book. The journal article was on the UK Supreme Court and human rights.