



Jean Monnet Centre of Excellence –
Tensions at the Fringes of the EU
Stream 3 (Variegated geometry) & Stream 1
(Balancing economic, social & ecological
integration)

Academic conference: 'BREXIT' 15 months on – socio-legal perspectives for the EU and Europe – summary report

Saturday 23 September 2017, 9:00 – 17:15 hrs Queen's University Belfast, Main Site Tower

This conference was organised by the Jean Monnet Centre of Excellence (TREUP) at Queen's University Belfast (organisation committee: Dr Sara Clavero, Prof Dagmar Schiek, Mrs Gift Sotonye-Frank) as part of a cooperation between Queen's University Belfast School of Law and University of Warsaw, Faculty of Law and Administration, following a first conference on 26 November 2016 in Warsaw. The school of law (QUB) supported the conference by providing administrative assistance and making available its moot court room for the plenary sessions.

Plenary Panel I: The EU's social legitimacy after the UK's withdrawal

Opening the conference, **Professor Dagmar Schiek** highlighted that to date there is little debate, academic and otherwise, on how the EU should respond to the UK's withdrawal – mainly, "Brexit" is discussed from national and subnational UK perspectives. She stressed that among the motives that led a majority of voters to support "Brexit" were some that were shared beyond the UK, including fears of socio-economic exclusion, which political campaigns such as the LEAVE campaign tend to channel



towards fear of the other, including those using EU free movement rights. To address those fears, the EU should, in Prof Schiek's view, enhance its social legitimacy – a theme connecting the three presentations on the first panel. **Prof Catherine Barnard** (University of Cambridge) opened the panel with an interim evaluation of empirical research into benefit claims before the competence UK tribunals, conducted together with Dr Amy Ludlow. The research confirmed that EU free movers are less represented among the claimants, and frequently are successful in challenging low allocations. The research adds to the statistics already available in this regards an



analysis of legal enforcements narratives in the UK. **Prof Mary Daly** (University of Oxford) deliberated on how the EU's social policy will most likely move forward after the UK's departure, highlighting the UK's reluctance in the past to support a more active social policy, as well as the changed positioning of the EU as a whole, in combination with increased challenges. She reviewed the EU



Commission's latest white paper on the future of Europe from a social policy perspective, indicating that "doing much more together socially" could be come a viable option if addressing the problems of long term care and unemployment alongside the coordination of social policy at EU levels. **Prof Frank Vandebrouke** (University of Amsterdam) presented his vision of a "Social Union", in which the EU does not provide "social Europe" but instead creates a holding environment for national welfare states, which would continue to remain solely responsible for social integration in Europe.



In the **discussion** with participants and among panelists questions were asked on whether the European Union could not gain legitimacy, and in fact identification, by providing social institutions

such as an EU level element for unemployment insurance, whether the data presented on tribunal cases on benefits could not be interpreted as confirming that EU free movers would be able to claim more benefits than they do, and whether the projected “Social Union” with its focus on employed work would not neglect the social integration beyond this sector, which has been contracting for a long time.

Parallel panels

The conference divided up into four parallel panels, running in two streams.

Parallel panel 1 A Free movement and social policy (chair: Dr Delia Ferri, Maynooth University, Ireland)

Professor Łukasz Pisarczyk (University of Warsaw): drew our attention to necessities to react to the UK’s departure by EU law & policy, demanding that the withdrawal agreement should ensure that citizenship rights of those E 8 workers who had moved to the UK would be maintained, and ideally also promoting a continuation of their free movement rights. If this would not succeed, he predicted a re-migration from the UK to Germany, the Netherlands and the Nordic countries. **Konstantinos Polomarkakis** (University of Bristol) continued where Prof Mary Daly left off, developing cautiously optimistic prediction for EU social legal policy: he cited the draft work life balance directive, the pillar of social rights and other policy document as evidence for an appetite for a higher level of EU social integration at the part of the EU institutions, which he viewed as a necessary reaction to “Brexit” by the EU. **Dr Konstanze von Papp** (Keele University) compared the ECJ case law on social benefits for free movers with its US counterpart. Stressing that the ruling in case C-308/14 (COM v UK, child benefits and tax credits) confirmed a string of cases refusing social equality to EU citizens who had not been lawfully removed from their host member state, she found a lack of communitarian solidarity for new comers in the EU, which contrasted with the US approach, while also stating that the EU approach is in line with citizens’ expectations. In the **discussion**, Prof Pisarczyk confirmed that in countries such as Poland there is limited appetite for European solidarity because there is a feeling of betrayal by the East, due, for example to politics around posting of workers. Other participants suggested that beyond the UK there would be a higher level of transnational solidarity, while others again wondered whether EU social law and policy can be successfully compared to that in a federal entity such as the US.

Parallel Panel 1 B Between internal market and free trade (chair: Dr Billy Melo Araujo, Queen’s University Belfast)

Dr Dylan Geraets (Catholique University of Leuven) considered whether and in what way “Brexit” would impact on the EU’s trade policy, a theme which only received limited attention during the campaigns in the UK. Nevertheless, he suggested that the EU external trade policy needs to be responsive, among others by continuing developing a coherent approach to Investor Courts in international trade agreements and EU trade dispute instruments, avoiding an inward looking trend. **Dr Bastiaan Kemp & Dr Stephan Rameloo** (University of Maastricht) focused on the question how the UK’s withdrawal will impact on the migration of companies, considering that British private limited companies have been very popular in other Member States of the EU, due to the ease of establishing them due to the limited capital guarantees needed. They suggested that the EU will have to provide opportunities to re-establish for those companies whose actual business is based within the EU, although incorporated in the UK. **Marta Ostrowska** (University of Warsaw) discussed the question what consequences “Brexit” will have on the insurance market, given the size of the UK insurance business within the Internal Market.

Paralell Panel 2 A: EU environmental law and policy (Chair: Dr Mary Dobbs, Queen's University Belfast)

Jędrzej Mańnicki (University of Warsaw) considered the impact of Brexit on the EU Emissions Trading Scheme (ETS) generally and within the UK. He focussed on the financial costs of the various alternatives open to the UK - including that of a UK ETS. He also considered developments at the EU level, in particular proposals by the European Parliament that have been hindered to date. **Dr Leonie Reins** (University of Leuven) built upon Jędrzej's paper. She considered the role of the UK - in developing and promoting the EU ETS, but also as the 2nd biggest emitter in the EU. She expanded upon the 3 options for ETS for the UK, focussing on the problems that would exist if the UK had its own ETS but retained links with the EU ETS. Instead, Leonie proposed that a UK ETS, which would be completely separate from the EU ETS, would be more beneficial for the UK. Together, these two papers highlighted the difficulties for both levels, which lead to significant legal and thereby financial uncertainty those who might seek to purchase allowances. **Dr Maciej Sokołowski** (University of Warsaw) delved deeper into the influence of the UK on the EU ETS and the impact of Brexit on Poland in this field. He examined the UK's role in relation to energy (market) liberalisation, state aid, and climate and energy policy - considering that Poland has lost out on a strong supporter in some aspects, but on balance that the impact will be neutral. **Dr Roderic O'Gorman** (Dublin City University) turned from energy and the EU ETS to the broader issue of environmental policy coherence post Brexit. He discussed the various options open to the UK, including variations of EFTA and the EEA, as well as the significance of the European Neighbourhood Project - an entire spectrum of relationships are possible regarding environmental protection. Roderick also considered the future of international environmental law in the UK, noting the automatic continued existence of much of this (for the time being) but with notable challenges regarding specific documents such as the Bonn Convention that is currently implemented by directly applicable EU Regulations.



Panel 2 B: EUropean polity and society (Chair: Dr Ulrike Vieten, Queen's University Belfast)

Dr Stephen Coutts, Dublin City University focused on the communitarian aspect of what Leave voters might have longed for, and the current limits of the EU's citizenship model. He portrayed EU citizenship as largely build on mobility typical for the middle class, leading to a perception of EU citizenship as not accessible to all. The ensuing de-nationalisation of citizenship rights results from the individualist, elitist and instrumental character of EU citizenship – three deficits which the EU could and should address by developing a more communitarian notion. **Dr Massimo Fichera** (University of Helsinki) analysed different layers of a securitisation threat emanating from the UK's decision to withdraw from the EU. That "Brexit" decision in his view shatters the project of expanding spaces, threatening to reduce the European Union's integration project once again to a merely contractual endeavour, and stressing its temporality. He also emphasised how Brexit points to the importance of the social and economic constitution as a support for European integration. **Professor Jukka Snell** (University of Helsinki) presented findings of an analysis of 29 EU related referenda in Member States, including the 2005 referendum in France and the Netherlands on the Constitutional Treaty, as well as the Irish referendum on the Treaty of Lisbon in 2008 next to the UK's "Brexit" referendum, all of which resulted in a rejection of the specific EU project submitted to a popular vote. There were differences as regards the main motives for rejections:



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e.g. in France the negative vote was motivated by the perceived negative impact on employment rights, while in the UK the perceived threat of EU citizens from other Member States as burdens on the NHS and social services was more decisive (possibly underpinned by high levels of income inequalities). However, common issues could also be identified, such as the perception of the EU as an agent of globalisation with insufficient social concerns, next to lack of information. The speaker suggested that increasing tax fairness, and the creation of an EU unemployment insurance fund could increase the acceptance of the EU project – though the EU cannot easily achieve these due to its limited competences. The **discussion** focused on the ideas of cosmopolitan citizenship, the need to strengthen the European project and the legitimacy of the referendum.

Plenary Panel Perspectives for the EU's Eastern and Western Fringes

The final plenary panel, chaired by **Professor Yvonne Galligan (Queen's University Belfast)** started



with a presentation by **Dr Steve Terrett** of a common paper by himself and **Professor Robert Grzeszczak** (both University of Warsaw) on the Polish government's slow dismantling of fundamental pillars of the rule of law, and the EU's lack of reaction to this problem to date. Although the paper concluded that the Polish constitutional court judges are practically in chains, and that the PIS party had an overly controlling grip on the media, the authors conceded that the EU

Commission had probably correctly weighed the opportunities to successfully conclude an "Article 7 challenge" given the likely vote of Hungary, deliberating whether the Treaty change necessitated by "Brexit" could offer an opportunity for reform



around the rule of law. **Professor Dagmar Schiek** (Queen's University Belfast) followed with a paper on the potential reaction of the EU to the specific threats to the island of Ireland emanating from BREXIT. She identified the geographical position of Ireland as one basis for the negative

consequences resulting from the physical cut-off of the island from the EU by the UK, and the relevance of EU law as a directly effective legal frame for the relatively peaceful coexistence of two states on the island of Ireland as the second. The speaker stressed that withdrawing the legal frames for socio-economic and civic integration would endanger the relative normality which had evolved on the island of Ireland, among others through the



movement of EU citizens from beyond the UK and Ireland to Northern Ireland as well as to the South. She presented five building blocks by which the EU could contribute to a continuation of this process post-Brexit, including the extension of the EU Internal Market and Customs Union, EU



funding programmes and the EU equality acquis to Northern Ireland in order to prevent divergence and the need of a hard border. **Dr Nikos Skoutaris** (University of East Anglia) focused on the effect of de-integration on border conflicts, using Cyprus, Gibraltar/Spain and the island of Ireland as examples. He illustrated by detailing the border conflict solution on Cyprus that there were options to

construct a border as well as EU coverage beyond its external borders, but concluded that these did not prevent disruption on the island of Cyprus. His paper illustrated that more flexibility would be needed for post-Brexit solutions, should the success of EU induced peace processes not be endangered.

Discussion points included the question whether a closer alignment of Northern Ireland with Ireland would not lead to a border within the UK which again might be detested by the Unionist community; Prof Schiek deliberated that this question demonstrated that there was a Unionist case for the UK to remain within the EU legal framework, which the people of Northern Ireland did realise: despite delivering a unionist majority in two elections, they also voted in their majority for Remain. Further discussion evolved on the degree to which a constructive dialogue with a rogue state could be had, and in how far Poland, alongside Hungary, already was to be qualified as rogue states. Dr Terrett deliberated that Polish civil society continued to challenge the PIS party's direction, and that imaginative and decisive action by the EU could have some much needed impact.

Further to this report, speakers' abstracts are available [here](#), and their slides are available [here](#).