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# Editorial

## The Brexit phenomenon and its impact on education, politics, and economy

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The voting public, with the referendum of June 2016, have opted for a withdrawal of the United Kingdom from the European Union. Since the shocking – and surprising even for those initiating the referendum – results have been made public, the EU and its citizens speculate about the possible withdrawal and its consequences. Media, and social media especially, have contributed to such speculations; however, they also reported on immediate social impacts which apparently are linked to the vote. The sentiments claimed to be mirrored by parts of the media were voices of pride, as well as voices of a not completely new but strengthened nationalism. Also among those sentiments were voices of regret, and of bitterness, too – the twitter hashtag “notinmyname” indicated that many young people of pre-voting age, especially, were terrified by the referendum’s outcome. In parallel, video footage of xenophobic harassment appeared online, and seemed to reflect an increasing hatred of foreigners, which, again, seemed to be linked to the referendum. All in all, the Brexiters, it appears, did not only protest the EU, but expressed a general feeling of being overlooked and left behind. Nevertheless, their voice will have a strong impact on the EU’s future, and thus on the lives of those who want to stay in the EU, people of pre-voting age, in particular. The media, as usual, were not the sole observer of the Brexit phenomenon. Social science takes part in both opinion-building, and commenting on the phenomenon. This journal, dealing with questions of Europeanization, European encounters and policies from interdisciplinary perspectives, wants to contribute to the ongoing debate by inviting scholarly representatives of different fields to speak up and comment. The contributors are experts in their fields, ranging from law to sociology to cultural studies and economics; at the same time, transdisciplinary considerations have their due share in all contributions. **John Benedicto Krejsler**, Department of Education, Aarhus University, provides a commentary on “Brexit: an exit disaster or entry into a Kafkaesque process? Reflections from a Danish education and research context”. Krejsler focuses on the potential – and in fact already present – impact of Brexit on the European education and research landscape. He discusses the possibility of exclusion of British research partners in ongoing grant application on EU level, due to uncertainty as to future policies after Brexit. Overall, national protectionisms might grow, whereas international collaboration within fields of education might decrease. In relation to the notion of a potentially new asymmetry, to the detriment of UK citizens, Krejsler touches upon the issue of English as a lingua franca in the EU and as the language of Higher Education; and he also addresses the mothertongue advantage of UK citizens in academia. Finally, Krejsler addresses the democratic deficit of the EU and the specific EU communication having alienated EU

citizens. This contribution is followed by the study of **Ushma Chauhan Jacobsen**, Department of Business Communication, Aarhus University: "English in the European Union after Brexit: Inclusion effects of a language without an owner". Jacobsen deals with English as a lingua franca, and on the potential privilege this entails for native English speakers. The author, as a first step, reviews public discourse on the legitimacy of English as an official language of the EU. She identifies claims to let English, the language, follow "its nation" in withdrawing from the EU. After discussing linguistic and cultural concepts and after briefly sketching the history of the UK entry into the EU, Jacobsen concludes that English, as a shared foreign language, might well exert a democratizing effect on the remaining EU partners. English, she concludes, will remain the language of the EU, but maybe as a kind of democratized language without an owner. The third contribution to this volume, by **Georg Vobruba**, Institute of Sociology, Leipzig University, is titled "Center, periphery, shadow. The geopolitical pattern after Euro-, Schengencrisis and Brexit." It embeds the Brexit phenomenon in the EU's general modus of crisis, including the crisis of the common currency, as well as that of the Schengen area with its impact on further integration. Vobruba, in presenting 12 intertwined theses, informed by relevant sociological discourse and by observation of current political events, illustrates potential scenarios of change of the EU's geopolitical character. **Béatrice Schütte**, PhD, legal journalist, contributes the title: "The Brexit Referendum – Legal Aspects". She maintains that, legally and contrary to populist sentiments, there is significantly more to the exit process than a simple proclamation of exiting. In the UK, especially, legislation influenced by EU law may need to be adjusted and bureaucratic obstacles might increase, both for UK and for EU citizens. Schütte argues that, in order to prevent other EU member states from following the UK example, EU-adherent states will have to demonstrate strict negotiation power. A lenient EU policy may transport the message that "one can have one's cake and eat it, too": states may get rid of perceived inconveniences - such as the intake of refugees - while at the same time enjoying EU membership advantages. This latter consideration will also be found in the contribution "An Economic Perspective on Brexit", by **Christian Soegaard**, Department of Economics, University of Warwick, and **Philipp J.H. Schröder**, Department of Economics and Business Economics, Aarhus University. They comment on short and long term consequences of the UK exit strategy. The exit strategy, they argue, might seem reasonable and attractive in the short run, and thus might tempt other states to follow suit. Despite the expectable negative economic impact of the decision to leave the EU and the single market, Britain might succeed in becoming an "island economy" with low taxes and little regulation. Yet this might lead to other EU countries pursuing a similar strategy of self-interest, while simultaneously aggravating the economic problems of other countries. **Michael Hartmann**, Institute of Sociology, Darmstadt University of Technology, and **Klarissa Lueg**, Institute of Sociology, Europa-Universität Flensburg, address issues related to Brexit as relevant for power structure research and research into elite communication. Centrally, in this interview, Hartmann argues that Brexit did reveal the relative lack of power of the internationally recruited economic elite in the UK, vis-a-vis a domestic political elite. The economic elite failed to prevent the Brexit referendum, which might harm British economy. Hartmann argues that the political and the economic elite, due to internationalized life courses, and, hence, to decreasing social similarities, have become alienated from each other.

Finally, **Hauke Brunkhorst**, Institute of Sociology, Europa-Universität Flensburg, in his essay "Comes the End of the Western Legal Tradition? – The world after Brexit, Trumpism, and the great authoritarian turn" describes a threat to a cosmopolitan and statist legal order by developments such as Brexit, Trumpism and the new authoritarian globalization. These recent phenomena could be signs for an ending Western Legal

Tradition with unpredictable consequences. Contributions to this volume, then, do represent different disciplines and sub-disciplines: they are closely interconnected, and even intertwined, nonetheless. We venture to say that they present a range of new and highly interesting insights into multidisciplinary perspectives and that, together, they are apt to provide an overview (certainly not complete) of issues having been raised by Brexit. All contributions are set to provide a nuanced perspective on what implications Brexit may entail, from language use and a potential cultural democratization to international cooperation in the field of education, or from the danger of a dynamic of beggar-thy-neighbor politics to changing dynamics between political and economic elites. Our collection of contributions is founded both on relevant social theory and on empirical observation. Although all of them circle around the Brexit phenomenon, some connect to other issues of crisis related to Europe and the EU (e.g., TTIP, CETA, Schengen crisis, Euro crisis), issues causing turbulence in the European solidarity project.

Finally, this overarching modus of crisis may be, at least partially, taken as a chance to rethink and renegotiate both national politics and policies and the European project and its society, altogether.

# Brexit: an exit disaster or entry into a Kafkaesque process? Reflections from a Danish education and research context

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What will Brexit mean for the UK and the EU? This commentary argues that Brexit will occupy the EU for years, and work as a brake on the EU as Brexit appears to represent a radical echo of popular dissatisfaction with the EU in most member states. EU and the UK are so interwoven that a solution will be brokered that reflects common trade, cultural and security interests. Brexit, however, also reflects the unfair and infantilized image of the EU as 'the bureaucratic giant thwarting national sovereignty' that is repeatedly echoed in national debates. This actualizes two main problems to be dealt with: (1) EU's one-sided focus on market interests, and (2) its democratic deficit. BUT: EU is necessary to prevent European nation states from reverting to inward-looking national(ist) perspectives in a globalized world. EU forces us to widen horizons. EU is also a project of cultural exchange, diversity and *Bildung*.

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## *What actually happened?*

On 24 June 2016 52% 'brexiteers' against 48% 'remainers' decided to vote the UK out of the EU with a turnout of 71.8% of the electorate. It was, by any definition, a motley vote: cosmopolitan London, independence-hungry Scotland and divided Northern Ireland voted to remain, and the rest of the country voted to leave the EU; it was young against old; educated against low-skilled. It was a vote that reflected the issue of who is riding the globalisation gravy train, and who feels left behind. Although Brexit represents a particular British showdown with Europe<sup>1</sup>, it also echoes the familiar heated – and in many ways unfair – misunderstanding of the EU, as we know it all too well in Denmark and other national contexts. The EU is often presented and perceived as an undemocratic, grey, bureaucratic giant that interferes in too much, whereas – a little pointedly expressed – the EU is not much more than what the governments of its member states can agree upon. In short, Brexit reveals that the UK is a divided nation. Theresa May, the newly-elected leader of the Tory party and, consequently, the new prime minister, appears to support a more balanced Brexit than might have been feared if the process had been led by colourful Boris Johnson, who became Secretary of State for Foreign and Commonwealth Affairs instead. On 2 October Theresa May promised to trigger the infamous article 50 of the Lisbon Treaty in early 2017, with an expected formal UK exit by 2019.

The outcome depends on whether the UK and the EU can negotiate a so-called Norwegian or Swiss solution, whereby cooperation will probably continue as before, although the British will have to remain outside in the corridor when decisions are taken.

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<sup>1</sup> For an informative account of this narrative about Britain's troubled relationship with Europe and the EU in particular, read Denis MacShane's book from 2015: *Brexit: How Britain Will Leave Europe*. London: J.B. Tauris & Co. Ltd.

Or, more likely, the UK and the EU will embark upon a long-term tug of war in which *Realpolitik* and common interests on economic, trade and security issues will eventually lead to a third way which small nations like Norway or Switzerland could never have achieved.

When following the British debate, one notes that the key British concern is about not losing full access to the EU single market. However, as vehemently reiterated by EU representatives, this full access requires compliance with the so-called 'four freedoms', comprising free movement within the EU for migrants/workers (including students), goods, services and capital. This condition will probably be hard to swallow for the considerable proportion of brexiteers who were primarily concerned with reducing immigration from countries like Poland, the Baltic countries and most recently Romania and Bulgaria. But then again, many brexiteers appeared to mix up the distinction between immigration from EU countries and third world countries.

#### *What will Brexit mean for European education and research?*

The short answer is: We do not know!

The slightly longer answer suggests that the political will to expand and deepen international collaborations within culturally sensitive areas such as schools and education will probably diminish for some years to come within the EU. Likewise, national protectionism can probably be expected to grow in terms of funding for research and a preference for own national students.

Collaboration with the UK within the OECD, the IEA and the Bologna Process will probably continue as before. The same most probably applies to the many-sided and diverse collaborations across borders between researchers and between students.

Regarding the prestigious Horizon 2020 programme (the EU's largest ever innovation and research programme, with a budget of nearly €80 billion) and other EU-funded research collaborations that Britons traditionally top in terms of winning grants, it is hard to imagine that the UK will not fight hard to remain within such golden schemes ([http://ec.europa.eu/research/horizon2020/pdf/press/fact\\_sheet\\_on\\_horizon2020\\_budget.pdf](http://ec.europa.eu/research/horizon2020/pdf/press/fact_sheet_on_horizon2020_budget.pdf)). Immediately after the Brexit vote, one could read in British newspapers like the Guardian that British researchers and scientists are deeply concerned that they will be excluded from research collaborations (<https://www.theguardian.com/education/2016/jul/12/uk-scientists-dropped-from-eu-projects-because-of-post-brexit-funding-fears>).

And yes, this has indeed already happened. EU researchers of other nationalities have expressed concern that they might jeopardise their chances of winning grants if they include British researchers because they do not know what Brexit agreements will apply in the near future. On the other hand, the British profit greatly from the advantage that English has become effectively EU's *lingua franca*, and that they have a privileged position in and access to *the Globalisation Empire*<sup>2</sup> in research and education, which is largely defined by Anglo-Saxon nations and standards (USA, UK, Australia, Canada and New Zealand in particular).

Altogether, there are many indications that not much is going to happen - right now. Or maybe the opposite is the case: perhaps a lot of things are already beginning to happen, of which Brexit is just a part and a symptom.

#### *The big problem is our infantilised relationship with the EU*

Brexit has already had an unmistakable impact. Or perhaps it would be more accurate to characterise Brexit as a particularly radical echo of trends that proliferate in many – or

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<sup>2</sup> Hardt, M., & Negri, A. (2002). *Empire*. Cambridge, MA & London: Harvard University Press.

even most – other EU countries. For Brexit is also an expression of a particular and widespread kind of dissatisfaction with the way people believe or experience that the EU works. A kind of dissatisfaction that politicians can hardly ignore without risking an increase in support for EU-critical and populist parties on the right as well as the left sides of the political spectrum.

It is already apparent that the EU has reduced the amount of new legislation and is operating with a budget that is lower than last year. A discourse is on the rise that constantly talks in the tone of a so-called smaller and leaner EU, akin to the following: “the EU should focus on issues that require cross-national collaboration, but should refrain from interfering in affairs which are better dealt with at a national level”. This discourse is usually built on the basic idea that the EU is a largely malevolent bureaucratic giant that erodes national sovereignty and democracy.

The question could be posed differently: Perhaps the problem is that we EU citizens harbour unrealistic expectations with regard to what the EU and Europe can accomplish with the current set-up. This situation is compounded by the fact that we have been guided for too long by too many national politicians and media who dare not or cannot find ways to convey to national audiences what collaboration within the EU actually involves and under which constraints. The result is too many infantilised national reactions and simplistic narratives about what goes on in the EU. In national politics the EU is blamed far too often when things go wrong, but is given no credit when things go well.

From a Danish context we know all too well what the consequences of ignorance about the EU and the way it works may be. A recent referendum (3 December 2015) on lifting a reservation concerning Danish participation in legal collaboration following the Danish “no” to the Maastricht Treaty (2 June 1992) was so badly explained and understood that, as usual, it became a referendum about whether you were for or against the EU. A rather similar thing happened recently in the Netherlands when the so-called *Dutch Ukraine–European Union Association Agreement referendum* (6 April 2016) was turned in many respects into a popularity contest about whether you liked the EU or not. And most recently of all, the right-wing Hungarian Prime Minister Victor Orbán called for a referendum (2 October 2016), which he lost (in the sense that the voter turnout was too low) but continued to exploit nonetheless. This referendum concerned the EU resettlement quota for migrants arriving in Greece and Italy in particular. Hungary was scheduled to receive only around 1,300 asylum seekers according to the plan. This referendum was shrouded in rhetoric about the EU giant thwarting Hungarian national sovereignty and identity, and has raised debate questioning Hungary’s place in the EU in the wake of Brexit. This rhetoric is evident in the way the question was posed in the referendum: “*Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of parliament?*” And I could continue with the French referendum rejection of the Lisbon Treaty in 2005 and other examples<sup>3</sup>.

I do not in any way deny that much critique can and should be raised about the transnational collaborations that Denmark and other European nation states are part of within the EU, the Bologna Process (the European Higher Education Area), the OECD (PISA, TALIS, etc.) and the IEA (PIRLS, TIMSS)<sup>4</sup>. In my view, there has certainly – albeit not exclusively – been too much focus on the economy, employment and employability, and

<sup>3</sup> E.g. Žižek, S. & Horvat, S. (2015). *What Does Europe Want?: The Union and Its Discontents*. New York: Columbia University Press.

<sup>4</sup> IEA is the International Association for the Evaluation of Educational Achievement. IEA conducts TIMSS (Trends in International Mathematics and Science Study) and PIRLS (Progress in International Reading Literacy Study) and other comparative surveys of student achievement.



often too much focus on the terms of a very neo-liberally oriented market perspective. In a school and education context there has been too much focus on surveys that are presented as mere rankings of nations, surveys which have also led to a one-sided emphasis on literacy, numeracy and science. The focus has been placed one-sidedly on school effectiveness, thereby generating a disregard for the knowledge and experience gained from broader *Bildung* and education perspectives that different countries have built up over many decades<sup>5</sup>.

Nonetheless, it is probably the case that Europe's many small and medium-sized nations (by global standards) would have adopted more inward-looking national identities and perspectives without the many transnational and international collaborations. Before joining the European Economic Community in 1973 together with the UK and Ireland, Danes used to regard their school system as the best in the world, and their society as an El Dorado in a dangerous world. So for Denmark as well as many other EU member states, the EU and other transnational collaborations have helped and still help to provide larger horizons and protect us from the seductions and temptations of inward-looking self-sufficiency.

The EU is of course also merely a part – albeit a very substantial part – of much wider and thorough processes of internationalisation that operate at all kinds of levels: student, teacher and researcher mobility and international conferences; digital revolutions that have enabled students and researchers to interact globally on a daily level, exchanging e-mails and articles, debating on Skype with colleagues abroad and so forth. This expands the horizon infinitely in terms of opening up minds and experiences to other perspectives and other literary, argumentative, and educational and cultural worlds. Obviously, these processes have also been accompanied by increasing levels of inequality, which seriously need to be addressed. This inequality, however, is hardly an argument for prohibiting or rolling back such new opportunities. On the other hand, nor is it an argument for refraining from focusing upon, addressing and trying to change two of the largest - and granted - most serious problems in the EU as well as many other transnational collaborations:

1. There has been a one-sided focus on economic growth and market interests with a liberal ideological focus on the Single Market and its four freedoms. And paradoxically, in the light of Brexit, the British have been particularly successful in driving this agenda!
2. The democratic deficit: it has not been possible to strike a satisfactory balance in the institutional set-up and communication of what is happening in the EU. As a result, we have seen too often that policy-makers and the media have been unable to communicate EU issues, potentials and pitfalls to their respective national publics and their democratic forums in satisfactory ways. Venues have been missing too often for national populations or – ideally – European citizens to become engaged in discussing and helping to solve the many challenges that can probably only be solved transnationally.

Jürgen Habermas, the German philosopher and sociologist – one of my heroes in this context –, has argued for decades that the EU is probably the only institution with sufficient politically institutionalised power and enough weight and punch to potentially

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<sup>5</sup> E.g.: 1) Krejsler, J.B. (2013). 'What Works' in Education and Social Welfare?: A mapping of the evidence discourse and reflections upon consequences for professionals. *Scandinavian Journal of Educational Research*, 7(1), 16-32.

2) Krejsler, J.B., Olsson, U., & Petersson, K. (2014). The Transnational Grip on Scandinavian Education Reforms: The Open Method of Coordination Challenging National Policy-making. *Nordic Studies in Education*, 34(3), 172-186.

match and challenge the excessively one-sided dominance of the market we have seen up to date<sup>6</sup>. He has warned convincingly that no European nation has the size and clout to establish a political frame to match market interests that increasingly defy national borders, for instance when multi-national companies as well as affluent citizens evade taxation and nation-state legislation. As Habermas himself has conceded, this struggle has only been partially successful. Many would likely say that it has failed. There is no doubt, however, that there are still plenty of hard battles to be fought to strike a more acceptable balance between a political system with democratic and popular legitimacy and the predominantly neo-liberally inspired market perspective that is dominant at present and for the foreseeable future.

But anyone who claims that these obstacles – however serious they may be – constitute a serious argument in favour of dismantling the EU ought to think twice. Without the EU, the domination of market forces would be even greater and more unchallenged. There would be a sea of small European nation states that would probably revert to the old national (and nationalist) habit of struggling for their own narrow national self-interests at the expense of their neighbours. This would create a Europe which would lose global influence, with each country probably being increasingly pitted against other countries by the dominant American, Chinese and Russian interests (just to name a few). This is already happening, but due not least to the existence of the EU it is still kept under at least some reasonable control. An illustrative example of this control is the recent ruling by the EU Commission that Irish preferential tax exemptions to Apple, the multinational giant, are illegal and the ensuing demand that Apple must repay the enormous amount that they have saved to the Irish state, against the will of the Irish government! This is an attempt to avoid a situation in which multinational companies pit nation states against each other to get extraordinarily preferential treatment that no small or medium-sized company would ever get ([http://europa.eu/rapid/press-release\\_IP-16-2923\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2923_en.htm)).

#### *Exit disaster or entry into a Kafkaesque process?*

So ultimately, I imagine that Brexit will probably mean:

1. that the UK will continue business as usual with EU countries, albeit with less influence;
2. that, for a number of years, EU collaboration will slow down, partly because of the immense effort to extricate the UK while simultaneously keeping them as intricately involved as the common interests of the UK and EU dictate;
3. that there will be more pressure in support of reforms of the EU that take the above-mentioned problems seriously.

Presumably, this predominantly – but not exclusively – negative and reparative focus means that it will be somewhat more complicated to fight for and benefit from the many opportunities that EU collaboration has opened up. In an education and research perspective, the following issues are particularly relevant in this connection:

- increased student, teacher and researcher mobility;
- proliferation of research collaborations and knowledge dissemination.

Not least, the many perspectives and hence the critical mass of knowledge and diversity of collaboration within the EU represents, and has helped to qualify and open the often narrow national perspectives towards far larger horizons. And this undoubtedly constitutes perhaps the most valuable contribution in a larger *Bildung* or educational perspective!

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<sup>6</sup> See for instance Jürgen Habermas (2013) *The Crisis of the European Union: A response*. London: New York: John Wiley & Sons Inc.

# English in the European Union after Brexit: Inclusion effects of a language without an owner

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It was not only Britain that officially entered the European Economic Community in 1973 but also the English language. Although English is only one of 24 official languages that figures in the multilingual kaleidoscope that characterizes the EU, its position of privilege cannot be overlooked. Not only does it sit comfortably with German and French as one of three EU procedural languages, it is widely acknowledged as the *lingua franca* par excellence required for the negotiation of international relations, the articulation and promotion of nation-specific agendas, and the professional career advancement of EU civil servants. It is also the working language of the European Central Bank. The Brexit referendum result on 24<sup>th</sup> June 2016 did not only raise concerns about the implications of Britain's exit from the EU within wide spanning domains of trade and commerce, environment, social justice, or migration and security, but also about which language(s) these issues were to be discussed, debated, and contested in.

Pungent statements on the future role of English from MEPs and other commentators appeared on different media platforms soon after the declaration of the referendum result. A senior MEP stated, 'If we don't have the UK, we don't have English'<sup>i</sup>. Another tweeted, 'English cannot be the third working language of the European parliament'<sup>ii</sup>. And another hashtag post stated, 'The English language has no more legitimacy in Brussels'<sup>iii</sup>. Such troubling headlines provoked a series of reactions that voiced the imaginings of English in a post-Brexit age.

But why the fuss? Although there is a well-established understanding that nations and their languages have been closely intertwined in the history of European nation building - and indeed in all postcolonial and present-day nation building efforts too - the history of the critical position that English occupies in the contemporary EU is unrelated to the history of using national languages as symbolic ammunition to build nations. After all, French, German, Italian and Dutch were all important languages in the the European Coal and Steel Community (ECSC) established in 1951. French held a position of privilege then as European institutions operated from French-speaking cities such as Brussels, Luxembourg and Strasbourg.

The entry of Britain into the EU could certainly suggest the entry of an imperialistic code for communication into the EU's official language regime. No one can turn a blind eye to, nor forget, the role that English played to establish and maintain asymmetries of power in Britain's settler and exploitative colonies. Yet to accord Britain the sole responsibility in accounting for the penetration of English into national educational systems all over the world, including within Hispanophone, Francophone and Lusophone nations, would be an error. The deep spread of English within the domains of global media, global business, global finance and global entertainment are outcomes of the emergence of the US as an influential global structuring agent after the Second World War. And it so happened that the US also spoke the same language that Britain spoke. In David Crystal's words, 'the language behind the US dollar was English'<sup>iv</sup>.

These two faces of English – one British, one not-so-British - inform the fuss about English after Brexit. The first face of English articulates itself in ‘official’, top-down and symbolic terms that is critical to the discussion of the recognition of cultural diversity and uniqueness of the people and nations of the EU. It supports the notion of linguistic rights of individual nation member states and is ideologically motivated. Why else should Ireland notify Gaelic or Malta notify Maltese into the EU’s language regulation when their MEPs and civil servants use English to conduct their business? The other face of English articulates another dimension that is characterized by bottom-up and pragmatic approaches that is free of native-speaker complexes that users of English as a foreign language often encounter. This face privileges the intrinsic virtues of any language that performs as a lingua franca to enable contact and communication; and it privileges the virtues of any language that has the ability to include many speakers without creating language hierarchies between them. As a MEP from Sweden stated, ‘keeping English now could actually make communications in the EU a bit fairer, since most of those speaking it would be using a foreign language.’<sup>v</sup>

The Wall Street Journal stated that Brexit would ‘erode the status of the English language in EU institutions’<sup>vi</sup> but this did not necessarily imply that English would not continue as a ‘working’ language. The Irish Times was quick to respond that although Gaelic would remain the official language, English would remain the working language of Ireland<sup>vii</sup>. The risks attached to imagining the withdrawal of English as a working language from the EU is reckless. Firstly, the inclusion of one compulsory foreign language has been part of European national education frameworks – with the exception of Britain and Ireland – since the mid 1970s. The general monolingualism mindset of Anglophone nations stands in contrast to the general multilingual ambitions and practices of other European member states. Not only is English seen as important in relation to the EU, but also far beyond.

The morphing of English - of sounds, words, grammar, idiomatic expressions - during the course of the last forty years shows how a language changes. Many of these changes are captured in complex notions of Englishes such Euro-English, International English or Lingua Franca English. Despite hefty claims and counter claims made by scholars and practitioners on whether such varieties of English exist or not, the fact that non-native speakers of English outnumber native speakers is undeniable. Thus, the drop in native speakers of English in the EU that follows Brexit may appear dramatic – but only if we retain a view of English as the property of Britain – which many would agree it ceased to be a long time ago. The reconstitution of English as a language for many different peoples and communities has already matured since the late 1990s when Suresh Canagarajah wrote of the ‘resistance perspective’ through which English users ‘may find ways to negotiate, alter and oppose political structures, and reconstruct their languages, cultures and identities to their advantage. The intention is not to *reject* English, but to *reconstitute* it in more inclusive, ethical, and democratic terms’<sup>viii</sup>.

Secondly, the EU is described as the ‘largest translation organization in the world’<sup>ix</sup> involving intricate arrangements of specialized professionals working with translation and interpretation processes in 24 official languages. However, in this complex and costly practice, English is a vital relay language. The EU’s Directorate-General for Translation regularly synthesizes and disseminates glossaries that list neologisms, terminologies and jargon associated with Europeak. The publication of numerous style guides help establish common forms of English usage in EU domain specific contexts<sup>x</sup>. The displacement of English would require substantial rearrangements and recruitment in the translation machine that accompany the daily practice of EU civil servants.

Thirdly, language is both a marker of identity as well as a means of communication. Those interested in promoting the ideology of the former will always face the pragmatic presence of the latter. On 28<sup>th</sup> June 2016, the New York Times reported that despite Brexit, 'likely very little' would change in relation to the use of English in the EU. On the same day, Forbes magazine ran an article insisting that English was the language of business, and the use of English in the EU was 'a market driven outcome'<sup>xi</sup>. Despite this excessively simplified and instrumental view of language, it also points to the everyday pragmatism that top-down impositions of language regimes often encounter. In practice, professionals use the language that is required to get the work done and to achieve results. The EU cannot be an exception.

Clocks cannot be rewound. English is far too entrenched into the global communicative pipelines of politics, finance and culture. English will certainly remain in the EU, thrive and be reimagined. But this does not mean that the privileged role it occupies in the EU should escape critical scrutiny. As Julia Kristeva evocatively writes in her essay on *Homo Europaeus*<sup>xii</sup>, the ambition is perhaps not to simply reduce Europe's plurilinguistic space to the bilingualism of 'global' English. Instead there is still work to be done in encouraging the emergence of polyphonic subjects and polyglot citizens of a plurinational Europe.

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<sup>i</sup> Goulard, H. (2016, June 27). English will not be an official EU language after Brexit, says senior MEP. *Politico*. Retrieved from <http://www.politico.eu>

<sup>ii</sup> Linn, A. (2016, July 11). English is and will be the lingua franca of Europe in spite of Brexit. *Quartz*. Retrieved from <http://www.qz.com>

<sup>iii</sup> Clavel, G. (2016, June 25). After Brexit, French politicians want English language out of EU too. Retrieved from <http://www.huffingtonpost.com>

<sup>iv</sup> Crystal, D. (2003). *English as a Global Language*. Cambridge: Cambridge University Press

<sup>v</sup> Steinhauser, G. (2016, June 27). English loses currency as Europe's lingua franca after Brexit vote. *The Wall Street Journal*. Retrieved from <http://www.wsj.com>

<sup>vi</sup> Steinhauser, G. (2016, June 27). English loses currency as Europe's lingua franca after Brexit vote. *The Wall Street Journal*. Retrieved from <http://www.wsj.com>

<sup>vii</sup> Carey, D. (2016, July 18). English will remain the working language of the EU after Brexit. *The Irish Times*. Retrieved from <http://www.irishtimes.com>

<sup>viii</sup> Canagarajah, S. (1999). *Resisting linguistic imperialism in English teaching*. Oxford: Oxford University Press.

<sup>ix</sup> Brexit: The demise of English as an international language? (2016) *Pangeanic*. Retrieved from <http://www.pangeanic.com>

<sup>x</sup> Examples may be found at [http://ec.europa.eu/translation/english/guidelines/en\\_guidelines\\_en.htm](http://ec.europa.eu/translation/english/guidelines/en_guidelines_en.htm)

<sup>xi</sup> Worstall, T. (2016, June 28). Brexit effects: EU to try to stop using English, but it doesn't work that way. *Forbes*. Retrieved from <http://www.forbes.com>

<sup>xii</sup> Kristeva J. (2016). *Homo Europaeus: Does a European culture exist?* *Open Mind*. Retrieved from <http://www.bbvaopenmind.com>

# Center, periphery, shadow. The geopolitical pattern after Euro-, Schengencrisis and Brexit

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Extraordinary problems are the European Unions' ordinary *modus operandi*. This is common knowledge. But does it apply even if problems pile up? What is the impact of the crisis of the common currency, the crisis of the Schengen area of free personal movement plus the aftermath of the Brexit vote in Great Britain? Will this accumulation of crises trigger further steps of integration? Or will it turn out as the beginning of the end of the EU? Or will something in between emerge? And if so: what?

In the following I shall offer a sketch, how current crises are likely to reshape the geopolitical structure of the EU.

- I. The European Union is based on a specific geopolitical structure, composed of mutual relations of all single EU-members. Programmatically, from its beginning EU integration operated by marching in step, hence consisting of equally integrated members. In practice at all times graded integration was the standard pattern, encompassing different levels of integration, different living standards, and power differentials.
- II. Already previous to the invention of the Euro it was clear that introducing the common currency in the EU is a "highly complex experiment" (Padoa-Schioppa 1994: 163), hence the Eurocrisis its logical consequence. Thus, not its mere occurrence but its severity was a surprise. Indeed, the Eurocrisis turned out to be a fundamental challenge for the EU. At present (end of 2016) the Eurocrisis is not solved but over. This means: Due to the crisis several new institutions are built, but it is unclear whether they are able to master the problems related with the common currency enduringly or simply postpone a big crash. In other words: The Eurocrisis has triggered relevant supplementary institution building (Banking union, ESM), but it is not sure whether this will be enough.
- III. Since summer 2015 people fleeing life-threatening situations and economic despair in their home countries triggered a crisis of the Schengen arrangement. The Schengencrisis is a fundamental challenge of the European border regime, so far consisting of free movement within the Schengen area and strict controls of its outer borders. This balance between inner freedom and outer control collapsed due to the number of refugees, desperately trying to reach the affluent center of the EU, causing several attempts to reestablish border controls within the Schengen area and triggering severe conflicts between the center and the periphery of the EU. Until today the EU is lost in a triangle between national egoisms, humanitarian demands and fragile political arrangements with authoritarian neighbor states in order to withhold refugees. The Schengencrisis is pending and overlapping the Eurocrisis..
- IV. For such a constellation, more than 100 years ago famous Swiss historian Jacob Burckhardt (1905/2005) coined the term "Krisenkreuzung" – crossing of crises. Does it mean that things deteriorate; that two crises mean double trouble? Not necessarily, as one has to take into account that some effects of both crises might neutralize each other. Just to mention one obvious effect: Because the Schengencrisis absorbs almost all political attentiveness, the political management of the Eurocrisis has be-

come much less hysterical. One crisis (Euro) becomes overshadowed by the other (Schengen). This was the effect, Burckhardt basically had in mind. But mutual neutralizing effects might go far beyond that (Vobruba 2017: 91ff.)).

- V. Both the Euro- and the Schengencrisis affect the relationship between the center and the periphery of the EU. In order to make this clear it is useful to understand this constellation as a political exchange relationship. The periphery commits itself to political and economic modernization and to operating as a buffer in order to absorb several kinds of border crossing problems coming from outside. The center in return offers administrative and financial support, (selective) freedom of personal movement, and – in the long term – participation in its wealth. This was the more or less hidden deal of the Eastern enlargement and analogous of the European neighborhood policy.
- VI. The exchange relationship between the center and the periphery remained intact until the worldwide financial crisis after 2007. The Eurocrisis unveiled a strong dependency of the periphery on the center. Whilst in the beginning of the crisis in 2007 there was a kind of a mutual dependency between center and periphery, in the course of the crisis the EU-center was able to get rid of it. Thus dependency became one sided at the expense of crisis ridden Southern EU-members, in particular Greece. They can't but accept financial aid from the center, thus forced to become exposed to transformative pressure which in some respect (Vobruba 2017: 77ff.) resembles former socialist countries transformation and its social costs.
- VII. The Schengencrisis in contrast manifests that the center depends on the periphery. Thanks to the treaty of Schengen, a new border constellation emerged: they are both national borders and the EUs outer border (Bach 2010). This double coding induces two effects. On the one hand for periphery members it means abandoning (or sharing) an important part of national sovereignty. On the other hand the center abdicates controlling the influx in the common Schengen area, hence their national territory. This arrangement collapsed with the big flight peaking in 2015. Now it turned out that without the periphery members' willingness and ability to control the common EU-border, the refugee problem turns into a distributional problem several EU-members apparently are unwilling or unable to solve.
- VIII. Both crises resulted in a breakdown of hitherto functioning political exchange arrangements. Thus the management of both crises aims at re-fixing political exchange arrangements at new terms. The Eurocrisis leads to a higher level of integration of the center and to austerity measures, covertly threatening the periphery to be excluded from the Euro-zone or even from the EU. The Schengencrisis reveals the centers' need to dispose of a buffer zone, hence guaranteeing the peripheries' membership in the EU. As far as the geopolitical structure of the EU is concerned, the impact of Eurocrisis and the Schengencrisis tend to neutralize each other. But this is just two third of the story.
- IX. As the Schengencrisis got on, political disputes became more and more concentrated on conflicts and bargains between the center, some southern members and some neighbors of the EU. In a shadow zone of these conflicts between the center and the periphery unfolds a development, creating a sort of "third countries": EU-members, hardly affected by the Eurocrisis and anxious to stay away from any EU attempts to solve the Schengencrisis commonly. This might change the geopolitical pattern of the EU as we know it fundamentally. This is where Hungary, Poland in the East and Great Britain in the West come into play. What can be expected? Any answer can't be but speculative. I use a sociological and a political argument.
- X. First sociologically: In his seminal work "Soziologie" Georg Simmel (1908/1992) analyzes "conflict" as a modus of social integration in contrast to mutual indifference. For conflicts are normal in modern society, society building by conflict must be seen as the normal case. Of course not all kinds of conflict contribute to society building, the crucial point is, whether they take place within a given frame. Simmel points to common values as such a frame, institutions antagonists can't question and damage

- might play an analogous role (Vobruba 2012).
- XI. Second politically: Whilst the center and the (southern) periphery of the EU is involved in intense conflicts about how to share the cost of the Euro- and the Schengencrisis, middle eastern EU-member countries and Great Britain successfully managed to keep away from such conflicts. And what is more, some EU-members try to suspend institutional rules, which so far provided a common frame for conflict and compromise. With respect to Eastern this is a step by step development, with respect to Great Britain it happens as a big bang, the Brexit. Whatever its final result: In the perspective of Simmel this clearly indicates one step out of an emerging European society.
  - XII. Euro- and Schengencrisis will leave a graded integrated as well as a divided EU: On the one side one can expect complex political exchange relationships between the center and the southern periphery evolve, all in all resulting in a geopolitical structure of graded integration. On the other side we will find some poorly integrated EU-members and halfhearted connected neighbors somewhere in the shadow.

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# The Brexit Referendum – Legal aspects

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The result of the Brexit referendum was that the UK voted to leave the European Union (EU). The UK government must now invoke Article 50 of the Treaty on the European Union (TEU), which regulates the voluntary withdrawal of a Member State from the EU. However, there is significantly more to this process than the mere exit procedure. A country's withdrawal has legal, political, institutional and economic consequences not only for the departing Member State but also for the EU and for the citizens in question. Institutional compositions will change. In the UK, existing legislation influenced by EU law may need to be amended. Regulatory gaps that emerge when EU law ceases to apply will need to be filled. The future relationship between the EU and the UK will have to be negotiated. Both EU citizens living in the UK and UK citizens living in other Member States will probably face bureaucratic obstacles. This paper gives an overview of the legal considerations relating to Brexit.

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## Introduction

On 23rd June, the referendum held in the United Kingdom on the question of whether the country should remain a member of the European Union (EU) ended with a small majority in favour of 'leave'. Despite criticism stemming from the tight result, and notwithstanding the fact that referenda are not binding under British law, new Prime Minister Theresa May said she felt bound by the decision and would guide the country through the Brexit procedure.<sup>1</sup> The tight result was not the only contentious issue. It has been argued that UK citizens were not sufficiently informed about the potential economic consequences of Brexit. Surveys also showed that the general public had a rather poor knowledge of EU institutions – a finding supported by the fact that on the day following the referendum, the second most frequent Google query in the UK was 'What is the EU?'.<sup>2</sup> Some have argued that if the country withdraws from the EU but remains a part of the internal market, it will still be subject to EU law but no longer be able to exert influence on its future development.<sup>3</sup> This was the second referendum on EU membership to have taken place in the UK. The first was in 1975, only two years after the country's accession to what was then called the European Economic Community. This referendum ended with a two-thirds majority in favour of remaining a Member State.<sup>4</sup> The result of the present referendum seems a logical and unsurprising culmination of growing Euroscepticism in many of the Member States. The people's poor knowledge of the EU and its institutions, as mentioned above, as well as a lack of access to and understanding of actions taken in Brussels, led to a breakdown in trust among UK citizens that resulted in the decision to leave.

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<sup>1</sup><http://www.express.co.uk/news/politics/683178/Brexit-is-EU-referendum-legally-binding-what-Article-50-legal-process-Britain-leave> (retrieved 5 November 2016).

<sup>2</sup> Welfens (2016), p. 540.

<sup>3</sup> Deutscher (2016) p. 2.

<sup>4</sup> Welfens (2016), p. 539.

People both inside and outside of the UK are now wondering what the future holds. Politicians from other EU Member States have repeatedly claimed that the process should be initiated quickly. However, the practical aspects of such a move are complex. This is the first ever application of Article 50 – a provision that is relatively new. Equally, Article 50 has been criticised for its incomplete detailing of the procedure, leaving gaps that must be filled by lawyers and politicians.<sup>5</sup> Time will tell whether Article 50's theoretical mechanisms are feasible in practice.

## *2. Voluntary Withdrawal from the European Union*

The 2009 Treaty of Lisbon gives Member States the possibility to voluntarily withdraw from the EU. None of the earlier treaties contained such a provision. Before 2009, the question of whether Member States had a right to exit the EU was highly disputed among legal academics. Against the right to terminate membership, it was argued that the treaties were concluded for an unlimited period, as per the current Article 53 TEU and Article 356 TFEU. On the other hand, given that EU membership is voluntary<sup>6</sup>, the subsidiary applicability of public international law as well as the sovereignty of the Member States were thought to favour the right to voluntary withdrawal<sup>7</sup>. However, the introduction of the Treaty of Lisbon put an end to this discussion.

### *2.1 Article 50 TEU Withdrawal Procedure*

Article 50 I of the Treaty on the European Union (TEU) states that any Member State may, in accordance with its own constitutional requirements, decide to exit the EU. There are no further substantive requirements for a withdrawal. A Member State wishing to leave the EU need not give any particular reason. 'Voluntary' also means that no consent of the other Member States is required.<sup>8</sup> Article 50 TEU stresses the Member States' continuous sovereignty in relation to the EU. Not only are these states the 'Master of the Treaties' as expressed in Articles 48 and 54 TEU but they are also the masters of their own membership. The provision also refers to the constitutional requirements of the Member States. This reference is generally seen as merely declaratory, as compliance with national law is not a matter of EU law. Whether these requirements are met can therefore only be determined by the withdrawing Member State and not by the ECJ or other Member States. An exception to this might be Germany, as Article 23 of the Grundgesetz<sup>9</sup> includes the duty to contribute to European integration.<sup>10</sup> A German withdrawal without substantial reasons may hence be deemed unconstitutional.<sup>11</sup>

The exit procedure is regulated by Article 50 II TEU. The withdrawing Member State must announce its intention to the European Council. However, the provision does not state any formal requirements regarding this notification. The EU and the Member State must then negotiate a treaty concerning the details of the exit and future relations between the Member State and the EU. This must be done according to Article 218 III TFEU, which regulates the conclusion of international agreements by the EU. All decision-making

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<sup>5</sup> Lazowski (2016), p. 1.

<sup>6</sup> The German Federal Constitutional Court classified the EU as a 'Staatenverbund', a voluntary association of states in order to reach common goals; Blanke, Mangiameli (2013), Article 50, marginal no. 6.

<sup>7</sup> Grabitz, Hilf, Nettesheim (2016), Article 50 TEU, marginal no. 1.

<sup>8</sup> Blanke, Mangiameli (2013), Article 50, marginal nos. 24, 25.

<sup>9</sup> Basic Law, the German Constitution.

<sup>10</sup> Blanke, Mangiameli (2013), Article 50, marginal no. 25; von der Groeben, Schwarze, Hatje (2015), Article 50, marginal no. 9.

<sup>11</sup> Callies, Ruffert (2016), Article 50 TEU, marginal no. 4.

institutions are involved.<sup>12</sup> The agreement should also deal with concrete questions such as mutual compensation, the future of pending cases at the ECJ, pending administrative procedures, the withdrawing Member State's contributions to current projects, and its participation in decision-making institutions during the exit procedure.<sup>13</sup> Negotiations are based on guidelines determined by the European Council. Representatives of the withdrawing Member State are not involved in any decisions. If the EU treaties do not contain specific provisions, the law applicable to the treaty between the departing Member State and the EU is the general Public International Law.<sup>14</sup>

According to Article 50 III TEU, EU treaties cease to apply to the Member State from the day the exit treaty enters into force, or two years from the date of the declaration being made to the European Council. The exiting Member State may, however, with the agreement of the European Council, decide to extend this timeframe. The treaty is not a constitutive requirement for an exit from the EU – a Member State can also leave without this framework. Due to the manifold legal, political and economic consequences of a Member State's withdrawal, however, this hardly seems feasible.<sup>15</sup> One of the consequences of a Member State leaving is a change in the composition of EU institutions such as the European Parliament, the European Commission, the European Council, and the European Court of Justice.

## *2.2 Possible Exclusion from the European Union*

Shortly after the referendum, politicians from other Member States repeatedly claimed that the process should be initiated as swiftly as possible. On the one hand, it is understandable that the remaining Member States want legal and political security; on the other, the complex, time-consuming nature of the process should be taken into account. It has been argued that the strict attitude towards the UK is related to the fact that there are parliamentary elections in Germany in 2017, as well as presidential elections in France.<sup>16</sup> However, the demand for a swift Brexit raises another question: If the process does not start quickly enough, or if the UK parliament ends up preventing Article 50 TEU from being invoked, could the UK still be excluded from the EU?

Under the scope of Article 50 TEU, the withdrawing Member State cannot be formally forced to invoke the provision and no deadline can be set to do so.<sup>17</sup> EU treaties, equally, do not contain any provision for facilitating a Member State's exclusion. Nevertheless, in September 2016, the Minister of Foreign Affairs of Luxembourg, Jean Asselborn, demanded Hungary's exclusion due to the country's treatment of refugees.<sup>18</sup>

Under the scope of the EU treaties, Article 7 III TEU allows for the temporary suspension of certain rights in cases of persistent and serious breach of the values mentioned in Article 2 TEU.<sup>19</sup> Exclusion from a treaty, however, is only possible under the scope of general Public International Law. It is a matter of debate among academics whether these rules are applicable or whether the body of EU law is exhaustive. Some academics argue that the respective provisions of the EU treaties are *lex specialis*, and that there is

<sup>12</sup> Blanke, Mangiameli (2013), Article 50, marginal no. 27.

<sup>13</sup> von der Groeben, Schwarze, Hatje (2015), Article 50, marginal no. 5.

<sup>14</sup> Grabitz, Hilf, Nettesheim (2016), Article 50 TEU, marginal no. 9; Blanke, Mangiameli (2013), Article 50, marginal no. 28.

<sup>15</sup> Callies, Ruffert (2016), article 50 TEU, marginal no. 5.

<sup>16</sup> Hammond (2016), p. 508.

<sup>17</sup> Lazowski (2016), p. 1.

<sup>18</sup> <http://www.spiegel.de/politik/ausland/fluechtlinge-jean-asselborn-fordert-eu-ausschluss-von-ungarn-a-1112024.html> (retrieved 8 November 2016).

<sup>19</sup> Article 2 TEU refers to the following values: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights including the rights of persons belonging to minorities.

no possibility to fall back on Public International Law such as the Vienna Convention on the Law of Treaties.<sup>20</sup> This is supported by the argument that the flexible regulation of Article 7 TEU offers a powerful means of exerting pressure on a Member State in breach of fundamental values. Others argue that if all measures under the scope of Article 7 TEU fail, and a state persistently damages the EU's reputation, the treaties could be interpreted as meaning that the other Member States would not be bound forever to a state that constantly violates fundamental EU values and damages the reputation of both the Union and its members.<sup>21</sup> However, the exertion of rights granted in the Treaty, such as voluntary withdrawal and any preparatory procedures, could never constitute a serious and persistent breach of fundamental values. Even if the Brexit procedure takes much longer than foreseen Member States – or in the improbable event that it does not happen at all – this would not be deemed a reason to exclude the UK from the EU.

### *3. Legal Aspects Beyond Article 50 TEU*

There are a number of legal aspects to consider regarding the withdrawal procedure that extend beyond Article 50 TEU as such.

#### *3.1 Consent of Parliament*

The UK government wanted to invoke Article 50 TEU without a parliamentary vote. On 3 November 2016, however, the British High Court ruled that Parliament must vote and that the government does not have prerogative powers in this matter. The government has announced its intention to appeal the decision, and the Supreme Court may have the final say. Brexit supporter Nigel Farage fears an attempt to block the country's withdrawal from the EU.<sup>22</sup> Regardless of the outcome to this legal challenge, it seems that if and when Article 50 TEU is invoked, the withdrawal process will be complex and drawn out. As such, the two-year timeframe may not be realistic.

#### *3.2 Influence of Brexit on the Law in Force in the UK*

The body of EU law in force consists of roughly 21,000 regulations and directives<sup>23</sup>, 1,100 international agreements concluded by the EU<sup>24</sup>, court decisions by the ECJ, as well as numerous guidelines and other soft law instruments, the exact number of which is hard to define as no institution publishes official numbers<sup>25</sup>. Not all of these affect the UK. From the day the withdrawal becomes valid, however, none of the provisions binding the country will continue to apply. The country will possibly need to enact corresponding national legislation in order to avoid regulatory gaps. The EU directives are not a major problem in this context, as they must be implemented into national law to have effect. Still, it may be necessary to revise or amend at least a part of these directives to cater for the new relationship between the UK and the EU. EU regulations, which are directly applicable, may pose the bigger problem. The most relevant act to be repealed is the European Communities Act, according to which the UK acknowledges the supremacy of EU law.<sup>26</sup>

Regarding the applicability of international treaties, a distinction must be drawn between those in the field of the EU's exclusive competence and the mixed agreements signed by

<sup>20</sup> Grabitz, Hilf, Nettesheim (2016), Article 50, marginal no. 12.

<sup>21</sup> Von der Groeben, Schwarze, Hatje (2015), Article 50, marginal no. 15.

<sup>22</sup> <http://www.bbc.com/news/uk-politics-37857785> (retrieved 3 November 2016).

<sup>23</sup> <http://www.n-tv.de/politik/Die-Wahrheit-ueber-die-Regelungswut-der-EU-article12821446.html> (retrieved 7 November 2016).

<sup>24</sup> Van der Loo, Blockmans (2016).

<sup>25</sup> <http://en.euabc.com/word/2152> (retrieved 8 November 2016).

<sup>26</sup> Lazowski (2016), p. 2.

both the EU and its Member States.<sup>27</sup> Treaties in the field of the EU's exclusive competence will cease to apply in the UK once the withdrawal process is completed. If the country wishes to uphold the relationship in question, the agreement must be re-negotiated, with the UK as a contracting party. Mixed agreements are more complicated. These deal with issues where the EU has exclusive competence, as well as issues whose competence falls to the Member States. For the latter, special arrangements will have to be made between the EU, the UK and the other contracting states for the treaty in question.<sup>28</sup>

### *3.3 The Future Relationship between the UK and the EU*

The treaty must also contain a concept of the new relationship between the UK and the EU. For instance, whether the UK wants to remain a member of the European Economic Area (EEA); whether they might aim for a Norwegian, a Swiss, a Canadian or a Turkish solution; whether they might opt for a WTO model;<sup>29</sup> or whether the solution may be something new and without precedent. The Norwegian model would still provide the UK with full access to the internal market, as the country would remain a member of the EEA. To do so, however, the UK would have to accept free movement of citizens and of services as well as standards on health and safety determined in Brussels, without having any influence in the decision-making process. The Norwegian model also includes contributions to the EU budget.<sup>30</sup> Some of the main arguments cited by the 'leave' campaign related to stopping the free movement of citizens and ending the supremacy of EU law including over-regulation and over-intervention, as well as opposition to trade agreements concluded by the EU. These factors make the adoption of the Norwegian model rather improbable.<sup>31</sup> The Swiss model implies that there would be multiple agreements with the EU, as Switzerland is not a member of the EEA. The Turkish solution would entail a customs union by which exports could pass freely into the EU without being subject to customs controls. The Canadian model would use CETA as a template.<sup>32</sup> Over the past 40 years, several areas of British law have been developed in accordance with European law. The examination of the necessary changes will be a costly and time consuming process. Brexit will also directly affect both EU citizens living in the UK as well as UK citizens living in other EU member states. When the withdrawal process is completed, free movement of citizens will no longer apply.<sup>33</sup> It may then be mandatory for UK citizens in the EU and for EU citizens in the UK to apply for residence and work permits unless specific arrangements are made in the treaty to be concluded between the EU and the UK – an outcome that appears improbable, as one of the objectives of Brexit was to mitigate immigration from other Member States to the UK. It is therefore unsurprising that applications for citizenships of other Member States made by UK citizens significantly increased after the referendum.<sup>34</sup>

### *4. Re-accession to the EU by Scotland and Northern Ireland?*

Developments in those parts of the UK where the majority voted in favour of remaining will be particularly interesting to observe. Even before the referendum, Scottish

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<sup>27</sup> Van der Loo, Blockmans (2016).

<sup>28</sup> Van der Loo, Blockmans, (2016).

<sup>29</sup> Hammond (2016) p. 509; Emerson (2016), p. 1.

<sup>30</sup> Emerson (2016), p. 3.

<sup>31</sup> De Grauwe (2016), p. 250; James (2016) p. 524.

<sup>32</sup> Emerson (2016), pp. 4-8.

<sup>33</sup> Deutscher (2016), p. 4/5.

<sup>34</sup> Deutscher (2016), p. 5.

politicians had discussed a second independence referendum in the event that Brexit became a reality. Post-independence, a new state would have to go through the general accession procedure regulated by Article 49 TEU. To apply for accession, a state must belong to the European area. Another substantive requirement is the fulfilment of the so-called Copenhagen Criteria adopted in 1993 by the European Council in preparation for the Eastern enlargement of the EU. The Copenhagen Criteria include: institutional stability guaranteeing democracy and the rule of law, the preservation of human rights, and the protection of minorities; a functioning market economy; and the capability to take on the duties arising from the membership and to adopt the goals of the economic and monetary union.<sup>35</sup> As these criteria are already met by the UK, however, they should also be met by Scotland and Northern Ireland.

### 5. Conclusion

Given the length of time it takes to draft other less complex, single-issue international agreements, the two-year timeframe for Brexit appears tight. It hence seems probable that both sides will have to agree on a prolongation as facilitated in Article 50 III TEU. To prevent the EU from falling apart, Member States will need to take a strong stance when negotiating agreements with the UK. To do otherwise would be to indicate that remaining Member States may withdraw from the EU and its perceived inconveniences, while retaining the advantages of membership.

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<sup>35</sup> Grabitz, Hilf, Nettesheim (2016), Article 49 TEU, marginal no. 17.

# An economic perspective on Brexit

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“Regrettably, the uninformed observer may misjudge the development of the UK economy in the years to come. Conceivably, in the short run the Island-Economy strategy might pay off. It would be almost unbearable if public opinion – in the UK and other European countries – takes such short-run developments as evidence for the economic wisdom of Brexit.” (Soegaard and Schröder, in this commentary)

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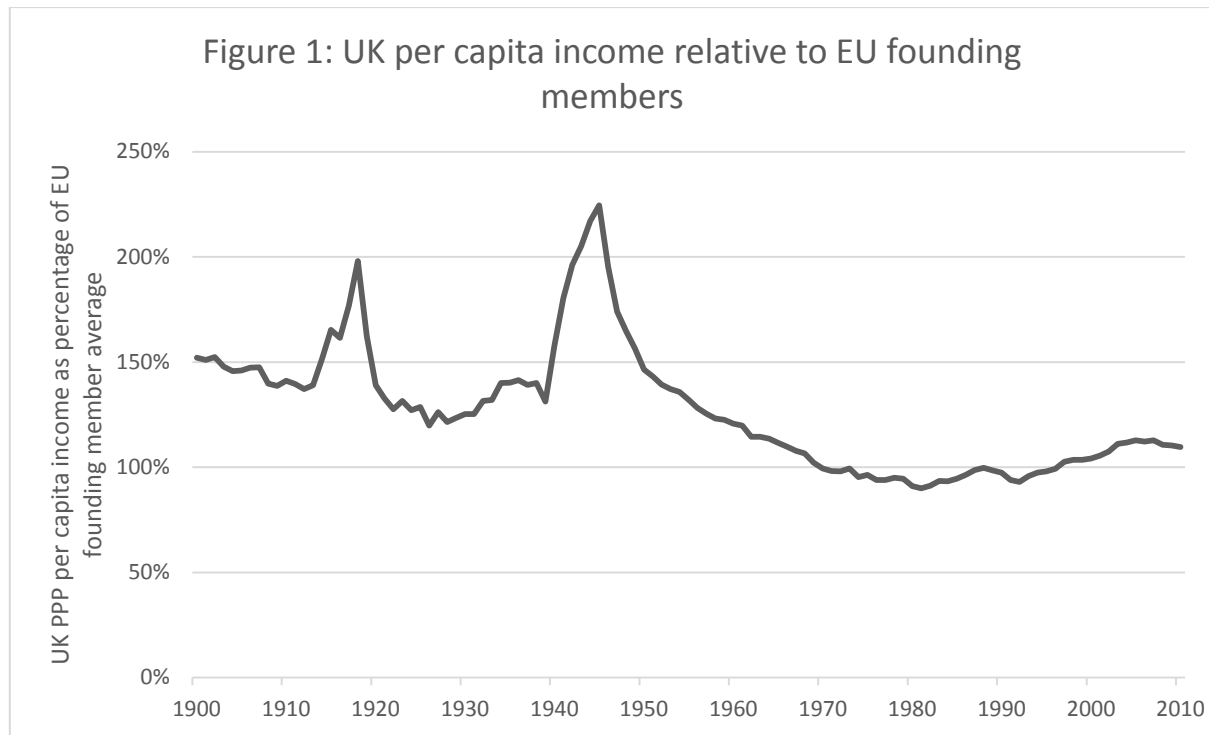
There is overwhelming consensus that Britain will experience an adverse negative economic impact following its decision to leave the European Union, and in particular by leaving the bloc’s Single Market. This is because Britain will lose out on important economic benefits resulting from well-established economic beliefs that more open economies that trade and invest with one another are better off. We argue, however, that for Britain there may be a silver lining with a bitter taste: if Britain succeeds in becoming an “island economy” with low taxes and little regulation it may nevertheless be able to attract investment and create jobs and growth. Yet this is likely to lead to beggar-thy-neighbour policies in which other EU countries break out and start competing for the same benefits, leaving everyone worse off.

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## *The origins of an awkward relationship*

The story of the European Union has always been a political project propelled forward by economic win-win reasoning. This applies from the very first step, the establishment of the European Coal and Steel Community (ECSC) in 1951. This first effort of European integration – still very much in the shadow of the Second World War – laid the two guiding principles that matter until today: supranationalism and mutual economic benefits. Why the United Kingdom stayed outside the ECSC is a question for historians, but from an economic point of view the ECSC was for the UK economy as meaningful as bringing coal to Newcastle. Subsequently, the UK continued to stay outside the European integration project for the next decades – but less and less by choice.

The economic backdrop for the first two decades of this non-relationship is of course the dramatic relative economic decline of the UK economy (see Figure 1). Before and during the Second World War the UK was still an economic super power, with strong Commonwealth of Nations trade relations and the British pound still a vehicle currency of international commerce. The memory of that legacy suggested both for continental Europe, but not least for Britain’s political ambitions, that the UK was a global economic player. Of course the 1950ies and 1960ies subsequently proved that assumption wrong. Over these decades UK foreign trade oriented increasingly to the growing Western European economies, and made it far more like its European peers.



Note: Authors' calculation based on Geary–Khamis international dollar (base year 1990), purchasing power parity (PPP).<sup>1</sup> Founding member group is the unweighted average of Belgium, France, Germany, Northern Italy and the Netherlands. Source: Maddison Project (2013).

As a result, unlike today, where the UK is trying to find ways to drag herself out of the EU, in the post-war years the UK was trying to find a way in. These efforts became more important, as Continental Europe's Economic integration gained momentum. It became clear that Britain was losing out on economic benefits. In particular, the landmark of the signing of the Treaty of Rome in 1956 between six founding European nations, which established the European Economic Community is a case at hand. This treaty obligated its signatories to gradually reduce customs duties and to establish a customs union with common external tariffs. The idea was to create an economic community to increase trade and investment amongst its members. This would produce the fundamental gains from trade as identified by Adam Smith in 1776 in opposition to the Mercantilist establishment, that were in the post-war period understood to drive prosperity for all participating nations.

Britain's pleas to enter the club were met with substantial opposition. In 1963, French President Charles De Gaulle vetoed the British application for entry into the European Economic Community, declaring "L'Angleterre, ce n'est plus grand chose" (England is not much anymore). It was not until 1973 that Conservative Prime Minister Edward Heath was able to take Britain in. It was mainly the Tory party which was keen to integrate the British economy with the European, because of a desire to break down barriers to trade between the nations of Europe and to create a tariff-free market. The EEC was 'too capitalist' to persuade many labour MPs to join Europe and to silence a loud group of anti-Europe Labour backbenchers, Labour Prime Minister Harold Wilson held a

<sup>1</sup> Comparison in Geary–Khamis international dollars and purchasing power parity (PPP) allows us to conduct a comparison across time and across countries, i.e. in real terms. In particular this measure avoids the pitfalls associated with inflation over time, and differences in national price levels. For example, if prices for non-tradable consumer goods such as renting a flat have different price levels in two different countries a PPP comparison corrects for these differences.



referendum on membership in 1975. A decisive majority of Britons voted yes (i.e., voted to stay in the EEC), giving the Prime Minister a strong mandate to make Britain a powerful and influential member of the EEC.

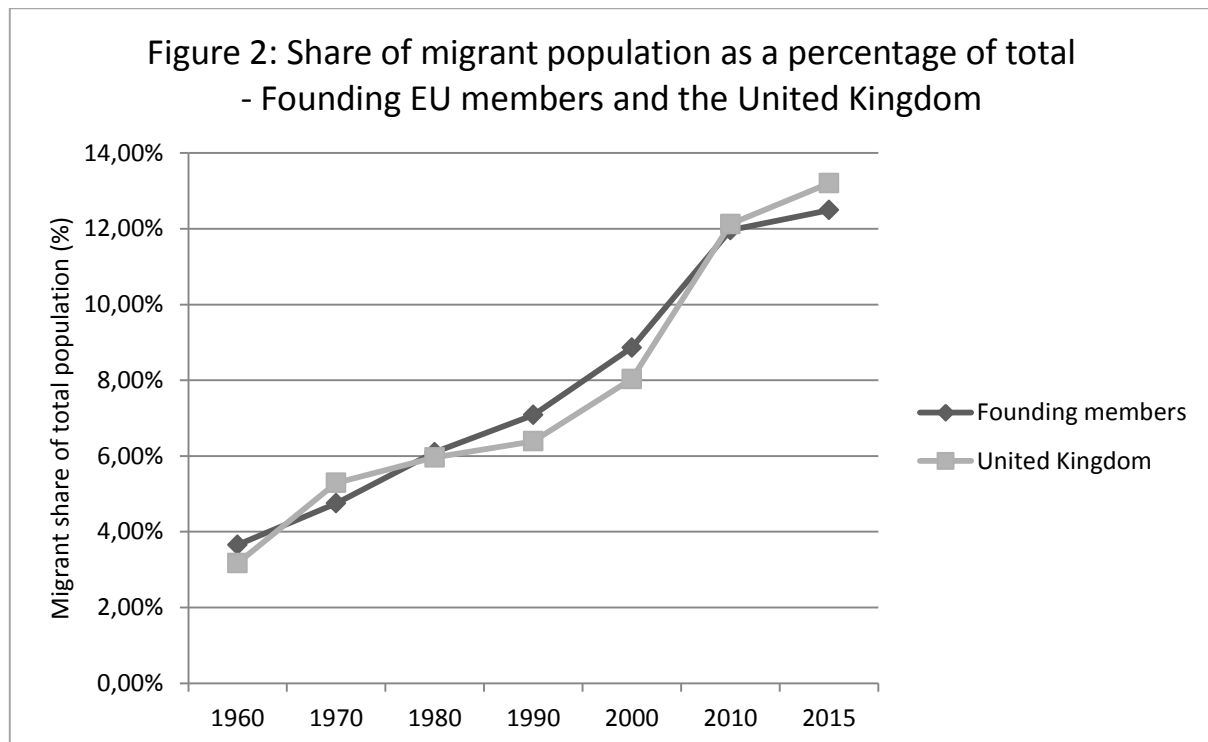
The relationship between Britain and Europe, however, becomes more awkward as the degree of political integration between Britain and the continent intensifies. In 1987 the Single European Act is signed, and the Maastricht Treaty is signed in 1991 with Prime Minister John Major obtaining an opt-out on the single currency. As political integration intensifies and more powers shift from the nation states to Europe, the political climate changes: while the Tory party was the party which traditionally favoured the EU, the Labour party now becomes the EU's friend in the House of Commons, in particular with the EU legislating on climate policy and workers' rights. A rebellion begins in the Tory party under the leadership of John Major, and the Tory party becomes deeply divided over the issue. In particular, with an EU-sceptic Tory membership, it becomes hard for those tory members seeking to reach the top to sell Europe in a positive light, even if they are keen supporters of a Britain in Europe. Yet, in that very period of growing EU scepticism, the economic realities for the UK in the 1980s and forward showed rapidly increasing integration and not least specialisation, such as the rise of the City of London for financial services.

More recently, that is, since the turn of the century, European integration also brought with it an increase in net migration to the UK. The flows of net migration have mainly been characterised as an East to West phenomenon, whereas labour flows within the Western European countries remain low.

#### *The 2016 referendum: political versus economic logic*

The referendum which was held in June 2016 was not unlike the one back in 1975. Prime Minister Theresa May's predecessor David Cameron was likely motivated by a desire to obtain a democratic mandate for continued membership of the EU from the people of Britain. Moreover, he was worried about Conservative backbenchers defecting to the far-right United Kingdom Independence Party (UKIP). With this in mind, David Cameron essentially gambled the future of Britain's relationship with Europe and the rest of the world. This gamble turned out to backfire and there is overwhelming consensus amongst economists that Brexit will harm the economy.

Arguments during the referendum campaign focussed on many issues, but there seems to be a general agreement that the main issue which may have swayed many voters towards a vote to leave is that of immigration. Demographics and migration are at large economic forces affecting the pool of labour available to create output and value added in a given territory. In this respect migration – and the economic gains from migration – is not different from that of the free movement of goods or firms across borders. However, changing the demographic composition of a country has a stark non-economic dimension. A large proportion of voters subscribe to the belief that foreign labour depresses wages and reduces employment of native labour, although there is not much evidence to back up such claims. Albeit, a recent Bank of England Working Paper finds that there is a negative but small impact of the immigrant to native labour ratio on average British wages; see Nickell and Saleheen (2015). In Figure 2 we plot the share of the migrant population as a percentage of total population in the UK and in the six founding EU members. Clearly, this share has been increasing since 1960, and marginally more so in the UK in the five years to 2015, although the slower growth in this trend amongst the EU founding members was driven mainly by somewhat below average migration to Italy and France.



Note: Share of total migration includes all migration (EU and non-EU). Founding member group is the weighted average of Belgium, Luxembourg, France, Germany, Italy and the Netherlands. Source: Migration Policy Institute (2016).

Another important issue – despite the absence of an economic rationale – centred around sovereignty, that is, Britain's ability to determine its own laws, and identity. A vote to leave the European Union was not supported by economists in general. In fact, more than 90% of economists recommended a vote to remain. In fact, it is worth noting that there were more Nobel Prize winning economists in the lobby group Economists for Remain (12 in total) than there were economists in Economists for Brexit (8).

So why is the economic case for the benefits of economic integration (or rather the costs of Brexit) so clear-cut? Broadly speaking, economists distinguish between the short run and the long run impact of Brexit. Should there be a short run cost associated with leaving the European Union, such a loss can be justified only if the long run gains are sufficient to counter the short run losses. There is overwhelming consensus, however, that both the short run and long run impact of Brexit represent substantial losses to the British economy. In the short run, the costs are associated with the uncertainty related to the degree of access which Britain is going to have to Europe's Single Market and to the rest of the world. The first negative responses that have been observed on the stock-market and currency exchange in response to the Brexit vote are just that. Investors are likely to put off investment until Britain's new relationship with Europe becomes clearer. These costs, however, are associated with Britain changing its status in Europe, or in economics jargon, moving from one equilibrium to another. While these costs should not be underestimated, and may affect the British economy for decades to come, the potential long run costs associated with losing access to the world's largest market could be even greater and affect the British people for generations. It is this long-run perspective that drives the large consensus among economists.

The argument that a country losing its market access will be worse off in the long run relies on well-established economic findings, both empirically and theoretically, that more open economies which trade and invest with other nations are better off. Trade

economists have identified at least three types of gains from trade. The first type concerns the gains from specialisation. This unique type of gain from trade was established by Adam Smith (1776) several centuries ago. The idea is that countries should increase the production of goods and services for which they hold a comparative advantage, and then exchange the difference on international markets. Having a comparative advantage in a particular good implies that the opportunity cost of producing it is lower. In other words, a country gives up less of “all other goods” to produce it. While this type of gain from trade is well established, it is widely believed that in the developed world, the nature of the gains from trade is driven by economies of scale. The ability of, say, a car manufacturer in one country to be able to expand production into other markets allows the exploitation of scale economies, and confers a welfare gain on consumers in terms of increased variety. Krugman (1981) identified this type of gain from trade, and Melitz (2003) extended this type of model to show that in addition to the gain from increasing scale, international trade leads to a selection process in which smaller and less productive firms drop out in favour of larger firms with the end result being greater productivity in the market as a whole. The third gain which also characterises trade between developed countries is related to increased competition (so called pro-competitive effects), which is an important gain to consumers. By increasing competition, international trade is likely to erode domestic mark-ups and drive out monopolies.

*In danger of extinction: deep integration*

The three forces of gains from trade (specialisation, scale and pro-competitive effects) depend crucially on the depth of integration. While the removal of tariff and customs barriers might facilitate some goods trade, ample non-tariff barriers remain that hinder the actual economic activity from crossing borders. For example, divergent product standards, exchange rate risks, health and safety rules or simply red-tape can be as sizable a barrier to trade as any tariff. Empirically, today, economists agree that non-tariff barriers are far more important than tariff barriers. Deep integration tackles exactly such non-tariff barriers. It is the mutual recognition of professional authorisations, common product safety standards or level-playing field public procurement rules that are the driving force of the deep integration the EU has marched forward with in recent years. This is particularly important for service sector trade and many of the higher value added industries, such as pharma. Being part of the European Single Market ensures that the countries can benefit from all three types of gain from trade. The EU has eliminated tariff-barriers to trade between its members allowing EU countries to specialise production, exploit economies of scale, and break down domestic market power. More importantly, given the ability of the EU to make law through its institutions (EU Parliament and Council of Ministers), it is able to harmonise product standards and regulation across all its member countries. The issue here is the access to the Single Market which membership of the EU affords. The ability of British firms to freely invest in and trade with 27 other European nations is a substantial benefit to the British economy. Should Britain opt for the so called “Hard Brexit” in which it completely withdraws from the Single Market, it is likely that some firms will relocate their production to continental Europe in order to obtain market access. Such moves will inevitably cost jobs and growth for the economy.

Many brexiterers argue that Britain will be able to sign trade agreements with non-EU countries once outside the union. However, given that trade with any non-EU country is substantially lower than with the 27 other EU countries, it is unlikely to yield significant welfare benefits. Moreover, due to the sequential nature of trade negotiations, it would

take Britain decades to fully implement such agreements. And even if the agreements are negotiated, they are not likely to be as “deep” as the trade integration within the Single Market. Most importantly different sectors will be affected differently. While it may be conceivable to maintain zero tariff trade agreements, it is hard to imagine that the UK will be able to buy in on issues such as safety standards, or professional authorisations. This implies that, for example, the service sector, and not least the financial service sector of banking and insurance will be hit disproportionately hard. Importantly, due to the economic mechanisms of win-win in trade, this also has severe costs for continental Europe. Seeing less of the firms and business drive of the City of London in the various capitals of Europe, means that national commercial banks face less competition, in turn reducing pro-competitive gains from trade. As much as economic integration is a win-win for the participating nations, exit (not least Brexit) is a lose-lose for everyone.

#### *A silver lining with a bitter taste*

Might there then be some sort of silver lining for Britain in the long run? We believe that outside the Single Market, it is likely that Britain will need to find alternative ways to attract investment and to induce firms to locate in the British economy. As such, the British government may see no other option than to lower business taxes (corporate taxation for example), and to deregulate its services and manufacturing sectors to provide a cost advantage to firms choosing to locate in Britain. In a way, it would become a tax shelter, or an island economy similar to the Cayman Islands or Panama. Such a move, however, is unlikely to go unpunished by the EU which would face a competitive disadvantage. The EU would likely (and perhaps justifiably) respond by restricting access to the Single Market, or by engaging in a predatory tax and regulation war which would restore its relative competitive advantage. Thus, whether Britain would benefit from becoming an “island economy” depends on the extent to which Britain can compensate, in the form of tax advantages and deregulation for domestic firms, for the restricted market access it is going to face from the 27 remaining members of the EU. In this perspective, the initial 15% devaluation of the British pound in the aftermath of the UK referendum is a case at hand that gives a taste of what is to come. The devaluation of the pound might not stimulate UK export as Brexiters might have hoped. This is because Britain is specialised in exports that are less price sensitive (services in particular); as such a depreciation of Sterling does little to boost its exports. Likewise, British consumers will find inflated goods prices which ultimately will reduce their purchasing power.

Britain’s success outside the Single Market will have an impact on the desirability of the remaining EU members’ desire to stay in the bloc. If Britain can become a successful island economy, many other current members of the EU may be tempted to join Britain outside the union. However, this is likely to create a free-rider problem in the following sense: while it may be advantageous for one country, it is doubtful if the advantages would persist if several countries attempted the same strategy. Britain’s potential advantage from becoming an “island economy” stems from its ability to avoid adhering to the rules of the Single Market while every other economy does. This would give rise to a free-rider problem in which countries would seek to leave the union to enjoy the benefits of free play. When all countries do so, however, they will all be competing for the same benefits which ultimately would leave all countries worse off.

The scenario in which Britain pursues policies which would lead it to become an “island economy” is not unlikely in the current political climate. The Labour party is currently under the weak leadership of Jeremy Corbyn who seemed to show only a lukewarm support for the Remain campaign during the referendum. Mr Corbyn is unlikely to win the general election which is due in 2020, and for this reason, the Conservative

backbenchers may see this situation as giving them a mandate for a “Hard Brexit” and to implement this sort of deregulated low tax haven which they have been advocating for years.

The vote for Brexit is a tragedy as seen from an economic perspective, rolling back decades of economic integration. It is difficult to see a silver lining in this chaotic environment. Britain is likely to lose out on important long-term benefits from membership of the Single Market, and the need to find alternative ways to make Britain attractive to invest in will result in beggar-thy-neighbour policies. The loser from all this is likely to be us all.

Regrettably, the uninformed observer may misjudge the development of the UK economy in the years to come. Conceivably, in the short run the Island-Economy strategy might pay off. It would be almost unbearable if public opinion – in the UK and other European countries – takes such short-run developments as evidence for the economic wisdom of Brexit. The economic truth is that while free-riding might work for one, it cannot work for everyone.

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# Brexit: On the declining homogeneity of European elites – and on the importance of a domestic habitus in times of globalization<sup>1</sup>

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*„The British economic elite – contrary to common perceptions of a globalized powerful elite – was not capable, not even on the national level, to prevent a decision which, to this elite group, is of eminently outstanding relevance.“ (M. Hartmann)*

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In this interview, Michael Hartmann addresses three aspects related to the social phenomenon “Brexit”: mass vs. elite; elite vs. elite; and implications for the theoretical perspective on Bourdieusian power structure research. First, Hartmann argues that frustration as to social democratic and socialist politics, combined with social decline, fostered pro-Brexit votes – as well as, on a broader European level, mainly right wing protest movements. Second, Hartmann argues that two ideal typical groups of elites in the UK, the political and the economic one, have become alienated from each other previous to the Brexit discussion. This is demonstrated by the economic elite not being able to prevent the Brexit referendum which, potentially, is damaging to British economy. Alienation between the two groups is tied to globalized and diverse life courses. Globalization, here, is responsible for lessening social similarities between managers and politicians. Hartmann concludes that, given this habitus alienation, even an otherwise powerful globalized economic elite cannot oppose a domestic political elite. Third, and finally, Hartmann conjectures that the habitus concept will remain of empirical importance despite globalizing careers.

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**Klarissa Lueg:** *You have pleaded, repeatedly, for more citizen participation in political decision making. Now, the Brexit referendum was an act of citizen participation. The result is: NO to the EU. This came as a shock to many citizens, to the younger and more educated ones, in particular. Right after announcement of the referendum outcome, desperate young people, in the UK, voiced anxiety about their future. There is little evidence of „the people“ having profited from Brexit. Yet, would you interpret the referendum, in this light, as a blow against the elites?*

**Michael Hartmann:** It was a voting, in this case more or less from the political Right, against the traditional elites – and those of the City of London in particular. Protest can be uttered in various ways. In the UK it was a movement of rightist populism, extending

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<sup>1</sup> The interview was translated from the original German. All translations are layman translations, K.L.

far into the Conservative Party. Rightist populism succeeded in focusing the protest movement. However, it should be said, the impression of the Old having outdone the Young, is not in line with reality. Just look at the voter turnout of the Young: the majority voted against Brexit, but turnout was miserable. Meaning, the majority of the younger generation didn't care. Meaning, again, those headlines – the Old outvoted the Young –, that's just not true. The Old out-voted those of the Young who went voting, and that was a minority. Also, what became evident in the UK: decisive, in the end, are the differences in real living conditions. According to a new study, on living conditions in Great Britain [from here: GB, K.L.], partly in relation to the Brexit, three quarters of regions, in terms of living standards, are below the European average level. Better-off regions are just London and the South East, and a few enclaves, such as Edinburgh, or Manchester. During the last 30 years, the North of England has experienced, simply, and in the best case, standstill, mostly, however, decline. This is what people reacted to. Older people voted Brexit, and younger people said we don't care. And that may be different only in places where, during the last 30 years, improvement is tangible.

**Klarissa Lueg:** *The NO to EU slogan is often interpreted as not being directed against the EU, only and immediately, but also against elitist communication, perceived as downgrading, in general. There were, in parallel to the Brexit discussion, the TTIP and CETA discussions, largely behind closed doors. This way of „communicating“: why is it being continued, in the face of direct protest demonstrations and of indirect protest by way of voting decisions of „the people“?*

**Michael Hartmann:** To the EU Commission, it would have preferred – and this was common practice until now – to negotiate and conclude TTIP and CETA behind closed doors. This doesn't work any longer. Large portions of populations, obviously in Germany, intervened to a degree not expected by the traditional political elites. Popular intervention forces politics to open up procedures wider than planned. It is most convenient for political institutions and in particular for the elites in Brussels, to decide on things without much ado and then to sell such decisions, to the public, as political wisdom without alternative, as the inescapable opening of markets. For three decades now, politicians have declared globalization and its consequences to be without alternative; and people have accepted this for a long time. This is the easiest way of doing politics. You just say, that's the only way to be done, and you, the people, just have to accept it. As a kind of overwhelming natural law. However, this is not being accepted any longer. As to TTIP and CETA, people were afraid of governmental curtailing of democratic procedures as well as of ecological standards and labor and employment law. Of course, there were **some few** unsubstantiated fears. But, again, they were kindled by governments' secret diplomacy. Protest movements, in general, may develop both in a rightist or a leftist direction. A case in point is globalization criticism. However, as to protesting CETA and TTIP, that's criticism from the left.

**Klarissa Lueg:** *You just mentioned that criticism of internationalization and globalization may be raised both from the leftist or rightist position. It has been said, by some, that repudiating the EU was nourished by rejecting migration – a rejection not only of non-EU refugees but also of EU migrants. Right after the Brexit referendum, there was a sudden increase of xenophobic attacks and harassments, and minority-hostile rhetoric rose. Skepticism of elites co-incited, it seemed, with xenophobia and resistance to change. This led to feelings of being shocked and victimized, not only on the part of the young and educated but also of migrant people, marginalized as they were even before. Hence, here comes*

*a question of ethical concern: „Power to the People“ – is that always a good idea?*

**Michael Hartmann:** First of all, you have to look at Southern Europe; Portugal, Spain, Greece – there, we don't have any of this. Look at Podemos, or Syriza before, or installing the new government in Portugal: protest movements, there, tended to develop in a left-ist direction. This means that protesting the dominant line of politics does not necessarily imply a rightist impetus. That impetus, it is true, is at work in most countries and regions; look at France, Germany, the UK, Austria. In these countries, protest action often is connected to a deep-seated disappointment with political parties usually associated with the left. In France, people voted for the socialist Hollande who promised to pursue a political programme completely different from that of his predecessor Sarkozy. Hollande said: those close ties to business, the decrease of social benefits – all this will be reversed. Nothing happened, though; Hollande voters are disappointed, accordingly. In the UK there is disappointment with Blair and New Labour who, basically, followed the course of the Conservatives. In Germany it is disappointment with Social Democracy, clearly demonstrated, at the latest federal state elections, by AfD [Alternative für Deutschland, K.L.] voters. The newly established section of AfD voters – those without a stable rightist outlook, having voted AfD just for protest – is made up, predominantly, of former SPD voters. They want to teach the SPD [Sozialdemokratische Partei Deutschlands, K.L.] a lesson. In all of these countries people refuse to believe in promises – and in promises of Social Democrat/Socialist parties in particular. And, searching for alternatives, these people, at present, and unfortunately, tend to turn to the right. In this context, nationalism undergoes a revival, implying seclusion from the markets, xenophobia, and racism. This can be observed in France, quite well. There is this book, by Didier Eribon, in which he describes how his family, formerly faithful Communist Party voters, turned into Front National voters. It is decisive here that these people feel deserted, that the demise of a whole population of industrial workers, in the North East, has been accepted, more or less indifferently, by the elites of Paris, including those of the Socialist Party. Socialist are blamed, in the first place; and they are seen as representing the Left altogether, because the Communists formed part of the Mitterrand government. Also, we must consider that even in the old Communist Party there was racism, mainly during the Algerian War, but it was not perceived as such. The average French worker, though voting for the Communists, did not adhere to the Algerian liberation movement. They were against it. The Communist Party, however, could not openly endorse racist attitudes among its voters. Racism was not in line with the goals of Proletarian Internationalism, even if that ideology, partly, served as a facade only. The predominant feature of the French Communist Party was fighting capitalism. Today, with the Front National, objectives are in reverse order, exactly. The Front, in terms of social politics, does offer programs which clearly resemble former Socialist offers. Xenophobia, however, is dominant with the Front. It is at the core of their program.

**Klarissa Lueg:** *Do you see a point of leverage, politically, for counter-acting this Rightist populism?*

**Michael Hartmann:** Right, that would be, always, in the field of social politics, or labour market policy. To go ahead there you would have to take note, in the first place, of deteriorations having inflicted large parts of the population during the last decades. You would have to stop denying all of these deteriorations – as if globalization and European unification were, for all of us, a process of tangible success. No. Both, globalization and unification have brought real worsening of life conditions for many people. We must ask: why is this so? And what can we do to counter-act it? And then we got to act, according-



ly. For Germany, this would mean repealing the Hartz laws, or changing the tax policy concerning high incomes and assets. That way, we would be able, most promisingly, to tackle the aversion to politics as well as Rightist populism.

**Klarissa Lueg:** *I would like to talk about two elite groups who acted from contrary positions: the economic elite and the political elite. In terms of generalization, one might say that the political elite has stirred up and maintained sentiments hostile to the EU, whereas the economic elite has attempted to hold off such sentiments. Now, one must get the impression that the economic elite, in contrast to this special political elite, is relatively powerless?*

**Michael Hartmann:** It is not two completely homogeneous elite groups facing each other. In the case of the economic elite, the anti-Brexit position has been, unequivocally, a majority position. It is true, there were some pro-Brexit voices in big business, but at its core the British economic elite was anti-Brexit. In the case of the political elite this was much less obvious. The ruling party, the Conservatives, was split up in a 50:50 situation. There were prominent anti-Brexit voices, and there were prominent pro-Brexit voices. At any rate, the economic elite, in contrast to earlier decades, was not in a position to commit a majority of the Conservative Party to the course the business elite wanted. Traditionally, in the UK, big business had been predominant. In political matters of massive economic concern, it had always been the City of London group of big business – world market oriented and amenable to globalization – who made the final decisions. And the Conservative Party, usually, did accept and even support these decisions. Now, with Brexit, this constellation has not worked, for the first time since decades.

**Klarissa Lueg:** *This new discrepancy: you explain it with reference to the habitus concept, in pointing to a decline of biographical similarities.*

**Michael Hartmann:** The Conservative Party and the economic elite do not have so much in common as they used to. Up to the 90s, the relatively small group of graduates from the leading nine public schools, the Clarendon Nine, provided more than one quarter of big business top Managers, as well as every third cabinet member of conservative governments. Another inter-relational element was Oxbridge graduation. One of two top managers, and four out of five members of governments were Oxford or Cambridge graduates. Such common experiences, in the UK, have been diminished, exceedingly, through opening of markets and internationalization of business elites. Actually, the UK is one of the very few countries with an actual internationalization of the business elite. At least every third top manager is a foreigner and doesn't have a UK passport. By international comparison, this is an extremely high figure, surpassed only by Switzerland, and, beyond Europe, by Australia. This development works against the traditional mechanism of sharing common backgrounds. Foreigners graduated from foreign universities. Internationalization diminished the importance of traditional British institutions. In the old times, in cabinet sessions, one Etonian sat next to another Etonian. This was a homogeneous group which, under Thatcher, provided more than one fourth of cabinet members. In banking, even every second top manager was an Etonian. So, as long as filling top positions used to be a purely British affair, these traditional institutions, like Eton, were of considerable impetus. With increasing numbers of foreigners, at the top of big enterprises, this has changed. And connections between economic and political elites have been loosened, from year to year. As a consequence, the economic elite – contrary to perceptions of a globalized powerful elite – was not fit, not even on the national level, to pre-

vent a decision, the Brexit, which to them is extremely important. Arguably, a large part of the finance elite must look out for new headquarters, as they are not able to serve, from London, the complete market of Euro loans etc. That would be a severe incision. They wanted to avoid that. However, ties to the political elite did not work sufficiently; the conservative party was split in two. And honestly, on the other hand, there were Brexit proponents in politics; I am talking primarily of Johnson, who did not really figure to be tangibly successful. Johnson played a game: who can recommend himself for the position of the future prime minister?

**Klarissa Lueg:** *In terms of social theory, your work can be related to a Bourdieusian tradition, and quite prominent here are the habitus and the accumulation of capital. There are a number of researchers dealing with the question of how capital is transferable and internationally applicable. You yourself assume that, with elites falling apart due to internationalization, common experiences like attending common educational institutions will become less relevant. What does this mean for the habitus concept? When talking about international spaces, do we have to take leave of that concept, to some measure?*

**Michael Hartmann:** The concept of habitus will stay extremely important. To begin with, we must recognize that the vast majority of top managers live and work in their home countries. This applies, even regarding the 1000 biggest and globally most active enterprises worldwide, to nine out of ten CEOs. In most countries, primarily the larger ones, like USA, China, India, or Japan, the number of such managers is even considerably higher. And even in countries having undergone an outright internationalization of economic elites changes are not always as far-reaching as one would assume. Social backgrounds of top managers have not changed through internationalization, at least not in Great Britain. I check this, regularly, as far as data allow. And the foreigners who now are heading British enterprises are, as to social origin, not different from Britons. Originating from upper-class/upper middle class backgrounds is normality still. In the UK, there are, on a regular basis, studies by the Social Mobility and Child Poverty Commission. The last study is on recruiting practices of law and elite financial service firms and there, too, I encountered the classical pattern. These firms are searching for persons who are „posh“ – meaning, usually, upper class origins and graduation from renowned schools – , persons, that is, having the right habitus. And this recruiting mechanism, it seems, is still relevant in the UK. It is true, the habitus, even in the UK, is constantly being re-shaped; its social groundwork, however, is much more stable than you would expect facing those many foreigners in leading positions. This supports assuming that, beyond national frontiers, there are personal characteristics allowing topmanagers to recognize each other. To me, then, the habitus concept remains the key for exploring procedures of recruiting and positioning, and for exploring elites in general. Even though, we must ask if and how the habitus, provided the international market development will continue its present way, will go along in developing and transforming itself. Let's look at Switzerland. There, the national habitus, distinctly definable in earlier days, clearly has lost relevance. The Swiss Habitus was shaped by membership in the officers' corps of the Swiss Army and by graduation from the ETH Zurich or the University of St. Gallen or the Bern Law School. Swiss Habitus has now become more diffuse – three out of four Swiss top managers originate from foreign countries. On the other hand, we cannot say, yet, that something like a new habitus is emerging. In politics and in the civil service the old habitus is still predominant. Not so in business. It can be questioned, though, whether the internationalization of top management will continue going ahead. Take the UK, again, as an example. Here, on CEO level, there was no trend to fill vacant positions with foreigners. On the contrary, we can observe a slight backward development; the foreigner proportion slightly decreased. I

have found out the same for Germany. It may imply that the trend to internationalization, as concerning the business elite, has been halted - in the UK with a proportion of a third of CEOs being foreigners, in Germany with nearly 15 %. These are, in international comparison, very high figures. In most countries, percentages are much lower. That is to say, in most countries nationally defined types of habitus are still valid, quite obviously, and are still dominant even in Germany or the UK.

**Klarissa Lueg:** *In some fields already, internationality or cosmopolitanism, including English as a lingua franca, functions as symbolic capital, at the university, for instance. For one thing, English as common language in higher education is being accepted, more and more; and also, in job postings, international qualifications are asked for, in growing measure.*

**Michael Hartmann:** But even there, the necessary habitus is characterized by national culture and practices, and much stronger than usually assumed. You will find this out only in researching it in detail. At first glance, you will notice that even for filling post-doc positions applicants are often expected to have spent at least one year at a top university abroad. In procedures relating to the appointment of professors there is often reference to publications in English-language journals with high impact factors, and to research projects abroad. „Abroad“ meaning, in general, the USA or the UK. If, however, you look at the power positions in academia, the secretaries general or the presidential committees, like those of DFG, MPI or HRK in Germany, you will notice – and this has been researched by Angela Graf only recently – that not much is left of this trend for internationalization. There, nationally oriented careers are clearly predominant; these people, in order to get hold of these power positions, must be active in national networks.

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# Comes the End of the Western Legal Tradition? – The world after Brexit, Trumpism, and the great authoritarian turn

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The paper argues that the emergence of the post-world war II global order of national, international and transnational law is the final step in a long evolutionary process of modern law formation. It originates in the Papal Revolution that engendered a basic constitutional structure concerned with the solution of conflicts between emancipatory and repressive Interpretations of law, and it triggered a long-lasting co-evolution of cosmopolitan and statist legal orders (theses 1-5). This order was related to universal truth claims but now comes under threat of a post-truth democracy that is no longer democratic. Brexit, Trumpism and the new authoritarian globalization could indicate the end of the Western Legal Tradition with unpredictable but not very promising consequences (theses 6-8).

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## *What actually happened?*

1. The idea that the *state* is an invention of the 16s and 17s centuries Protestant revolutions, is a myth, born out of the crisis of the modern (multicultural) *national state* – different from the 'homogenous' *nation state* (Tilly) – in the first half of the 20s Century (Voegelin, Strauß, Schmitt). The Hobbesian basic assumption of German Staatsrecht from Laband and Triepel to Böckenförde and Di Fabio is that the authority of the state is a conceptual and empirical presupposition of constitutional law and democracy (Möllers). When Schmitt wrote that the age of the state is over (*Begriff des Politischen*), he presumed with Hobbes that there are only three evolutionary stages available during the social evolution: the local state of civil war that precedes the modern state, the modern *nation state* as the measure of all things, and the global state of civil war that comes in the aftermath of the modern state, which operated as the great *Aufhalter* of the Anti-Christ, Bolshevism and Americanism. The state is *legitimated metaphysically before and beyond all legal procedures of democratic legitimization*. To say it with a slightly modified ("state" instead of "german people") word by Stalin: Democracies come and go, the state remains unchanged. Hegel, one of the (unvoluntary) founding fathers of the "myth of the state" (Cassirer) in early 19<sup>th</sup> Century in his 1820 *Philosophy of Right*, rightly remarked that the national state (the state of the French Revolution) is only a small ship on the ocean of world history (Gans, Fine). That means that there is a great variety of *centralized legal organizations of political power* (states) since socially stratified societies emerged in the course of the agrarian revolution. The modern national state is just one of many, and probably not the last one. There exists an ever denser and strong new formation of inter-, trans- and postnational *statist* ("Staatlichkeit" vs. "Staat") organizations

of international public law (Albert, Stichweh, Kjaer, Bogdandy) that frames and enables the further development of the national states (Thornhill). Since the end of the 19th century and early 20th century international law was professionally differentiated (Koskenniemi), state-like (in the sense of "Staatlichkeit") international organizations emerged, and the first international courts were founded.

2. The modern formation of private, public and constitutional law, political and economic corporation (freedom of corporations), statist organization, universities and science, disciplinary power, the jurist privilege in diplomacy, and even of the modern nuclear family was triggered by the first great legal revolution that was the Papal Revolution 1075-1122 (Berman, Moore, Fried). Modern society begins with the functional differentiation of a fully-fledged *legal system* in the 12th and 13th centuries. What I mean by "fully-fledged legal system, is an academically professionalized, and therefore autonomous legal order with a system of courts, appellate bodies, internal differentiation etc. Therefore it is no surprise that this was also the time, first, of the formation of law schools, and then of a functionally differentiated *system of universities*. Autonomy of science (Honnfelder) emerged together with the autonomy of law. The differentiation of the legal system enabled the beginning differentiation of religion and state, and the spheres of the sacral and the profane, even if law, religion and politics still overlapped within the statist organizations of Church and Empire, kingdoms and city states.
3. Modern constitutions are the final (but not at all necessary) result of the highly unlikely (but not unplanned) fusion of the incompatible legal traditions of *canon law* of universal and egalitarian salvation with *Roman Civil Law* that is – as all civil law – a law of coordination of the interests of the ruling classes. This dialectical fusion was enabled by a *cognitive and normative learning process* that accompanied the age of the Papal Revolution. It consisted in a further *rationalization of Christian monotheism* through platonic ontology (onto-theology) and – mediated by the Islamic reception – Aristotelian logic, which together made it possible to reconstruct the recovered collection of Roman Civil Law as a professionally rationalized system of legal text books. This was the same time when a first gestalt of the *modern intellectual* could be observed (Leyser).
4. The new public law was the "existing contradiction" (Hegel) of repression and emancipation. The contradiction legally was integrated through the dialectical method of Gratian's CONCORDIA DISCONCORDANTIUM CANONUM. Planned and unplanned processes came together during the revolutionary age, which shows that its legal advances were not just evolutionary advances accompanied by the false consciousness of intellectuals that we, the people have made them (Luhmann). The popular slogan of the revolution that was "Freedom of the Church" (*Libertas Ecclesiae*) aimed already to the most important legal and political advances of the Papal Revolution because it turned the *pre-revolutionary* struggles over the *preservation of privileges for single churches* under the slogan ECCLESIA LIBERA upside down into the *revolutionary* slogan LIBERTAS ECCLESIAE that referred to the *future freedom of the universal church* under a general concept of law (Allgemeiner Rechtsbegriff). But Luhmann (as ever) was not completely wrong. The new law was a strong instrument to stabilize the system (with all its real advances) and enhance the power of the haves and the powerful. But the plans and utopian visions also became part and parcel of the new legal system, because the same law that brought clerics and aristocrats to power could strike back (Müller). It enabled the have-nots and powerless to use the stories of the bible, which had become part of professional law and legal studies, to make a

legal claim as the famous "When Adam delved and Eve span who was then the gentleman?" that finally became one of the slogans of a further Revolution of Protestant bonded farmers ("common men").

5. The *basic constitutional structure* of modern law established for the first time by the Papal Revolution enabled *the struggle of individuals and social groups for the right and the rights from within the law*. This struggle keeps within the continuum of the legal evolution even in cases of revolutionary change. For example, when Emanuel Josef Siey  s claimed at June 17 of 1789 in the Assembly of Estates, to transform the Assembly of Estates into a National Assembly, he made a self-contradictory institutional speech act that (with a grain of salt) triggered a great revolution. But, it was a speech act not in the natural state of the woods of Paris but a legal act within the constitutional framework of the Ancien Regime – with the ironic footnote that the contradiction finally was healed by the king (Dreier). The revolutionary actors who depose or charge the king, act not beyond the law but just illegally. However, as Kant famously has argued, once they find a new republican state, and then charge the former king, they act legally, again within the law. Finally, the swelling white noise of the discourse covers the bridge between the old and the new law with arguments and justifications.
6. The establishment of a functionally differentiated legal system and the basic structure of modern constitutionalism by the Papal Revolution triggered something as a second Axis Time (Geyer). The original learning process enabled further learning processes and revolutionary changes, which transcended modern law from within ever again. Today *written constitutions* function as legally embodied *normative constraints* of legally stabilized functional adaptation and instrumental class rule. These legal constraints enable egalitarian political self-determination, which is comprehensive (*Allzust  ndigkeit*). However, the development of a new Axis Time might come to an end under the increasing pressure (and complexity) of disembedded global capitalism, global private law regimes, and authoritarian liberalism, which suddenly emerges everywhere around the globe. The second Axis Time that began with the legalization of Jesus speech act: "I am the Truth" seems to come to an end in the post-truth post-democracy of Marie le Pen, Boris Johnson and Donald Trump.
7. Modern democracy is depending on the "wild and anarchic complex" (Habermas) of a diffuse and socially, culturally, politically and legally inclusive public sphere that has access to, and is fueled by a stream of hypothetic and post-conventional empirical and practical knowledge, produced by specialized scientific, philosophical, legal, aesthetic and theological discourses, which are open to and driven by rational criticism and revision. The *state of the art of expert cultures* must be available for the selective perception, needs and options that are the basis of will formation in the public struggle over the generalizability of material and ideal interests of social groups, classes and individual human beings. During the last 30 years (to say it very oversimplified) the strongly monopolized new global media- and cultural-industry, based on the technical innovations of the internet and private interest of profit, has shaped a global public that has transformed the selective access of the wild and anarchic complex of the public sphere to the same state of the art of expert cultures into a completely *fragmented public that blocks access of rapidly growing parts of the population to the same state of the art of expert cultures*. Instead, the new media- and cultural industry replaced the latter by a huge variety of socially and technically constructed fake news, mythical obscurantism, blatant lies, rapidly mobilized

resentments, hate speech cascades, and (mostly racist) prejudice, *engendered rapidly and reinforced strongly by the echo chambers of the internet* (Sunstein). “The more senseless the antagonism, the more rigid the blocs.”<sup>1</sup> The simple (hypothetical but empirically well backed) *knowledge* of normal science (concerning e.g. climate change and evolution) successfully has been transformed by the fragmented public opinion into the clash of fundamentalist statements of *faith*. Social science access to public discourse has been blocked completely and replaced by micro-economics with a highly selective relation to social reality, mathematically perfect macroeconomics with a completely counterfactual relation to social reality, individualizing and atomizing cognitive psychology, neuro-science, a selective reception of evolutionary theory that is in accordance with lifelong education for competitiveness, and so on.<sup>2</sup> Information (“content”) for all the different and culturally diverse groups and regions now is sold on the content-online-markets together with the social construction of a neatly fitting social, cultural, economic and political reality, in the words of Matthias Döpfner, chief executive of the Axel-Springer AG: “Content is our top priority.”<sup>3</sup> Theories of social, cultural and media radical constructionism are deeply wrong with their absurdly idealist thesis, that reality is a construction but, as the century old sociological Thomas-theorem puts it: “It people define situations as real, they are real in their consequences.” And the consequences of fake-reality are deadly now, and – by the way – together with the emergence of a global youth culture of highly educated masses of no future generations also explain most of fundamentalist mass-killings. This makes it possible *everywhere* that leaders, such as Donald Trump, are elected with less than a quarter of eligible voters, and democratic constitutions, as in the Brexit, are destroyed by little more than a third of the voters through factually irreversible suicide-referenda, which are close to illegal, and therefore, hard cases for the courts who come too late anyway (Offe). “A post-truth democracy would no longer be democratic,” Habermas already wrote after the invention of embedded journalism in the Bush-Blair Gulf-War. All journalism now is embedded journalism – in a world of market-embedded states.<sup>4</sup>

8. The global constitutional system that emerged after the Second World War, and led to the *transnational constitutionalization of national states* (Thornhills paradox) was a strong further progress within the path laid by the Papal Revolution that had put in place the *co-evolution* of national states and cosmopolitan institutions (Albert, Brunkhorst, Thornhill). The productive paradox of transnationally constitutionalized national states that was the last step of this long lasting co-evolution, has been transformed through 40 years of neoliberal transformation from state-embedded markets to market-embedded states (Scharpf, Streeck) into a co-evolution of *highly integrated transnational*

<sup>1</sup> Max Horkheimer/ Theodor W. Adorno, *Dialectic of Enlightenment*, Stanford: Stanford University Press 2002, 169.

<sup>2</sup> In a curriculum for a graduate school in social, cultural, economic, legal and political sciences at Gießen University you can find the following (different!) course offers and workshops: career service, projektmanagement, effizient lernen, führungskompetenz, moderationstechniken, zeitmanagement, grant writing, academic writing, grand writing advanced, bewerbungstraining, berufstraining, selbstmarketing, grand writing advanced, conference chair training, happy career days.

<sup>3</sup> See: Nicola Clark, “An Old-Media Empire – Axel Springer Reboots for the Digital Age”, *New York Times*, 20.12. 2015; “Speech held by Mathias Döpfner at the German Newspaper Congress on September 26<sup>th</sup> in Berlin”, Bundesverband Deutscher Zeitungsverleger, Pressemitteilung 26. 9. 2016, [http://www.nytimes.com/2015/12/21/business/media/an-old-media-empire-axel-springer-reboots-for-the-digital-age.html?\\_r=0](http://www.nytimes.com/2015/12/21/business/media/an-old-media-empire-axel-springer-reboots-for-the-digital-age.html?_r=0) (24.11.2016).

<sup>4</sup> Jürgen Habermas, „Religion in der Öffentlichkeit“, in: Habermas, *Zwischen Naturalismus und Religion* Frankfurt: Suhrkamp 2005, 119-154, hier: 150f, my translation.



*technocratic order* and deeply *fragmented national states*, which has exhausted the resources of democratic solidarity (Platzmann). We have now a crisis of legitimization on both levels, the national and the transnational, and the paradigmatic case is the European Union. The crisis could be solved only through a democratic method of *CONCORDIA DISCONCORDANTIUM CANONUM* that works on *both levels*. Unfortunately, as it seems, there is no such solution available. If the fragmented national states progress to decouple themselves from transnational law, the suicide-referenda will work and fragment them further, and in shortest time they will become an exact copy of the structure (not the uniforms) of the Behemoth, explained by Franz Neumann at the beginning of World War II in Europe. Welcome back to the 1930s.

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