

## Human Rights in Europe

## Two systems, one future?

Newsletter of the Sussex European Institute  
 \* Summer 2012 \* Human Rights \*

**Prof Susan Millns**  
SEI Co-Director  
S.millns@sussex.ac.uk



We live in a time of unprecedented human rights guarantees in Europe – on paper at least. Since the second world war two major systems of protection have developed – one under the auspices of the Council of Europe (with its 47 member states) and the other under the European Union (with 27 members).

The former system which comprises the human rights protected under the European Convention on Human Rights offers an array of key civil and political rights enforced by the European Court of Human Rights in Strasbourg. The second system which is operated by the European Union comprises a rather complex array of case law, general principles, Treaty provisions and now, post Lisbon, the legally binding EU Charter of Fundamental Rights. This article examines the development of human rights protection in Europe and the relationship between the two European human rights systems together with the potential for further links between them arising out of the Lisbon Treaty.

From its early case law on the application of fundamental rights within EU law, the Court of Justice of the EU has developed an activist strategy to both promote rights and also to stave off supremacy challenges from national constitutional courts concerned that EU law should not undermine the strength of fundamental rights guarantees in their national constitutions. Within this

case law the European Convention on Human Rights has long provided one of the key sources of rights (along with national constitutional traditions and other international human rights instruments).

The Court has found that EU legislation in a number of different fields, including free movement and residence, sex discrimination and data protection and privacy, was designed to uphold guarantees set out in the European Convention. Furthermore, Article 6 of the Treaty on European Union has, ever since the adoption of the Maastricht Treaty, expressly referred to the ECHR as a source of rights for EU law.

In this spirit, rulings of the European Court of Human Rights are regularly cited as inspiration for the rights guaranteed under EU law with the Court of Justice tending to use the Convention as a floor rather than a ceiling for the EU's standards of protection. Article 52(3) of the EU's Charter of Fundamental Rights also states that the meaning and scope of the Charter rights where there is overlap with the Convention, is to be the same meaning as those rights laid down by the ECHR but that this does not prevent the EU providing more protection where necessary.

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That said, two systems, with different contents, different membership and different political agendas, still provide, the potential for confusion and inconsistencies in the standard of rights protection across Europe. The Treaty of Lisbon, though, offers an interesting prospect for greater integration of the two European human rights regimes. Article 6(2) of the Treaty on European Union now states that the EU *shall* accede to the European Convention on Human Rights. Previously, in 1994, the Court of Justice had ruled in its *Opinion 2/94* on accession of the EU to the ECHR that the EU had no competence under the then Treaties to accede since '[n]o Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field' (at para. 27). A Treaty amendment would be necessary to achieve this.

The Lisbon Treaty has now resolved the competence problem – at least from the EU's perspective – with a specific injunction in favour of accession in Article 6(2) TEU. The Council of Europe too has had to amend its statute. This has required the consent of its 47 member states and the resolution of the long blockage caused by Russia's failure to ratify Protocol 14 to the ECHR. Finally Article 59(2) ECHR permitting EU accession came into force in 2010.

What benefits are thus to be gained from accession? First, at the perhaps rather symbolic level, the EU might now be better placed to counter criticism that it does not take human rights seriously and that it seeks to promote the influence of EU law at the expense of the interests of its member states. Signature of the Convention enhances the credibility of the EU in making its claim to be founded on human rights as part of its core constitutional values.

Secondly, the Court has been accused of being selective in its promotion of particular rights, preferring the fundamental economic freedoms to more fundamental basic rights. It now has the potential to adhere to a full range core civil and political rights which will serve to balance the sacrosanct market-oriented freedoms. Thirdly, the possibility of serious conflict between the two systems is diminished and the prospects of a more harmonious jurisprudence and common rights culture are enhanced. Finally, there will now be a direct mechanism

whereby acts of the EU may be directly challenged before the European Court of Human Rights meaning that the Court of Justice is no longer the final arbiter of the lawfulness of EU action where this is alleged to violate human rights.

The Commission began negotiations over accession with the Council of Europe and a draft agreement on accession was published by the Steering Committee for Human Rights of the Council of Europe on 14 October 2011. The accession agreement aims in principle to treat the EU as far as possible like any other party to the ECHR, including having one EU judge on the European Court of Human Rights, as is the position with the other member states.

Contrary to the wishes of some EU Member States, the draft does not exclude the possibility of review by the European Court of Human Rights of EU primary law and EU member states can indeed only become co-respondents to an action (along with the EU) in situations where an application to the European Court of Human Rights calls into question the compatibility with the ECHR of a provision of the EU Treaties (ie primary law).

A number of obstacles still lie ahead. The 47 state parties to the ECHR as well as the EU have to sign the agreement. Article 218 TFEU provides for a special ratification procedure for a number of specific international agreements, including EU accession to the ECHR. Then all 47 existing parties to the ECHR (which include of course the 27 EU member states) must approve the agreement in accordance with their national constitutional requirements. Last but not least the Court of Justice of the EU may be asked to give its view on whether the accession agreement is compatible with the EU Treaties. While none of the above is to be taken for granted – national parliaments and national constitutional courts, together with Eurosceptic voters, all have a track record of inflicting unexpected and humiliating blows to the cause of European integration – the reality of a harmonised approach to human rights protection after 50 years in the making, is a step closer.

## Who we are...

**euroscope** is the newsletter of the Sussex European Institute (SEI).

It reports to members and beyond about activities and research going on at the SEI and presents feature articles and reports by SEI staff, researchers, students and associates. The deadline for submissions for the Summer term issue is: 1st March 2012.

**Co-Editors:** Amy Busby, Anne Wesemann & Rebecca Partos  
([euroscope@sussex.ac.uk](mailto:euroscope@sussex.ac.uk))

**The SEI** was founded in 1992 and is a Jean Monnet Centre of Excellence and a Marie Curie Research Training Site. It is the leading research and postgraduate training centre on contemporary European issues. SEI has a distinctive philosophy built on interdisciplinarity and a broad and inclusive approach to Europe. Its research is policy-relevant and at the academic cutting edge, and focuses on integrating the European and domestic levels of analysis. As well as delivering internationally renowned Masters, doctoral programmes and providing tailored programmes for practitioners, it acts as the hub of a large range of networks of academics, researchers and practitioners who teach, supervise and collaborate with us on research projects.

**Co-Directors:** Prof Sue Millns & Prof Aleks Szczerbiak  
University of Sussex, Falmer, Brighton, BN1 9RG, Tel: (01273) 678578,  
Fax: (01273) 673563 Email: [sei@sussex.ac.uk](mailto:sei@sussex.ac.uk), [www.sussex.ac.uk/sei](http://www.sussex.ac.uk/sei)



## Where to find euroscope!

*euroscope* is easily accessible in the following places:

- the SEI website: <http://www.sussex.ac.uk/sei/euroscope>
- via the official mailing list, contact: [euroscope@sussex.ac.uk](mailto:euroscope@sussex.ac.uk)
- hard copies are available from LPS office
- via its new and dedicated facebook group and fan page called 'euroscope', where you can also join in discussions on the articles

**Also feel free to contact us to comment on articles and research and we may publish your letters and thoughts.**

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## Features Section: Human Rights

This issue of *euroscope* is a special edition presenting articles on Human Rights in the European context. You can find our special Features pieces on pages 13-24.

# Message from the Co-Director...

**Prof Aleks Szczerbiak**

A.A.Szczerbiak@sussex.ac.uk

University of Sussex

Welcome to the summer term issue of Euroscope. The theme of this issue is 'Human Rights in Europe' and it contains a series of articles on pages 13-21 from SEI linked scholars from the Sussex Law School specialising in this field - including Marie Dembour, Charlotte Skeet, Richard Vogler, Elizabeth Craig and Deborah Gellner - and follows a very successful SEI round table on this subject held in January.

Human rights and the Euro-crisis

SEI is as the hub of a large inter-disciplinary network of scholars researching contemporary Europe across the University of Sussex (and beyond) and this issue of Euroscope reflects nicely the increasingly strong presence and links that Institute now enjoys among Sussex colleagues based in the Law School.

These links have been strengthened considerably since 2009 when the SEI has been located in the Sussex School of Law, Politics and Sociology. They are exemplified by the appointment, last September, of Sue Millns, a Professor of Law, as an SEI Co-Director. In her lead article, Sue explores the two systems of human rights guarantees that have developed in post-war Europe under the auspices of the Council of Europe and the EU.

Since the start of the year, European developments have continued to be dominated by the ongoing crisis in the Euro zone. The last, spring term issue of Euroscope was devoted to this theme and the current one contains an update on the situation by SEI visiting professorial fellow Alan Mayhew on pages 22-23, together with an article on pages 57-59 in the 'Dispatches' section by Douglas Webber, Professor of Politics from INSEAD, based on a paper that he gave at a recent SEI seminar on the prospects for the EU's disintegration. 'Dispatches' also contains pieces on this theme by



SEI practitioner fellows Michael Shackleton (a somewhat more upbeat prognosis) and John Palmer on pages 61-63.

France chooses a President

However, apart from the seemingly endless round of crisis summits, wrangles over the new European fiscal treaty, and nervous gauging of the reactions of financial markets, rating agencies, international institutions and national political actors to the main European powers' latest attempts to impose fiscal restrictions on Euro zone members, 2012 is also an important year for national elections in Europe and beyond.

The phoney Russian poll in February that saw Vladimir Putin 're-elected' as President while in November the USA holds a presidential election, whose outcome will, as ever, have a major impact on the future of our region. More imminently and closer to home, April-May sees a crucial, and closely fought, presidential election in France where centre-right incumbent Nicolas Sarkozy

faces a strong challenge from the Socialist Francois Hollande, with Marine Le Pen from the radical right French National Front also likely to poll strongly in the first round.

One of the highlights of the summer term for SEI will, therefore, be a round table discussion on the French presidential election, which will be held as part of our research-in-progress seminar series on April 25th; three days after the first round of voting and ahead of the second round scheduled for May 6th. I am delighted that - in addition to expert analysis from SEI-linked French specialists Sue Collard, Sally Marthaler and Adrian Treacher - this event (co-hosted by the Sussex Politics Society) will also include a session showcasing emerging talent among Sussex undergraduates who have been studying French politics as part of their degrees.

We are very fortunate at Sussex to have a vibrant community of Politics undergraduates interested in contemporary Europe: in this issue of *Euroscope* you can read about the activities of our undergraduate Politics and EU Societies (including how they are establishing an undergraduate academic journal) on pages 54-55 together with reports from recent study visits to Paris and Berlin organised respectively by Sue Collard and SEI-based reader in Politics Dan Hough on pages 51-53.

The French presidential election round table is part of an increasing effort by SEI to draw undergraduates into our research community - an effort which includes initiatives like the University of Sussex Junior Research Associate bursary scheme, as part of which undergraduates have worked alongside SEI faculty as part of a kind of 'craft apprenticeship' for undertaking future academic research.

For example, Rebecca Partos - a recent JRA scholar and now an SEI-based doctoral researcher, whom I'm delighted to welcome to the 'Euroscope' editorial team - went on to secure a ESRC I+3 studentship for her research project on the British Conservative party and immigration policy. (You can read a conference report from Rebecca in the 'Activities' section on page 50.)

Welcomes, farewell and congratulations

Finally, a few words of welcome, farewell and congratulations. Welcome to two visiting fellows from Poland who are coming to SEI in April-May: Agnieszka Łada from the Institute of Public Affairs (ISP), a leading Polish think tank with whom SEI has enjoyed strong links; and Przemysław Biskup from Warsaw University who will be here as a Socrates-Erasmus visiting lecturer in European studies (some of you with long memories will remember Przemysław as a visiting student a number of years ago!). You can read articles by them on pages 29-31 and come and hear them talk about their research at SEI research-in-progress seminars on May 2nd and 9th respectively.

Farewell to Lucia Quaglia who move from SEI after six years as a senior lecturer in contemporary European studies (and, some years earlier, was both an SEI Masters and doctoral student) to become a Professor at the University of York. Many congratulations, Lucia, and all our very best wishes for the future.

Congratulations to SEI doctoral researcher Ezel Tabur who passed her viva successfully in March, as well as to Dan Hough for being awarded British Academy funding for his forthcoming research project on the Polish anti-corruption agency. Dan is the Acting Director of the new Sussex Centre for the Study of Corruption, which involves a number of SEI-linked researchers and will be launched at a major conference this September.

Last but not least, I'd like to plug a major conference that SEI will be holding on September 27-28th to celebrate our twentieth anniversary and look ahead to the future. The programme is still being finalised but please put the date in your diary and keep checking the website (<http://www.sussex.ac.uk/sei/newsandevents/sei20anniversaryconference>) for further details.

Prof Aleks Szczerbiak



# The SEI Diary



The SEI Diary provides snippets on the many exciting and memorable activities connected to teaching, researching and presenting contemporary Europe that members of the SEI have been involved in during Spring 2012.

## January:

### **Doctoral students win travel bursaries**

Three Sussex doctoral students have been awarded 2012 Francois Duchene European Travel Bursaries. Satoko Horii will conduct two research trips to Greece and Brussels as part of her doctoral project on understanding the role of the Frontex border agency in the EU external border regime. Mari Martiskainen will visit Finland as part of her research on the innovation of community energy projects in Finland and the UK. Gentian Elezi will conduct fieldwork in Albania and Brussels as part of his doctoral research on explaining the implementation challenges in preparing Albania for EU membership. See pages 48-49.

### **New EPERN election briefing on Poland**

The European Parties Elections and Referendums Network (EPERN) based in the SEI has published a new election briefing on Europe and the October 2011 Polish Parliamentary Election by Prof Aleks Szczerbiak (University of Sussex), which is available free at:

<http://www.sussex.ac.uk/sei/research/europeanpartieelectionsreferendumsnetwork/epernelectionbriefings>

### **SEI welcomes visiting researcher**

The SEI has welcomed a new visiting researcher. Dr Juan Ramon Fallada, from Rovira I Virgili University, Tarragona is researching racism and technocratic legitimisation policies. From mid-January until mid-May, he will be working with Dr James Hampshire.

### **SEI welcomes new doctoral student**

Blanca Lopez (bl84@sussex.ac.uk) is working on 'Institutional evaluation in the Mexican federal government' with Prof Shमित Saggarr and Francis McGowan. See Blanca's profile on page 34.

### **18 January: SEI round table on Human Rights**

Prof Sue Millns, Dr Charlotte Skeet and Zdenek Kavan (all of University of Sussex) spoke in the SEI research seminar on the topic of 'Human Rights in Europe'.

### **19-20 January: SEI Co-director visits Croatia**

Prof Aleks Szczerbiak visited Croatia to meet with academics and practitioners in the run-up to the country's EU accession referendum. While in Zagreb, Prof Szczerbiak was interviewed by Croatian Radio, Novi list (a Croatian daily newspaper), T-portal (a leading Croatian Internet news portal), Croatian TV, Aktual (a Croatian political/current affairs weekly); and the Croatian correspondent of RTL (the German TV channel).

Prof Szczerbiak also gave the keynote address on 'Direct Democracy: The dynamics of EU referendums' at a conference hosted by the Zagreb University Political Science Faculty on 'Only a Ballot Away from EU Membership: The EU Referendum in Croatia'; and spoke at a meeting sponsored by the British Council in Croatia on 'Transitioning to Europe: Croatia on the verge of EU membership'. See article on pages 43-44.

## Activities

### **26 January: SEI students celebrate at winter graduation**

18 MA in Contemporary European Studies (MACES) and 4 MA in European Politics (MAEP) students graduated at this year's University of Sussex winter graduation ceremony. This year's Jean Monnet Prizes for Best MACES student went to Derek Barnham and Best MAEP Student to Siobhan Farrell. Maria Cheiladaki-Liarokapi was awarded an MPhil in Contemporary European Studies. At the same ceremony, SEI DPhils Dr Anastassios Chardas and Dr Stijn van Kessel received their doctorates in 'An evaluation of the impact of the structural funds for the cases of Greece and Ireland' and 'Paths to Populism, the ideologies of Populist Parties in Europe' respectively.



### **February:**

#### **New EPERN election briefings on Latvia and Denmark**

The European Parties Elections and Referendums Network (EPERN) has published two new election briefings on: 'Europe and the early Latvian election of September 17 2011' by Daunis Auers (University of Latvia); and 'Europe and Danish General Election of 15 September 2011' by Ann-Christina L Knudsen (Aarhus University), which are available free at:

<http://www.sussex.ac.uk/sei/research/europeanpartieselectionsreferendumsnetwork/epernelectionbriefings>

#### **1 February: SEI doctoral students present research**

Three SEI doctoral students presented research outlines during an SEI research seminar. Bart Napieralski spoke on 'Political Catholicism and Euroscepticism: The deviant case of Poland in a comparative perspective'. Stine Laursen presented 'A comparative study of irregular migration in Northern Europe'. Roxana Mihaila spoke on 'Change or business as usual? A comparative analysis of the inter-action between political parties and the EU'.

#### **8 February: EU foreign policy and conflict prevention**

Dr Christoph Meyer of King's College London presented his research on 'Learning EU Foreign Policy: The case of conflict prevention' during the SEI research seminar.

#### **15 February: Political participation of migrants**

SEI doctoral student Giuseppe Scotto spoke on 'The political participation of migrants: a study of the Italian communities in London' during the SEI research seminar.

#### **17-18 February: Populism in Latin America**

Dr Cristóbal Kaltwasser presented a paper called 'Populism in Latin America: Some Conceptual and Normative Lessons' during a workshop entitled Populism: Historical and Normative Aspects at Princeton University, USA.

#### **18 February: Euroscepticism and Government participation**

Prof Paul Taggart presented a paper entitled 'Coming in from the cold? Euroscepticism, government participation and party positions on Europe' during a workshop at the University of Surrey.

#### **22 February: Employment protection reforms**

Dr Sabina Avdagic of University of Sussex presented her research on 'Partisanship, Political Constraints and Employment Protection Re-

## Activities

forms in an Era of Austerity' during the SEI research seminar.

### **Corruption Centre Visits Mumbai**

Dr. Dan Hough attended a three day conference at the Tata Institute of Social Science. He made various contacts in connection to the Sussex Centre for the Study of Corruption.

### **22 February: Doctoral Training Centre launch**

SEI doctoral student Rebecca Partos gave a poster presentation of her research on Conservative Party immigration policy during the launch event for the Sussex ESRC Doctoral Training Centre (DTC).

### **New EPERN election briefing on Switzerland**

The European Parties Elections and Referendums Network (EPERN) based in the SEI has published

a new election briefing on 'Europe and the Swiss parliamentary elections of 23 October 2011' by Prof Clive Church (University of Kent).

### **New EPERN working paper on Finland**

The European Parties Elections and Referendums Network (EPERN) has published a new working paper entitled "Whenever the EU is involved, you get problems": Explaining the European Policy of the (True) Finns' by Prof Tapio Raunio (University of Tampere), which is available free at: <http://www.sussex.ac.uk/sei/publications/seiworkingpapers>

### **29 February: Future of the European Union**

Prof Douglas Webber of INSEAD gave a presentation entitled 'How likely is it that the European Union will disintegrate? A Critical Analysis of Competing Theoretical Perspectives' during the SEI research seminar. See article on pages 57-59.

### **March:**

#### **Twelve step recovery programme for Fianna Fail**

Prof Tim Bale was invited to Dublin by Dianna Fail's general secretary to give a presentation on how defeated parties recover power.

#### **7 March: Small Party Survival**

Dr Jae-Jae Spoon of University of Iowa presented her research on 'Balancing Interests: Understanding Small Party Survival' during the SEI research seminar.

#### **8 March: SEI Professor is external examiner**

Prof Aleks Szczerbiak was the external examiner of a doctoral thesis at the University of Leiden Politics Department.



#### **21 March: Participation of Non-National EU Citizens**

Dr Sue Collard presented a paper to the research seminar series at the Spanish National Research Council in Madrid. The paper looks at

the 'Participation of Non-National EU Citizens in Local Elections in France and the UK'.

#### **New EPERN election briefing on EU**

The European Parties Elections and Referendums Network (EPERN) has published a new working paper on 'Reforming the EU budget to support economic growth' by Prof Alan Mayhew which is available free at: <http://www.sussex.ac.uk/sei/publications/seiworkingpapers>

#### **19 March – David Miliband lecture series**

Prof Tim Bale gave a lecture as part of the 'Labour's Future' seminars. Chaired by Jon Cruddas MP, Prof Bale's lecture was entitled 'Know Your Enemy: How the Conservative Party Wins and Holds on to Power'.

#### **30 March: FCO Masterclass on Politically Extreme Parties**

Prof Aleks Szczerbiak spoke at a Foreign and Commonwealth Office (FCO) Europe Directorate Masterclass on 'The Rise of Politically Extreme Parties in Europe'.

#### **30 March: Populism in Europe and Latin**



### America

Dr Cristóbal Kaltwasser presented a paper entitled 'Explaining the (Re)Emergence of Populism in Europe and Latin America' during a workshop called Power to the People, at the University of Kentucky, USA.

### Congratulations to SEI Doctoral Student

Many congratulations to Ezel Tabur for passing her DPhil viva successfully in March with only one correction. Ezel's thesis was on the subject of 'The decision-making process in EU policy towards the Eastern neighbourhood: the case of immigration policy'.

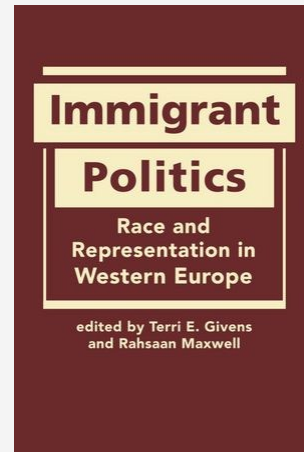
### British Academy awards SEI member research funding

Dr Dan Hough has been awarded British Academy funding for his forthcoming research project on the Polish anti-corruption agency, the CBA. The project, which will begin in September 2012, will analyse why so few anti-corruption agencies have been genuinely successful.

### New book on immigrant politics published

Dr James Hampshire has written a chapter for

the edited book *Immigrant Politics: Race and Representation in Western Europe*. The title of his chapter is 'Race and Representation: The BME Shortlist Debates in Britain'.



### 31 March–2 April: Slavonic and East European Studies conference

Dr Lee Savage attended the British Association for Slavonic and East European Studies (BASEES) annual conference at Fitzwilliam College, Cambridge.

### April:

#### 3-5 April: Political Studies Association conference

Three SEI members gave papers at the Political Studies Association (PSA) conference, in Belfast. Dr Cristóbal Kaltwasser presented a paper called 'Dahl's Democratic Dilemmas and Populism's Responses'. Dr Lee Savage gave a paper entitled 'Coalition stability and duration in Central and Eastern Europe: The Role of Party Ideology'. Prof Paul Taggart presented a paper called 'Problems of Populism'.

#### 3-5 April: Socio-Legal Studies Association conference

Prof Sue Millns gave a paper at the Socio-Legal Studies Association conference at De Monfort University, Leicester. The title of her paper was 'Gender Equality and Legal Mobilization in the UK'.

### 11-13 April: EU Centre of Excellence Conference

SEI doctoral student Marko Stojic gave a paper at the EU Centre of Excellence conference at Dalhousie University, Halifax, Canada. His paper looked at Serbian and Croatian parties' ideologies and attitudes towards the EU.



## Activities

# Corruption Centre Launch Conference planned for 6/7 September



**Plans for the Sussex Centre for the Study of Corruption's (SCSC) launch conference on 6/7 September are gathering momentum. A number of high-profile speakers, from both academia and the policy world, will lead debate both on corruption's causes as well as possible remedies to fight it.**

The recently formed SCSC will be hosting a two day launch conference on 'the fight against corruption' at the offices of law firm Clifford Chance - who are generously sponsoring the event - in early September. Up to 150 people are expected to attend, and a number of high profile speakers will keep them entertained. The most prominent of those will be Sir Christopher Kelly, Chair of the UK's Committee on Standards in Public Life, and prominent author of a recent report in to party funding in the UK. Sir Christopher will be speaking on the effectiveness of the rules and regulations currently in place for preventing public servants from abusing their roles for private gain. Given his current position, he is arguably the most apt person to speak on such issues in the UK today.

The conference will not, however, solely be concentrating on corruption-related issues in the UK. The Kenyan anti-corruption campaigner John Githongo, a man who tried and failed to take on corruption within the Kenyan system, will be discussing his own experiences of trying to root out graft, whilst a range of CEOs from multi-national companies will be talking about corruption at the interface between politics and business. It is also hoped that Festus Mogae, former president of Botswana and a Sussex alumni, will be giving another of the keynote addresses.

The provisional conference programme will be published in early/mid-April, and can be downloaded from

<http://www.sussex.ac.uk/lps/research/lpsresearchcentres/sussexcentreforthestudyofcorruption/launchconference> .

The conference is open to all, although prospective participants still need to book their places. This can be done by emailing Christine Turnbull on (C.Turnbull@sussex.ac.uk). For further information on either the conference or the work of the SCSC, please mail Dan Hough on d.t.hough@sussex.ac.uk

Sussex European Institute

20th Anniversary Conference

## Future of Europe: Progress or Decline?

27-28 September 2012

The Sussex European Institute (SEI) was set up in 1992 and has developed into an outstanding postgraduate training and research centre of excellence in contemporary European studies. As well as delivering internationally renowned Masters and doctoral programmes, the SEI is also one of the foremost centres of cutting edge academic research on contemporary Europe. The SEI:

- Publishes highly influential working papers and briefing papers.
- Holds seminars and conferences involving leading academics and practitioners working on Europe, including our prestigious weekly research-in-progress seminars
- Acts as a hub for scholars involved in research on many aspects of contemporary Europe both within Sussex and beyond through internationally renowned collaborative networks such as the European Parties Elections and Referendums Network (EPERN) and the Jean Monnet Wider Europe Network.

**US50**  
University of Sussex

<http://www.sussex.ac.uk/sei>



## Activities

### The School of Law, Politics and Sociology DPhil Conference:

#### Rights and Responsibilities: Global Perspectives

The DPhil community at the Law, Politics and Sociology School invites doctoral students to participate in a one day conference entitled "Rights and Responsibilities: Global Perspectives". This interdisciplinary event aims to engage students studying within the areas of Law, Politics and/or Sociology who are interested in the themes of rights and responsibilities (broadly conceived).

The conference will allow students to present their research ideas/work in a variety of different ways during three separate sessions that include:

- A plenary session, including keynote speaker
- A poster session, and

Workshops separated into topic specific streams.

The title of the conference was chosen on the basis of its broad context application to support wide range participation, with particular consideration given to the variety of DPhil topics being researched within the School. We will be accepting abstracts for presentations under any of the three sessions.

**Provisional date: 14<sup>th</sup> of June (tbc)**

**Submission of abstracts: 16<sup>th</sup> of April**

Please email **Christine Turnbull** for further information: **C.Turnbull@sussex.ac.uk**

See website for registration and further details:

<http://www.sussex.ac.uk/lps/newsandevents/events/rightsandresponsibilitiesglobalperspectives>

#### SEI Research in Progress Seminars

**SUMMER TERM 2012**

**Wednesdays 14.00 - 15.50**

**Friston 113**

**\*NB-25.04—14.00—17.00**

**02.05—12.00-13.50 Arundel 230**

**13.06—12.00—13.50**

#### **25.04.12\***

Joint SEI/Sussex Politics Society round table on 'The French Presidential Election'.

#### **02.05.12\***

The EU Council Presidency after the Lisbon-Treaty – challenges and opportunities  
Dr. Agnieszka Lada

#### **09.05.12**

A Marriage of Convenience or Ideological Passion? The British Conservatives and Polish Law and Justice party in the European Conservatives and Reformists group  
Dr Przemysław Biskup

#### **16.05.12**

PhD outline presentation on: 'The practice and politics of preventing radicalisation'  
Will Hammonds

#### **23.05.12**

Comparative Fracking: the unconventional politics of a unconventional gas  
Francis McGowan

#### **30.05.12**

Gender mainstreaming and human rights in Europe  
Monica Beard & Raquel Vano Vicedo

#### **13.06.12\***

The everyday practice and performance of European politics: An ethnography of the European Parliament  
Amy Busby

***Everyone is welcome to attend!***

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# Features

## Human Rights in Europe

### Migrant First, Human When?

**Prof Marie-Benedicte Dembour**  
SEI Professor of Law and Anthropology  
M.Dembour@sussex.ac.uk

Marie-Benedicte Dembour is writing *Migrant First, Human When? Testing Human Rights in the European and Inter-American Courts* with the support of a Leverhulme Major Research Fellowship (2009-12). Her monograph is due to be published by Oxford University Press in 2014.

Is the European Court of Human Rights going too far in bestowing rights to individuals who really do not deserve them? You would be forgiven for thinking so, for this is the message conveyed both by the British government and the media.

For example, the Strasbourg Court recently prevented the deportation of the alleged (but never tried) Islamist terrorist Abu Qatada from the United Kingdom to Jordan. This was because of the risk that Abu Qatada would be brought before a criminal tribunal which would base its judgment on evidence produced under torture. Would any democrat wish for a different ruling? I should not think so, but the ruling is proving controversial.

Despite the noise that this and other cases have made, my research indicates that far from restraining governments too much, the European Court is not going far enough in protecting human rights. This is regrettable. Moreover, there is nothing in human rights law which makes such judicial restraint and state deference imperative. The Inter-American Court of Human Rights is one of the human rights bodies which is following a far more



principled human rights path. This is why I have decided to write a book where I shall be comparing the approaches of the European and Inter-American Courts of Human Rights, something I shall do by reference to

migrant cases.

Migration provides an interesting focus when testing the resilience of the human rights idea to perceived political constraints. In the last thirty years, immigration has risen to the top of the political agenda of many governments and international organisations around the world. It recurrently leads to reflexes of closure which are at odds with the ethical message embodied in the concept of human rights, generating questionable, if not straightforwardly abhorrent, practices which too often become entrenched and regarded as 'natural'.

The European Court of Human Rights is widely celebrated, and indeed praises itself, for being 'the conscience of Europe'. However, does it manage to remain true to the values at the core of its institution when it decides migrant cases? As generations of SEI students who have followed my option course 'Migration under the ECHR' know, I do not think so. It has therefore been inspiring for me to discover a magnificent counter-example as I was



researching this project. The Inter-American Court consistently displays human rights integrity, making it a champion of migrants' human rights, amongst other causes.

My book will thus conduct a painstakingly close analysis of the migrant case law of the two courts in order to demonstrate that they approach migrant cases from a fundamentally different perspective. In brief, the European Court of Human Rights treats migrants first as aliens, and then, but only as a second step in its reasoning, as human beings. By contrast, the Inter-American Court of Human Rights approaches migrants first as human beings, and then as foreigners (if they are). These trends are discernable right from the time of the earliest, hardly ever researched, days of the two courts; they persist today.

At first sight, the founding texts of the European and American Conventions on Human Rights could explain the identified divergence. However, the Conventions are themselves the product of the different histories of the continents of Europe and Latin America. Ultimately, it is the overall social, moral and political conceptions prevalent in the two continents which explain the conceptions which have come to dominate the courts, and thus their different reasoning and contrasting outcomes, which, unsurprisingly, end up reflecting their respective conventional text. The developing case law then comes to reinforce past trends, with the stark divergence identified above too easily becoming regarded as a self-fulfilling prophecy.

I am sure some will wish me to offer my views on whether the trends I have identified are set to continue in such stark fashion in the future. I am not in the business of predicting the future, however I shall offer some remarks. It is striking that the Strasbourg Court has always counted some judges who defend an approach which recognises first of all the human character of the migrant applicant. These judges have had some success in persuading their colleagues to adopt their favoured logic. Still, their reasoning has until now failed to entrench itself in the Strasbourg case law.

Under its current leadership, the Strasbourg Court has produced some very strong and progressive judgments (amongst which *M.S.S. v. Belgium and Greece* and *Hirsi v. Italy*). It remains to be seen, however, whether these new developments constitute a new trend able to resist the dominant European political orientation towards (irregular) migrants, not to mention the never settled question of the legitimacy of the Court in the eyes of the governments to which it addresses its judgments, arguably pushing the Court towards state deference (as the British debate illustrates).

As for the Inter-American Court, its consistently principled approach owes a lot not just to the historical context of the South American continent but also to the towering figures who have emerged from within its (evolving) benches and who have encouraged boldness rather than timidity and self-restraint. The result has been a continual affirmation of the fundamental equal worth of all human beings, including migrants. Obviously, new circumstances could dim, or even extinguish, the light which the Inter-American Court has been throwing for almost three decades on the institutional human rights landscape. The impact of more politically motivated judicial nomination or an asphyxiation through lack of governmental funding could be feared. So far, however, the Inter-American case law, though quantitatively limited, sees no sign of abating the light of intense quality it sheds on the human rights landscape.

# Human Rights in Europe

**Dr Charlotte Skeet**  
SEI Lecturer in Law  
[C.H.Skeet@sussex.ac.uk](mailto:C.H.Skeet@sussex.ac.uk)

When the European Convention of Human Rights and Fundamental Freedoms opened for signature in 1950, widespread rights of individual petition were not envisaged. Yet, an optional protocol which provided for countries to allow individual petition to the European Court of Human Rights (ECtHR) from domestic courts became a mandatory feature of this regional system in 1998 and is one of its most distinctive features. The resulting extensive jurisprudence of the ECtHR also makes it a source of influence beyond the 47 members of the Council of Europe. This approach to the implementation of rights through individual adjudication has led to a backlog of cases, long delay in the court and also, arguably, to a problematic approach taken to the rights of minority groups.

This can be seen through the operation of admissibility criteria, decisions in relation to which Articles are applicable and through the exercise of the Margin of Appreciation. I do not have problems with principle of some deference to localities through the Margin of Appreciation *per se*, but find it problematic when the Court uses it to abdicate responsibility, as it did in *Sahin v Turkey*. While application of the margin of appreciation depends on the perceived severity of the interference and the nature of the state justification, I do not always share the views of the court in relation to this, particularly where the rights of women and other political minorities are involved. For instance, while the Court exercises good standard-setting in many areas, there is a problem in relation to the claims of the most disadvantaged and marginalised in Europe: the Court fails to locate claims in the wider social context and reality of the lived experience of discrimination.

This is particularly the case in relation to religious minorities. Marie Dembour's work has highlighted the failures of the Court and earlier Commission in relation to the admissibility of applications on the right to religion, and of a failure to engage fully



with the issues where cases were adjudicated. While Paul Marshall notes a global neglect of the right to religion, it is also worrying that in his survey of religious freedom across the world he found that of the 20 countries which had a lower rating for religious freedom than civil liberties more generally, a majority were members of the Council of Europe and half are members of the EU.

Within this group there were systematic variations. A cluster of countries had a history of greater repression towards religious non-conformity than non-conformity in general, and a further cluster of countries showed clear 'attachments...to traditional dominant religions...and an antipathy to new, unorthodox religions...'. Marshall concludes from this that there were 'two real trends in the world: the increasing Western European phobia of 'sects' and Islam and an Eastern European fear of anything that challenges the hegemony of the dominant religious group'. While this must be placed in the context of some of those countries having relatively high scores for religious freedom in general, it is worrying given that attacks on members of minority religions are increasing within Europe. It is of great concern that the ECtHR is presiding over this situation, particularly given that its genesis was a reaction to the intolerance and genocide of the 1930s and 1940s.

The Court has also failed to engage with principles and discourses on equality more generally, and any intersectional understanding of rights breaches is absent. Part of this problem is caused by a seemingly wilful reluctance to engage with Article 14 - a provision that does not provide for freestanding equality but rather examines equality in relation to enjoyment of other rights. In refusing to consider whether there has been a breach of Article 14, the Court often states that Article 14 is either of no

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consequence or that it will add nothing to the determination. Yet this failure to examine Article 14 may mean that aspects of a rights breach may be missed or no rights breach found at all.

In this way the lived experience of the applicant may be ignored and the context in which a rights breach occurs is disregarded. This of course presents an incomplete jurisprudence for national courts, even following decisions where the outcome is in favour of the applicant. For example, in *MC v Bulgaria*, a ground-breaking case in relation to violence against women which involved state failure to investigate and prosecute rape, the court saw no reason to consider the claim of sex discrimination under Article 14. Thus despite the clear finding that rights had been breached, there was no sense that the cause was sex discrimination within the Bulgarian criminal justice system.

The Maltese judge, Giovanni Bonello's dissent in *Anguelova v Bulgaria* also makes this problem of individualisation quite clear when he said 'Kurds, Coloured, Muslims, Roma and others are again and again tortured, maimed ...but the court is not persuaded that their race, colour, nationality or place of origin had anything to do with it'. More recently, in *DH v Czech Republic*, Article 14 was used by the Grand Chamber when it took on board dissent in the earlier 2006 hearing to overturn a finding on the acceptability of 'special schools' filled by Roma

children in the Czech Republic. The Grand Chamber instead contextualised the use of these schools in the wider discrimination against Roma. This finding was subject to dissent and some criticism of both the detail and general approach precisely because it failed to treat the application on a purely individual basis. Yet this to me is exactly its strength and suggests movement in a much more positive direction by the court.

It may be that a procedural innovation might also change the way that court views substantive claims. The court is currently struggling with a backlog of 150,000 cases and it is recognised that many of these are repeat claims. Recent suggestions to introduce pilot judgements with wider recommendations and remedies for applicants in a similar position will ease some of these problems. This innovation might also go some way towards recognising the class nature of human rights breaches.

For anyone interested in engaging with the current debates on the role of the ECtHR and proposals for reform, the Select Committee proceedings on Judgments of the European Court of Human Rights make interesting viewing. The Presidency of the Court is currently held by Nicolas Bratza, the English judge, and his evidence was recently given to the committee on 13 March 2012 (see <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=10508>).

## Dealing with the Soviet Inheritance in Criminal Justice: Georgia and Ukraine

**Dr Richard Vogler**  
SEI Lecturer in Law  
[R.K.Vogler@sussex.ac.uk](mailto:R.K.Vogler@sussex.ac.uk)

Amongst the more toxic legacies of Soviet rule in Eastern Europe and the Caucasus is the network of moribund and brutal systems of criminal justice which have persisted in successor states.

In the course of lengthy and bureaucratic procedures, which are essentially the same as those laid down by the authoritarian All Soviet Code of Criminal Procedure of 1961, tens of thousands of



detainees are still routinely subjected to torture, excessive detention in unsanitary remand prisons known as *SIZOs* and systemic injustice. Whereas political democratisation has taken place relatively quickly in some states, the pace of judicial reform has been glacial.

A number of agencies have taken an active role in promoting change. Prominent amongst them are

the OSCE, the Council of Europe and the EU as well as the United States Department of Justice, through its OPDAT and ABA/CEELI programmes. Domestic agencies such as the British Council and the German GTZ have also made important contributions. Unfortunately, whilst subscribing to a general human rights agenda, many of these organisations do not share the same vision of progressive reform and instead compete for the attention of justice ministries in successor states. Worse still, there are no internationally agreed standards for criminal justice and existing scholarship is fixated on the unhelpful distinction between 'adversarial' and 'inquisitorial' approaches to procedure.

Faced with utterly contradictory demands from the international community, with some agencies calling for more defendants' rights, others for more victims' rights instead or for increased efficiency and plea-bargaining, it is not surprising that the response is often a cynical one. Post-Soviet states have all inherited an over-mighty *Procuracy* (prosecutor's office) with responsibilities for ensuring the legality of state activity which go far beyond the criminal court. Needless to say, these powerful agencies have been active in blocking any reforms which might challenge their domination of the criminal process.

Two very different states in the region, Georgia and Ukraine, have managed to overcome some of these difficulties, with major reform of their Criminal Procedure Codes (CPCs) in 2009 and 2012 respectively. As an academic and former practising lawyer with a strong interest in criminal procedure, the opportunity to observe the development of due process reform in these states at first hand has been a fascinating one for me.

### Georgia

I first visited Georgia in 2002, shortly after the civil war, to provide support (funded by the British Council) for a group of NGO/opposition activists in Tbilisi who were challenging reforms promoted by the Sheverdnadze administration. After the 'Rose Revolution' in November 2003, several members of these NGO/opposition groups were appointed to senior ministerial posts in the new

government of Mikhail Saakashvili. Promising to address the urgent problems of corruption and lawlessness, they proposed drastic solutions which included the dismissal of almost the entire police force of nine thousand corrupt officers and an equally bold policy of plea-bargaining to attack organised crime.

In 2006, a zero-tolerance approach to offending became the centrepiece of the government's law and order strategy. Inevitably, these draconian initiatives attracted both domestic and international criticism. So too did the proposal to replace the Soviet-style CPC with a radical alternative based on the libertarian ideas which we had debated in the former NGO/opposition groups. With the support of the US Department of Justice OPDAT programme, I and Prof Bill Burnham of Wayne University, travelled repeatedly to Tbilisi in 2005-7 to serve as principal overseas advisers to the small and very youthful CPC drafting committee.

In 2007, we invited its members to a seminar at the University of Sussex. However, further progress was delayed by (amongst other things) the 2008 Russo-Georgian war and it was not until 2009 that a draft was ready for assessment by the Council of Europe. I served on the 'Expert Review Panel' which met in Paris and which produced a number of amendments. The CPC was enacted by the Georgian Parliament in November 2009.

Georgia has been transformed in under a decade from a lawless state dominated by corruption and 'Thieves at Law', to a country recently described by Jan Van Dijk, former Director of Crime Prevention at the United Nations Office on Drugs and Crime as a 'low crime country ... with one of the safest capitals in the Western world'. It has also achieved a remarkable ascent in the Corruption Perceptions Index from 133rd place in 2004 to 64th in 2011.

However, the cost of the 'zero tolerance' policy on which these achievements were based was the trebling of the prison population in seven years, ensuring that Georgia now has the fourth largest prison population per head of population of any state in the world! Addressing this appalling car-

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ceral overload remains an urgent task, as is ensuring that all the libertarian aspects of the 2009 CPC are brought into force and operated fairly.

### Ukraine

Lessons learned in Georgia were not easily transferred to the very different political situation in Ukraine. However, between 2006 to 2009 I had the opportunity again to serve as overseas adviser to the Drafting Committee appointed by the then Ukrainian Minister of Justice, Serhiy Holovaty, as part of the Yushenko government's 'Commission on Strengthening Democracy and the Rule of Law'.

The Committee was chaired by Viktor Shyskyn, the President of Ukraine's Constitutional Court

and, unlike its Georgian counterpart, it included a wide range of senior Ministerial and NGO representatives, academic and law professionals. I attended most of the drafting sessions in Kiev, Khmelniuk and Cherkasy on behalf of the US Department of Justice's OPDAT programme and also assessed the draft CPC for the Council of Europe. Although we were all given medals and thanked politely, it appeared that the reform process had become stalled as a result of opposition from the Procuracy. It was not until international criticism of the 2011 trial of Yulia Tymoshenko obliged the government of President Yanukovich to concede that there were serious failures of due process in the system, that an amended version of the CPC was introduced into the Ukrainian Parliament, the *Verkhovna Rada*, in February this year.

# Do we need a UK Bill of Rights?

**Dr Elizabeth Craig**  
SEI Lecturer in Law  
Emc22@sussex.ac.uk

The resignation of Dr Michael Pinto-Duschinsky on 11 March 2012 from the UK Commission on a Bill of Rights marks the latest stage in the on-going controversy over the future of the Human Rights Act (HRA) 1998 and its potential replacement with a UK Bill of Rights. One of the main criticisms he made of the Commission's work to date was the apparent side-lining of the issue of parliamentary sovereignty, in particular the challenges posed by recent judgments of the European Court of Human Rights.

The relationship between human rights and parliamentary sovereignty was one of the issues discussed at a round table on the need for a UK Bill of Rights, which was convened by the Sussex Law School's Centre for Responsibilities, Rights and the Law on Wednesday 19 October 2011. The session was chaired by Dr Elizabeth Craig and was used to inform the Centre's response to the Bill of Rights Commission's recent consultation paper. Presentations by Jo Bridgeman, Prof Marie Dembour, Prof Jane Fortin, Dr Charlotte Skeet and Dr Richard Vogler were followed by a wider discus-



sion on the need for a UK Bill of Rights, the process of drafting such a Bill, the role and impact of the HRA and the relationship between rights and responsibilities.

The overriding consensus expressed by roundtable participants was that we already have a UK Bill of Rights, the UK Human Rights Act 1998, and that this existing mechanism of rights protection needs to be protected at all costs. Although subject to much criticism in the press and amongst politicians, this is a well-crafted instrument, which manages to internalise the requirements of the European Convention of Human Rights (ECHR) into domestic



law whilst allowing the possibility for the development of a distinctively British jurisprudence and the development of a constructive dialogue between UK courts and Strasbourg. Section 2 of the Human Rights Act merely requires decisions of the European Court of Human Rights to be taken 'into account' by UK judges and there have been occasions when UK courts have decided not to follow Strasbourg and indeed used the opportunity to challenge the reasoning of the Strasbourg courts, most notably in the *Horncastle* case. Meanwhile it was confirmed in the case of *Kay v Lambeth LBC* that, save in exceptional circumstances, the lower courts should continue to follow binding precedent, regardless of whether or not there has been a subsequent ruling of the Strasbourg Court that appears inconsistent or in conflict with the approach of the House of Lords/Supreme Court.

Parliamentary sovereignty is also protected under the HRA. The courts notably do not have the power to strike down legislation that is incompatible with the ECHR and a declaration of incompatibility under section 4 has no legal effect. The case of *Ghaidan v Godin-Mendoza* provides a useful illustration of the potential of section 3 of the HRA, which places an obligation on courts to interpret legislation '[s]o far as it possible to do so ... in a way which is compatible with the Convention rights'.

In this case, section 3 of the Human Rights Act was used to rectify the discriminatory effects of the previous interpretation of para. 2 of Schedule 1 of the Rent Act 1977 (as amended by the Housing Act 1988) by extending protection to the surviving partner of a same-sex relationship. However, Parliament can always introduce legislation if the application of section 3 results in interpretations that it considers produce unacceptable outcomes. It would therefore appear that discomfort with, or criticisms of, rulings of the Strasbourg Court need to be decoupled from concerns about the Human Rights Act itself, which appear to relate more to the power of judges vis-à-vis Parliament as representatives of the people.

The position adopted by many during the roundtable discussion was that the Human Rights Act

1998 provides an important mechanism for the protection of vulnerable and marginalised individuals and for holding the executive to account. Without it, the UK would remain internationally bound by the ECHR but the rights provided for in the Convention would not be directly justiciable in the domestic courts. This would mean that a crucial check-and-balance mechanism to protect individuals would be lost. The subsequent conclusion in the Centre's response was that any UK Bill of Rights should as a minimum ensure the levels of protection currently guaranteed under the Human Rights Act 1998.

The issue of what additional rights a UK Bill of Rights might contain was of particular interest to members of the Centre, who considered that the Commission should examine other international human rights norms that might be internalised into UK law such as rights to equality; socio-economic rights; children's rights; women's rights; culture, identity and language rights and criminal process rights. Centre members have different views and different levels of expertise in these areas.

For example, it was submitted by Elizabeth Craig that lessons can be learnt from the Northern Ireland Bill of Rights process in relation to the possible inclusion of culture, identity and language rights. Meanwhile, the view expressed by Richard Vogler was that we have a strong collective interest in ensuring universal rights respecting criminal procedure everywhere, rather than in just one jurisdiction.

A number of Centre members advocated giving greater effect to the rights in the UN Convention on the Rights of the Child under domestic law. Given the Centre's remit and the work that has been done by Centre members in relation to the notion of responsibility, it is unsurprising that there was also extensive discussion of the relationship between rights and responsibilities.

The view was strongly expressed during the discussion that members would not want to see a UK Bill of Rights and Responsibilities which couples enjoyment of individual fundamental human rights to fulfillment of a set of responsibilities.

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The point was made by Charlotte Skeet during the course of the roundtable discussion that contemporary constitutional rights building exercises show that engagement can help to build a culture of respect for rights - rather than a culture of rights litigation.

The view expressed was that wide involvement in process itself generates education and consensus around rights, and positive discourses which act both internally on civil society and externally on constitutional institutions. Questions that Centre members considered should be addressed by the

Commission included: What should a Bill of Rights process look like? How do you ensure that a Bill of Rights results from a democratic and transparent process? Who should be consulted?

How do you ensure adequate representation of views of marginalised and disadvantaged groups? What can be learnt from experiences in other jurisdictions? The process to date has been notably lacking in this regard and responses to the discussion paper are not yet available on the Commission's website. This is regrettable and further criticism of the Commission's work is starting to appear inevitable.

## Immigration and the Right to Family Life for EU Citizens

**Deborah Gellner**  
SEI Associate Tutor in Law  
D.A.Gellner@sussex.ac.uk

National immigration laws and EU freedom of movement rights have been on a collision course for many years as migrants' lawyers, very much assisted by the Court of Justice of the European Union (CJ), have successfully argued that their cases fall within the scope of EU law. The national (restrictive) measure is then found not to comply with EU law, and so is duly trumped by the EU right. The usual scenario is that the unlawfully resident third country national (TCN) is able to resist deportation by being the family member of an EU citizen.

Prior to the latest developments, this was usually achieved by the EU citizen having exercised their free movement rights. Thus, in *Metock 2008*, four failed asylum-seekers married migrant member state (MS) nationals living in Ireland. Had they married Irish women, EU law would not have been engaged and, in all likelihood they would have been deported under national immigration law, notwithstanding their (genuine) marriages. In this situation, ECHR Article 8 has not proved remotely as powerful as EU rights.

However, in three recent cases the MS national has remained at home, and the sacrosanct right for migrant EU citizens to unite with their family could not be engaged. If there was to be an EU



law dimension, it had to be based on citizenship. In *Zambrano 2011*, Belgium was obliged to grant residence permits to a failed asylum-seeking Columbian couple because their two small children were Belgian

nationals, due to having been born there. Unsurprisingly all seven intervening MSs argued, with Belgium, that this was a wholly internal matter. In a very brief judgment, the CJ, ignoring its own case law on the need for a cross-border element, ruled that Article 20 TFEU 'precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens'. The *Zambrano* situation came within this; no further explanation required and no mention of the Charter or fundamental rights.

Had the floodgates opened? Deporting TCN family members of EU citizens surely interferes with their 'genuine enjoyment' of their status. There will not be countless future cases on the same facts, as in 2006 Belgium brought its nationality laws in line with other MSs, abandoning the *jus soli* system; it is only surprising that this had not happened earlier. However, the new 'genuine enjoyment' test will have horrified MSs and heartened

immigration lawyers in equal measures. The CJ revisited the issue in two further cases later in 2011, and, somewhat unusually, MSs, not migrants, were successful.

In *McCarthy*, a welfare-dependent stationary British woman also obtained Irish citizenship in order to bring herself within the scope of EU law, and the Citizens Directive 2004/38 in particular. Her husband was a Jamaican overstayer resisting deportation. The CJ made clear that, as a non-mover, she was not covered by 2004/38, notwithstanding her dual nationality. However, following *Zambrano*, this lack of movement did not render the situation purely internal, and instead, as a citizen, the 'genuine enjoyment' test was applicable. What is then extraordinary is that the CJ decided that 'no element' of her situation was such that the 'national measure at issue' would deprive her of the 'genuine enjoyment' of her EU citizen status.

Having her husband deported is not even mentioned. Since she failed the 'genuine enjoyment' test, the matter reverts to being internal, and thus out of scope. This neatly prevents Art 18 TFEU right to equal treatment or the Article 7 Charter right to family life gaining a toehold. The 'genuine enjoyment' test, as applied to Mrs McCarthy, is simply that, unlike the Zambrano children, she is not forced to leave the Union, given that she is not dependant on her TCN relative.

She also failed a second linked test as to whether there was anything impeding her right to go and live elsewhere in the Union. Neither the judgment nor AG Kokott's Opinion disclosed the fact that she had three children (from a previous relationship) and that she was the full-time carer of a disabled son. Therefore, there would be strong reasons as to why she could not relocate to another MS in order to retain her family life with her husband. Instead it is simply assumed that she could, with the implication that she would then be in scope for any relevant EU rights.

If the facts of Mrs McCarthy's case were of dubious merit, the same could not be said for all five applicants in *Dereci*. The cases concerned non-moving Austrian nationals with TCN family members. Mr Dereci was an unlawfully resident Turk, married to

an Austrian, and with three small children, wanted to be allowed to work, to support them. Another was a Sri Lankan woman married to a working Austrian, who had entered legally, but whose residence permit had lapsed.

The third was a 29-year-old Kosovan man who had lived in Austria since he was two, having been brought there by his parents from what was then Yugoslavia. His mother was now an Austrian national. The fourth was a failed asylum-seeker married to an Austrian, and the fifth (the only one currently in her home state, and so not facing deportation from Austria) was a 52-year-old Serbian woman seeking to join her Austrian father who had been supporting her financially for many years.

The CJ confirmed that EU law permits MSs to refuse their nationals the right to have their TCN family members with them, subject to the 'genuine enjoyment' test. In contrast to *Zambrano* and *McCarthy* where the answer was baldly given, it is for the referring court to verify that test. The right is breached if the EU citizen would have to leave the Union (i.e. *Zambrano*) but it will not be assumed that the EU citizen will be forced to leave merely because their TCN relative has to.

As for Article 7 of the Charter, the referring court must consider it, *if* the situation of the applicants is covered by EU law. This is circular; a case appears to come back into scope if the 'genuine enjoyment' test is breached. But a right to family life is not part of that test. And is it not the duty of the CJ, not the referring court, to decide if a matter is within scope?

EU citizens who are children or disabled, requiring the care of their TCN family member, are still likely to benefit from *Zambrano*. Otherwise it is very mixed picture. The tension between respecting fundamental rights and allowing MSs to maintain immigration control can only increase as one of the many challenges the EU currently faces.

# Eurocrisis, Democracy and the Fiscal Compact

**Prof Alan Mayhew**  
SEI Professorial Fellow  
a.mayhew@sussex.ac.uk

The economics of the euro crisis were discussed at great length in the last edition of *Euroscope* (Spring 2012). Since then four significant decisions have been taken.



The most important has been the decision by the European Central Bank to make €1 trillion financing available to banks in the eurozone. This has led to rising confidence that a banking crisis can be avoided and that bank financing of the private sector will not entirely dry up. Secondly, private bondholders have agreed through a PSI to take a significant haircut on Greek bonds, reducing Greek government debt by around €100 billion.

The third decision was that of EU finance ministers to release most of the promised €130 billion loan to Greece which should lead to a further tranche of money from the IMF. Finally, 25 EU member states agreed to sign up to the 'fiscal compact' promising greater fiscal stability within the eurozone and indeed within the EU in the future.

These various developments have led to increasing confidence that the monetary union will survive. They have also led to a perception that the extreme case of Greece is now not going to lead to a collapse of the eurozone even if, in the end, Greece has to default and perhaps leave the eurozone. Interest rates on Italian and Spanish debt across a wide range of maturities have fallen sharply, improving the outlook for managing the debts of these countries in the future. The euro crisis is not over but time has been bought. A major problem remains, however: there is no common view amongst eurozone members on how to finally solve its crisis. A great deal has been said about moving towards real fiscal union, but unfortunately the different eurozone states understand very different things by the term 'fiscal union'.

The strangest element of the measures taken to attack the euro crisis is the fiscal compact agreed

amongst 25 EU states.

Firstly, it is an agreement not just between the eurozone countries but across the whole EU and two countries have not signed up to it. It is therefore an intergovernmental treaty outside the Treaties. It deals with many elements which are already eurozone policy through the 'Six Pack' measures or other decisions which have been made during the crisis.

And it does not make short-term economic sense! Indeed, on the day of its signing, the Spanish Government announced that it would not stick to the agreed budget deficit reductions, because they made no economic sense and were unrealisable for Spain.

The fiscal compact lays down tight rules on the size of the structural deficit and on correction mechanisms when there are significant deviations from the medium-term objective (article 3). Paragraph 2 then reads as follows:

The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes.

Constitutional brakes on 'irresponsible' governments exist in a few countries – Switzerland, Poland, Austria, Spain and Germany. Poland introduced a constitutional brake in 1997. Switzerland is often looked upon as the home of the 'Schuldenbremse' but undoubtedly the German system is the one most likely to affect the national and the European economies. It separates deficits into structural and conjunctural components and limits the structural deficit to 0.35% of GDP. This limit will apply to the Federal government in 2016 and the Länder from 2020.

Constitutional brakes are essentially a vote of no confidence in the fiscal responsibility of democratically elected governments. Ideally, governments use

periods of good economic growth, when tax and other receipts are strong, to reduce government deficits and debt which have been incurred during recessions or periods of very low growth.

However, this rarely happens. Governments frequently use periods of booming receipts to increase spending programmes or lower taxation, both aimed at increasing the popularity of the government parties, especially when important elections are due. In Greece, this has been a problem for the last 30 years. However, we don't have to look as far as Greece but only to the final years of the last Labour government in the United Kingdom or to the efforts of Mr Sarkozy to get himself re-elected as president of France. The crassest example of irresponsibility by democratically elected government was Mr Berlusconi's decision to abandon important tax reforms just a few days after the ECB began to buy Italian bonds.

If democratically elected governments are fiscally irresponsible by nature, it might appear attractive to submit them to a higher authority which could force them to adopt a more balanced fiscal stance over the cycle. The fiscal compact does this in two ways. It first submits governments which are in breach of the terms of the fiscal compact to stronger control through the European Council, the Commission and ultimately, the European Court of Justice. However, this is considered by many to be less effective than writing fiscal responsibility into the constitution of the country. Governments are thought to be less willing to be in breach of their constitutional obligations than to ignore the discipline imposed from Brussels. The fiscal compact copies the German *Schuldenbremse*, limiting the structural deficit after a transition period to 0.5% of GDP.

While the introduction of a constitutional brake is

understandable from a German perspective, it raises several problems. Firstly, there may be an issue of democracy in submitting the fiscal authority of a national government to central control. But one could say that all 25 governments have agreed to the terms of the fiscal compact and therefore the democratic argument does not apply. There is a real problem in defining what the structural deficit really is - we know that the estimates of the structural deficits before the financial crisis were completely misleading and there will be infinite disputes about the definition and calculation of these deficits. But thirdly, the constitutional brake will do nothing to solve the shorter term problems within the eurozone.

Imposing austerity on countries which are already in recession will only make the debt situation worse. If the fiscal compact is to be implemented successfully, there will probably be a need for significant transfer of finance to the weaker countries as well as a re-balancing of the economies of the stronger eurozone countries.

It is also interesting to note that the eurozone debt crisis is only partially a problem of government debt and deficits. A constitutional brake on fiscal policy would not have prevented the crisis in Ireland and Spain, because these two eurozone members ran extremely responsible fiscal policy prior to 2008. The crisis is also a crisis of competitiveness, of appropriate regulation of the banking and the quasi-banking systems to avoid speculative bubbles in specific sectors, notably construction. Fiscal discipline is only one part of the eurozone problem – in the medium-term a constitutional brake might help, but it will make life more difficult in the short-term and can only be one element of a complex raft of measures needed to ensure the survival of the monetary union in the medium- and longer-term.

## EU Competition Law and Islamic Principles – an Egyptian Perspective

**Dr Mourad Greiss**  
Legal Consultant, SEJR Associates LLP  
mgreiss@sejrassociates.co.uk

Mourad Greiss successfully defended his PhD in the Department of Law, School of Law, Politics, and Sociology in summer 2011. Supervised by Prof Malcolm Ross and Dr Yuri Borgmann-Prebil in the

Law School and Dr Peter Holmes in Economics, the thesis investigates the influence of EU Competition Rules and Islamic Principles on the legal treatment of abuse of dominance under Egyptian Competition Law. Despite monopoly being recognised and condemned by Islamic law ever since its advent, competition law has featured in the Middle East and North African Region in general only less



## Features

than a decade ago and, as such, is relatively new in the region.

Egypt, the main focus of the research project, faced three central pressures to introduce its own competition law in 2005. First, the EU/Egypt trade relations, which evolved by virtue of the 2004 Euro-Mediterranean Association Agreement with Egypt.

Second, the market structure that followed the 1991 privatisation programme, which transferred monopoly from the state to the private sector and which enabled the latter to become highly concentrated. In fact, it is this prevalent market structure and the unequal distribution of wealth, among other social, economic, and political reasons, that paved the way to the 25 January 2011 Egyptian revolution. The third pressure lies in the Egyptian government's long-term desire by virtue of its constitution to comply with Islamic principles that condemn monopoly.

The research found that Egypt was not forced to transplant the EU rules on competition as a result of EU/Egypt trade relations, although it is implicit that the EU deems it desirable to do so, primarily to provide EU investors with a comparable treatment in Egypt.

In fact, the study reached that among the distinctive characteristics of Egyptian rules is that, unlike EU rules, they do not prohibit the practice of excessive pricing. Although in jurisdictions that prohibit this practice competition authorities do not contemplate it as an priority, it was found that the lack of its prohibition raises Islamic law concerns and, if not appropriately tackled, may have detrimental effects on the Egyptian economy.

However, the difficulties which investigators face in settling such a practice (as the South African *Mittal* case demonstrates) suggest that the Egyptian legislator may have adopted the right approach in not prohibiting it; otherwise this may have increased the likelihood of committing type II errors



(erroneously condemning pro-competitive practices) and, as a result, violate Islamic law principles of injustice.

A further distinctive feature of the Egyptian rules, and in contrast with EU law, is that they do not cover the practice of below-cost margin squeeze. Although it was found that its omission does not pose potential effects to the economy, it is suggested that it raises Islamic law concerns on the basis of fairness and intentions principles. Given that this is relatively easy to investigate, compared to excessive pricing, it is suggested that the Egyptian legislator re-considers encompassing it in the future while drawing on the approach adopted under EU law.

The third characteristic of the Egyptian Competition Law in this respect is that it reflects the EU Commission's initiative of employing an effects-based approach to abuse of dominance. However, the Egyptian system, arguably influenced by the Islamic principles on market intervention, goes a little further to require an actual effects standard.

Despite an effects-based analysis being difficult to employ in emerging economies with inadequate economic expertise like Egypt, it is argued in its favour for two reasons. First, it increases the chances of avoiding type II errors, which, similar to excessive pricing and margin squeeze, violate Islamic law and; second, the Egyptian Competition Authority's analysis in the *Steel* study shows that it is capable of employing this approach at the present stage. The Egyptian Competition Authority should focus on increasing economic expertise and seek technical assistance from competition authorities of the developed world.

# On-Going Research

This section presents updates on the array of research on contemporary Europe that is currently being carried out at the SEI by faculty and doctoral students.

## Sex, Gender and the Conservative Party: From Iron Lady to Kitten Heels

**Paul Webb**  
SEI Professor in Politics  
P.Webb@sussex.ac.uk



Can Conservatives be feminists? Did it matter for the Tories' electoral prospects that they had only a handful of women MPs going into the UK general election of 2010? In seeking to promote the selection of more women candidates, did David Cameron foster disharmony within his party? And did the new-found manifesto emphasis on 'women's issues' succeed in attracting greater electoral support from female voters? These and related questions are at the heart of a new book (*Sex, Gender and the Conservative Party*, Palgrave Macmillan, 2012) that I have co-authored with Sarah Childs from the University of Bristol, drawing on a mixture of quantitative and qualitative research.

The feminization of British politics over the last decade or more has been largely party-specific—women have never constituted less than a quarter of the post-1997 Parliamentary Labour Party, compared to under 10% of the Conservatives and less than 20% of the Liberal Democrats. Small wonder, perhaps, that David Cameron prioritised early action to 'change the scandalous under-representation of women in the Conservative party' when he became leader in 2005. He quickly set about reforming the party's parliamentary selection procedures in an effort to rectify the per-

ceived anomaly. At the same time, the party developed a new range of policy ideas designed to address the substantive policy concerns of women in contemporary British society. These took in, *inter alia*, questions of equal pay, parental leave rights, and violence against women.

What effects did these actions have? For one thing, 49 Conservative women were returned to the House of Commons in 2010 – unprecedented progress for the Conservative Party, though at just 16 per cent of the parliamentary party, this still left it well behind Labour in terms of the 'descriptive representation of women'. Based on interviews and documentary analysis, it is clear that Cameron stood back from making this his 'Clause IV' moment.

This was most probably because – as focus group discussions and a survey of members revealed – there was little appetite for equality guarantees such as All-Women Shortlists within the party, even though there was widespread support for the goal of getting more women into Parliament. Neither did local constituency associations, long jealous of their largely independent role in selecting parliamentary candidates, welcome the perceived interference of the party's national headquarters in this sphere. Fearing the potential for a noisy backlash against an overly heavy-handed approach by the leadership,

Cameron chose not to offer stronger leadership on this issue – even with the support of key senior

parliamentary and voluntary party women.

Nevertheless, other developments relating to the position of women in the party have been observable. On the voluntary party side, the Conservative Women's Organisation experienced something of a revival during the mid-2000s with new priorities and new organisational forms (women's summits, forums and a Muslim group), suggesting that the party may be attracting a 'third' type of Tory woman: younger, in paid work and interested in politics. Moreover, the analysis of manifestos and related women's policy documents suggests that the Conservatives in 2010 were more electorally competitive on these issue dimensions both relative to their own past and to the other two main parties.

The Conservatives are now more likely to address women's issues and promote policies that might be considered 'liberal feminist' in orientation. New policies - on flexible working rights, maternity and paternity leave and pay, and the gender pay gap, for example - reflect the input of the women's organisations within the party under the leadership of Theresa May (now the Home Secretary and Minister for Women & Equalities) and suggest a party more at ease with modern gender roles.

More specifically, we argue in the book that there are variations of outlook on these issues between different intra-party tendencies: 'Liberal conservatives' are the least hostile to *general* feminist values, although 'Traditionalist Tories'—the largest, most working class and most female of the intra-party tendencies—are surprisingly progressive on a number of *specific* policies relating to women's descriptive and substantive representation;

'Thatcherites' are generally hostile to gender-related reforms of any kind.

Did the electorate notice any of the party's maneuverings on gender? It is hard to be certain of this, although there was a greater tendency of female than male voters to swing back to the Conservatives in 2010. Perhaps the changing profile of the party's parliamentary candidates and its new gender-conscious manifesto bore fruit in these terms, then. But this may be beside the point, for the truth is that gender issues have rarely been electorally salient in the UK.

It is rather more likely that the feminization of the Conservative Party was part and parcel of the strategy of 'de-contaminating' a toxic image which had come to seem so disconnected from the mainstream of society that the majority of Britons refused to take it seriously. Only when the electorate as a whole was able to see the party as once again 'in tune' with contemporary Britain was it likely to take the substantive policy appeals of the Conservatives seriously.

This is how the feminization strategy would have helped the party regain power. However, the austere exercise of power since May 2010 is increasingly perceived by gender activist organisations such as the Fawcett Society as impacting disproportionately negatively on women, in that women depend more heavily than men on public jobs and benefits in their traditional roles as parents and carers. Where this will leave the Conservatives in representing women descriptively and substantively by 2015 is a question for future research.

## A Year at the Hanse-Wissenschaftskolleg

**Dr Yuri Borgmann-Prebil**  
SEI Lecturer in Law  
Y.A.Borgmann-Prebil@sussex.ac.uk

I am spending this academic year as a fellow at the Hanse-Wissenschaftskolleg (HWK), an Institute for Advanced Study, in Germany. The HWK promotes disciplinary and interdisciplinary collabora-

tion among scholars and scientists, both at national and international levels. Worldwide there are about 25 such institutions.

The HWK is a non-profit foundation of the German federal states (*Länder*) of Lower Saxony and Bremen, as well as the provincial town of Delmenhorst, the seat of the institute. Its primary objective is to augment the internationally recog-

nised research potential of the universities and research institutions in the region, especially the Universities of Bremen and Oldenburg. This explains the Institute's location. Delmenhorst is right in between the Land Bremen and the city of Oldenburg and well linked by rail and motorway to both cities.

The HWK seeks to realise its objectives by two means. First, the institute appoints guest scholars (fellows) from all over the world to work and live at the HWK building and to collaborate with the named research institutions of the region.

Second, the HWK conducts about 60 national and international scientific conferences and workshops per year, most of which are hosted in the HWK building. Those two pursuits are related, as many former, current, and indeed future, fellows participate in the conferences and workshops. In addition there are frequent high profile guest lectures, which are also open to the wider public.

A key feature of the HWK is the working and living together in the well-equipped building. Each year about 60 fellows are hosted, for periods between three and 10 months duration. Many fellows who are appointed for the full 10 months split their stay in two or three periods.

The highlight of the weekly calendar is the Wednesday evening 'fellow lecture', in which one fellow presents his or her research project to the community of fellows currently resident at the institute, as well as to collaboration partners from Bremen and/or Oldenburg University. The lecture is followed by an often lively discussion and dinner. Each week ends with a social gathering by the fire place on Friday nights. These social events are very conducive to engender inter- and cross-disciplinary interest and sometimes collaboration.

There are four research clusters at the institute. These are Energy Research, Marine and Climate Research, Neurosciences and Cognitive Sciences and Social Sciences. These research areas are referred to by the shorthand 'Energy', 'Earth', 'Brain' and 'Society' and correspond to the research strengths of the universities of Bremen and Olden-

burg and other research centres of the region (such as the Alfred Wegener Institute for Polar and Arctic Research in Bremerhaven). In addition to the scholars and scientists, there are always one or two artists in residence at the institute.

My own research project is entitled 'A Constitutional Patriotism Perspective on European Constitutionalism and Citizenship'. The object is to investigate whether, and to what extent, the concept of constitutional patriotism provides appropriate terms of reference and analytical tools for a conceptualisation of core characteristics of European Constitutionalism and Citizenship.

The collaboration partner is Prof Stefan Leibfried of the University of Bremen who heads the Collaborative Research Centre (*Sonderforschungsbereich*) 'Transformations of the State'. I have also established links with the Centre of European Law and Politics (ZERP) at the University of Bremen.



## The German Constitutional Court: Defending democratic rights of Members of Parliament

**Dr Yuri Borgmann-Prebil**

SEI Lecturer in Law

Y.A.Borgmann-Prebil@sussex.ac.uk

The recent judgment of 28 February 2012 (2 BvE 8/11) concerned proceedings between two members of the Bundestag and the Bundestag itself, in which again the a potential undermining of democratic legitimacy as a result of European integration, here the implementation of German legislation of the European Financial Stability Facility (EFSF), was at issue.

Its pedigree dates back to the 1970s and 1980s, with the so-called Solange Judgments (*BVerfGE* 37, 271 (Solange I) & *BVerfGE* 73, 339 (Solange II)) in which the German Constitutional Court made the acceptance of the EU doctrine of supremacy conditional on the EU meeting essential requirements of fundamental rights protection which were, at least theoretically, monitored by the German Constitutional Court. The Maastricht judgement (*BVerfGE* 89, 155, English translation [1994] *CMLR* 57), which ruled on the compatibility of the Maastricht Treaty with the German constitution shifted the focus of the German court's *ultra vires* review to the question of whether the constitutionally guaranteed right to vote (enshrined in Article 38 of the German Constitution) would be undermined by a transfer of competencies to the EU envisaged by the Maastricht Treaty, and held that it would not.

In its *Lisbon* judgement (*BVerfGE* 123, 267), which like its predecessor deals primarily with constitutional complaints alleging that the right to vote guaranteed in the German constitution is undermined by the Lisbon Treaty, the Court continued to characterise the Union as a confederation of sovereign states (*Staatenverbund*), based on the principle of conferred powers.

The 'Constitution of Europe', was portrayed as a 'derived fundamental order', which excludes a 'competence-competence' (i.e. a EU competence

to determine its own competence) of the EU. Thus, the Court was adamant that the constituent authority is vested in the German people. In this regard, it linked national sovereignty with democratic legitimacy, which forms part of the inviolable essence of the German constitution's 'constitutional identity' pursuant to Articles 23 (3) in conjunction with the 'eternity clause' enshrined in 79(3) of the Constitution.

This connection between the exercise of national sovereignty in European affairs with democratic legitimacy forms the backdrop of the February judgment. This recent decision follows on from the September 2011 judgement (2 BvR 987/10) in which the Court ruled on the legality of German loans to Greece and state guarantees for the European Financial Stability Facility (EFSF) and required the German federal government to seek a mandate from the Bundestag's Budget Committee before taking decisions in these areas.

The February judgment related to an amendment of the implementation law of October 2011, which concerned the increase of competences of the EFSF, and which curtailed the involvement of the MPs in budgetary decisions concerning the authorisation of the German representative in the EFSF.

In spite of the general rule that those decisions had to be legitimated by the entire parliament, i.e. the Bundestag meeting in plenary session, the statute prescribed that in cases of urgency and confidentiality, such decision were delegated to a nine-person body to be elected by the 41-member budget committee. Furthermore, there was a presumption of urgency and confidentiality in the case of emergency measures taken to avoid the risk of contagion spreading to other member states.

Two MPs challenged these measures on the basis that they infringed the fundamental principle of representative democracy and their rights as MPs to participate in all parliamentary decisions, enshrined in Article 38(1.2) of the Basic Law. Follow-



ing an interim judgement of October 2012 (2 BvE 8/11), which suspended the implementation of the challenged rule, the Bundesverfassungsgericht in the main proceedings to a large extent decided in favour of the applicants. It held that impugned provision whereby the legislative powers of the Bundestag were to be exercised by the nine-member committee (para 3(3) StabMechG) is, in principle, contrary to the rights of MPs guaranteed by Article 38(1) of the Basic Law.

The unequal treatment of MPs resulting from the delegation of significant budgetary matters to the small body was of paramount significance for the ruling. The Court referred to the pivotal importance of budgetary powers for parliaments in this regard and held that the democratic principle required that such a curtailment of parliamentarians' rights could only be justified by virtue of other constitutional values. More precisely, the exclusion of the vast majority of MPs from the deliberation and decisions in these matters could only be justified by the countervailing interest of the operability of parliament, which was held to be of constitutional rank.

The collision of the democratic principle with the operability of parliament had to be balanced in accordance with the principle of proportionality. The proportionality requirement includes observance of the principle that a parliamentary committee must constitute a mirror image of parliament (*Spiegelbildlichkeit*), i.e. that its composition must tally with representation of the parties in the entire chamber (which is difficult to achieve for a body of nine people representing the Bundestag's

current 620 members).

The counteracting constitutional value of operability could qualify the rights of MPs if decisions have to be taken very urgently and confidentially. However, the Court found that there were no compelling reasons to take the relevant budgetary decisions very urgently. Instead, they required preparatory measures and cooperation with the member state in need as well as the EFSF.

Therefore, the exclusion of MPs was disproportionate. In particular, the statutory presumption of urgency and confidentiality for these decisions was held to be incompatible with the principle of proportionality. In contrast, the delegation of decisions on the acquisition of member state bonds by the EFSF was deemed to be proportionate and therefore, restriction of the rights of deputies was justified by requirements of urgency and confidentiality. In particular with regard to the latter, the Court accepted that if plans of such decisions were leaked in advance their effect would be rendered futile.

Thus, this recent judgement closely follows on from the mentioned earlier rulings of the German Constitutional Court which seeks to preserve and strengthen the democratic rights of German MPs with regard to matters concerning European integration. The democratic principle is adjudicated analogously to a fundamental right, i.e. restrictions of it can only be justified by virtue of overriding competing constitutional values.

## A Marriage of Convenience or Ideological Passion?

**Dr Przemyslaw Biskup**

**Chair of European Studies, University of Warsaw**

**SEI Visiting Socrates-Erasmus lecturer, May 2012**

**[p.b.biskup@uw.edu.pl](mailto:p.b.biskup@uw.edu.pl)**

The presentation that I will make during my visit to the SEI in May (as part of the research seminar series) links two basic fields of my research. On

one hand, it aims to address the problem of alliance-forging in the European institutions, which can be seen in the example of the European Conservatives and Reformers (ECR). The ECR group is of particular interest because, fundamentally, it has been a project of just three major political parties sharing a reputation of being Eurosceptic, that is, the UK's Conservatives, Poland's Law and Justice (*Prawo i Sprawiedliwosc* – PiS), and Czech Republic's ODS. What is more, these parties either were, or



remain at the moment, the leading parties of government in their respective countries and remain perceived as 'awkward partners' in respect of such fundamental EU reforms as the Lisbon Treaty or the Fiscal Pact. This may create the impression that the ECR group is a manifestation of a passionate ideological alliance of Europe's leading Eurosceptics.

This argument is of particular interest with respect to the European Parliament's (EP) policymaking, which is dominated by two of the biggest groups: the Christian Democrats and the Socialists. Their numerical strength, combined with the EP's Rules of Procedure, allows the formation of effective coalitions. The voluntary resignation of membership from one of the biggest groupings, such as the European People's Party (EPP) in the case of the Tories, the ODS and the PiS, and the resulting diminution of their impact on the EP's policymaking, might indicate that ideology has prevailed over the real politics.

On the other hand, there are counter-arguments pointing out that there were important reasons of a pragmatic nature behind the ECR's creation. In case of the Tories, it was the bid to differentiate the Conservatives from their Labour competitors before the oncoming 2010 general election. In case of the PiS, there was an urgent need to consolidate the right-wing electorate (both the moderate and the more radical) around Mr Kaczynski's party as an overture to the long-lasting political struggle for the country's leadership. Next to the European election of 2009, this included the local and the presidential election in 2010, and the gen-

eral Election in 2011.

What is more, in both cases the important role was the internal competition between different groupings and fractions, forcing the leaderships to consolidate their respective parties before the oncoming general elections and to counter-balance the power of potential rebels. In the case of the Tories, it led to a strengthening of the position of Eurosceptic MEPs at the expense of their more EU-friendly colleagues, as part of the more general shift in favour of the Eurosceptic stance. In the case of the PiS, it was partly about 'exiling' some of the leading party personalities to Brussels by the party's core leadership. Notwithstanding the aforementioned reason, the creation of the relatively small ECR group was favoured by many of the PiS MEPs because it offered an opportunity to combine animated activity on the Polish political scene with a spectacular, although not particularly effective, presence at the European parliamentary forum. The fact that the PiS representation has already witnessed two major splits seems to support this line of analysis.

To sum up, the ECR group is a very interesting case for the researcher of party-based Euroscepticism, as it indicates that ideological kinship may very well be combined with perfectly pragmatic choices. What is more, those pragmatic choices remain set in the rationality of national policymaking, at the expense of the effectiveness of the EP-based initiatives.

While visiting Sussex, I plan to discuss with Prof Paul Taggart and Prof Aleks Szczerbiak the concept of my monograph on the influence of evolving British political identity on the UK's participation in the European projects in the 20th century. I would be also very much interested in meeting the members of the SEI staff who share my interests. Last but not least, I would also like to make a query at the University's library.

# Polish “think tanker” visits SEI

**Dr Agnieszka Łada**

**Institute of Public Affairs, Warsaw  
SEI Visiting Fellow, April-May 2012  
Agnieszka.Lada@isp.org.pl**

Dr Agnieszka Łada is a political scientist, Head of the European Programme and Senior Analyst at the Institute of Public Affairs (IPA) in Warsaw. She is also Chair of the Board of Directors of the Policy Association for an Open Society (PASOS), Member of Team Europe (a group of experts at the Representation of the European Commission in Poland) and Member of the Council of the Polish-German Youth Exchange.

Dr Łada is the IPA's Representative in the European Policy Institutes Network and Active Citizenship Group at the European Commission. She specialises in the following issues: EU institutions (European Parliament and EU Council Presidency), Polish-German relations, Polish foreign and European policy and the perception of Poles abroad.

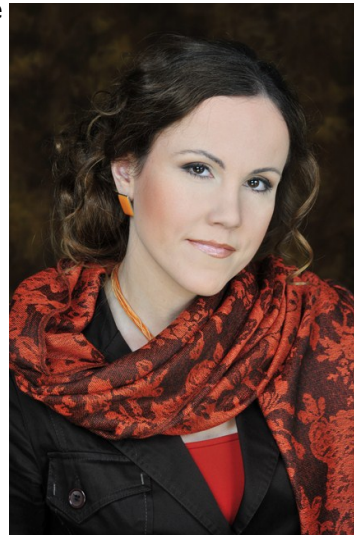
In my projects, I work on issues connected with the institutional reform of the European Union, Poland's role in the EU and perceptions of Polish European policy. I am sure my stay in Sussex will allow me to better understand the British position in those fields.

I am currently working on a study on the online communication of the Polish members of the European Parliament and experts from my team are simultaneously preparing a report on the effectiveness of the Polish MEPs' activity during this term.

This study is the third that is being written at the IPA, so we already have a couple of conclusions and some material to share. I hope that this work will be of interest to the EPERN group at Sussex. I intend to use the research results for deeper analysis and to elaborate on my study. It will be especially fascinating to find out what kind of issues that the European Parliament deals with are interesting from the British perspective, and how the Polish

MEPs are

perceived.



I continue to monitor on a regular basis the Polish European policy and the reforms that are taking place in the EU. I am looking forward to the opportunity to discuss the newest developments with British colleagues. The Polish presidency of the EU, which came to an end in December last year, could be assessed very positively.

As one of my fields of interest is how Polish European policy is perceived abroad, I would like to collect British opinions on Poland's six months assuming the presidency. At the Institute of Public Affairs, we have already conducted a couple of quantitative surveys in different countries among the representative groups of their respective societies.

One survey took place in the UK. We asked participants for their thoughts on Poland and the Poles. Getting to know what kind of image Warsaw has as a European player among experts, politicians and civil servants would be an extension of these quantitative studies. There are so many stimulating questions that I will bring with me to Sussex; I hope to have a great time in discussions with colleagues.

# Spanish DPhil student visits Sussex

**Raquel Vañó Vicedo**  
**Visiting DPhil student in Law**  
**Raquel.vano@uv.es**



I have always been attracted to the academic and intellectual life. Hence, I decided to start a PhD on human rights, one of my great passions. I graduated in both Law and in Political Science at the University of Valencia and I also completed an MA on Human Rights, Democracy and International Justice at Valencia. Later, I was very lucky to obtain an FPU grant (*Beca de Formación del Profesorado Universitario*) for research assistance, awarded by the Ministry of Education and Science of the Spanish Government. Since 2009, I have been part of the Institute of Human Rights at the University of Valencia, led by Doctor Consuelo Ramón Chornet.

In 2010, during a summer course on Diversity and Human Rights hosted by the *Università degli Studi di Palermo* (Italy) I had the pleasure of meeting Prof Susan Millns (Co-Director of the SEI) whose field of research is one of the main themes of my thesis. Since I was looking for a research stay abroad at that time I decided to come to Sussex. Undoubtedly, it was the best decision that I could have taken.

I believe that Sussex is an excellent university and an ideal place to conduct my research. Since my arrival last January, I have found the intellectual environment highly stimulating. Both academics and PhD students are very approachable and helpful, especially my two supervisors: Prof Millns and Dr Charlotte Skeet. They have provided me with all the personal and logistical support needed to conduct my research and our meetings are very productive. I have certainly found a great network of support available for postgraduate students here and I enjoy sharing my thoughts with other academics and peers.

In relation to my research, I am finishing my PhD thesis on 'Gender Mainstreaming in Post-conflict International Interventions', where I advocate the introduction of gender mainstreaming in conflict analysis as a basis for sustainable peace and securi-

ty. My research project aims to offer a valid legal response to this issue and attempts to ensure recognition of women's rights in post-conflict settings

and war-torn societies. In particular, I question the persistence of extreme forms of gender inequality and offer possible answers to improve the situation for women in peace-building contexts.

In my view, the ways in which conflict affects men and women differently can be traced to an imbalance in power with regard to gender relations before the conflict. Such differences should be understood and taken into account in all responses to any armed conflict.

My thesis intends to demonstrate that being alert to the state of gender relations prior to the conflict enables us to perceive features of armed conflict and peace-building that would otherwise be overlooked. Current frameworks for understanding conflict and peace are not yet fully integrated with a gender approach. This is the result, until relatively recently, of the lack of attention to both gender and conflict issues within development thought and practice.

Therefore, recent international interventions have proved that gender mainstreaming is possible and can improve the effectiveness of operations through gender-aware leadership and gender sensitive responses. These relations are worth examining because a gender analysis permits understandings of conflict and post-conflict dynamics. In this sense, I am analysing the historical and current debates, together with the efforts and obstacles surrounding the mainstreaming of gender in post-conflict reconstruction processes. I aim to complete my PhD this year. All in all, I am extremely excited about this new path in my life and I would not rule out staying longer at Sussex.



## Human Rights-related Migration: The Due Place of Law

**Tom Southerden**

SEI DPhil student in Law

Ts213@sussex.ac.uk

I am currently halfway through the research methods Masters portion of a 1+3 DPhil programme with the Law department, supervised by Marie Dembour and Elizabeth Craig. Prior to beginning the course, I had fluctuated between academic life and the big wide world, completing a BA in History & Politics from Warwick in 2006 and an MA in Human Rights from Sussex in 2008, punctuated by work for a human rights development NGO in Cambodia and training to become an asylum and immigration caseworker in the UK.

I have worked for a variety of legal charities in this capacity since 2008, and am currently working part-time at Lambeth Law Centre. During my Masters degree, Marie had foolhardily suggested that if I wanted to do a doctorate at some point in the future she would supervise me, and she was kind enough to react enthusiastically when I contacted her about applying and set about persuading Elizabeth to help me out too.

While the thesis plan is still thoroughly in development, the aim is to analyse the political implications of legal action in human rights-related migration cases. As readers of Euroscope will know, the growing backlash in both politics and the media against the European Court of Human Rights (ECtHR), and the Convention it interprets, is in significant part related to its impact on government attempts to deport and remove migrants.

Both the ECtHR, and the domestic courts enforcing the Human Rights Act, have found reason to prevent such removals on human rights grounds, particularly Article 3 (the prohibition on torture, inhumane or degrading treatment) and Article 8 (the right to private and family life). In response, the UK government has called for wholesale reform of the ECHR system and repeal of the Human Rights Act. The majority of media accounts fluctuate between representing human rights lawyers and judges as incompetent, foreign and un-

democratic. Often a heady cocktail of all three.

The intention, therefore, is to investigate the political implications for lawyers, NGOs, migrants and the Courts themselves of the pursuit of a strategy of legal action in defence of migrants making human rights claims. The project will seek to assess such a strategy's advantages, in that a successful legal case provides a definitive answer to a problem for a specific person in real time (or at least, in as real a time as the legal system can manage), and the disadvantages, related to the risk of alienating the general public and increasing the discourse of resentment to human rights concepts.

As such the starting point will not be a faux-neutral assessment of migrants' entitlement to make human rights claims; my CV should make my views on the relative merits or otherwise of migrants' human rights claims clear. Instead, it will work from the position of someone who is interested in protecting the human rights of migrants and is trying to assess the best way of going about it. It also comes from the position of someone who finds themselves becoming a slightly reluctant lawyer – not having been to law school and not fully co-opted into the legal milieu, but with an awareness of the crucial role legal action can play and a detailed knowledge of the daily realities of how such action plays out. After all, some of my best friends are lawyers...





### **Institutional evaluation in the Mexican federal government**

**Blanca Lopez**  
SEI DPhil student in Politics  
BI84@sussex.ac.uk

In January 2012, I began working on my DPhil in Politics, under the supervision of Prof Shamit Sagar and Francis McGowan. My primary academic research interests are in evaluation, evaluation policies and comparative politics.

Prior to coming to Sussex, I worked in the federal government in Mexico for many years, advising on how to improve the delivery of public goods and services, and on the development of performance indicators for federal budgetary programs. My work involved designing methodologies and regulations for evaluating these programs. The latter task has become a priority for government as part of a global trend to improve performance and effectiveness.

Despite the fact that the Mexican government has some evaluation systems, none of these are considered to be tools to integrate information about dependencies and state enterprises' results in a systematic way.

On the one hand, executive branch requires results to achieve evidence-based policy and practice, in order to accomplish the national goals previously established in the National Development Plan (PND), as well as to make better public policy decisions. On the other hand, legislative requires reliable and accurate information to improve budget allocation. Furthermore, the Mexican govern-



ment faces the challenge of improving the performance of the public sector with limited resources, combined with a legacy of wasted resources and institutions without results.

Of particular importance and interest to me is the question of how to measure 'efficiency', by which I mean appraising institutions' performance at the micro-, meso- and macro-levels, and how to evaluate their contribution to public value. Therefore, it is important to identify whether institutional results could be measured in terms of efficiency and to consider the feasibility of the evaluation model, given the Mexican context.

I decided to undertake my doctoral research in order to deepen my understanding of institutional evaluation and evidence-based policymaking within government and to apply those experiences to the Mexican context. Additionally, my aim is to propose a realistic approach which will show how evaluation can help in organisational strategic planning, as well as to improve government performance, increase transparency and accountability too.

### **The MSc in Social Research Methods at the University of Sussex – a platform to doctoral research**

**Olivier Rémy Tristan David Lewis**  
SEI DPhil student in Law  
O.Lewis@sussex.ac.uk

Once I have completed my MSc in Social Research Methods at the University of Sussex, I will be studying transatlantic security relations from 2001 to

2011, focusing on topics such as human rights, private data sharing and intelligence sharing. As of now, I plan to focus on the policies of the United States, France and the United Kingdom, but I will be also looking at the role of various European Union institutions, such as the European Parliament and the Court of Justice of the EU. Beyond

seeking to promote better transatlantic cooperation, the research is also intended to test some dominant theories in International Relations (IR).

The University of Sussex's reputation for a critical disposition was the main reason I sought to conduct doctoral research here. Another reason was that two of the university's faculty, Dr Louiza Odysseos and Dr Fabio Petito, share my interest in applying political theory to international relations, notably via the work of the German jurist Carl Schmitt. Although Schmitt's thought has often been applied to state-level politics, an application at the international level is rather recent. For those of you interested in more theoretical or philosophical questions, especially concerning European affairs and human rights, I highly recommend (re)reading his work. A century ago, Schmitt was already using many disciplines (law, history, philosophy, theology, etc) to study the relations between morality, violence and international law.

Before diving into the worlds of epistemology, methodology and data gathering, I served as an editorial intern at the European think-tank *Notre Europe*. This allowed me to apply knowledge I had just gained via an MA in European Interdisciplinary Studies at the College of Europe. Before this, I had

already obtained an M.Litt. in International Political Theory from the University of St Andrews and a BA(*magna cum laude*) in IR, Journalism and French Literature from Lehigh University in the United States.

My first interest in political philosophy started during a course I took while spending a semester overseas at the American University in Cairo. But generally speaking, I have always sought to marry my study of contemporary politics with my interest in more abstract matters. As an undergraduate student, I was highly interested in on-going globalization and cultural diversity debates; and for my last two theses, I focused on the thought of Michel Foucault in IR, and how Schmitt may interpret the Treaty of Lisbon. My endeavour to mix theory and practice has not always been easy, but in this respect the Social Research Methods programme was a wonderful way to learn how to use concepts to better understand everyday observations. Now I am looking forward to finally putting these new-found research skills into practice.

From my experience, there are two core ingredients to any successful academic programme: challenging courses and friendly faculty, both of which I have found here at Sussex.

# New SEI Working Papers

SEI Working Papers in Contemporary European Studies present research results, accounts of work-in-progress and background information for those concerned with European issues. There are three new additions to the series. They can be downloaded free from: <http://www.sussex.ac.uk/sei/publications/seiworkingpapers>

## **SEI Working Paper: No 127** **EPERN Working Paper No 26**

**'Whenever the EU is involved, you get problems': Explaining the European policy of The (True) Finns**

**By Tapio Raunio**  
Tapio.Raunio@uta.fi  
University of Tampere

## **Abstract**

The 2011 parliamentary elections in Finland finally resulted in the breakthrough of a major Eurosceptical party. Analysing the European policy of The Finns, this paper shows how the entry of EU to the domestic political agenda contributed to its electoral success. The anti-EU discourse of the party is largely similar with the policies of other European radical right or populist parties. The Finns view the EU as an elitist club that fa-

## Research

vours big business and poses a serious threat to democracy, national culture and solidarity. The consensus-based model of Finnish democracy clearly contributed to the rise of the party, with The Finns calling for an end to 'one

truth' politics. However, while opposition to integration is clearly a fundamental part of party ideology, the contextual factors have also moderated the argumentation and policies of The Finns.

### **SEI Working Paper: No 128**

#### **Reforming the EU budget to support economic growth**

**Alan Mayhew**

A.Mayhew@sussex.ac.uk

University of Sussex

#### **Abstract**

The Euro crisis has dragged on now in March 2012 for the best part of two years. The emphasis has been on imposing austerity in indebted countries in return for loans from the Eurozone member states and the IMF. A new treaty on fiscal rectitude has been negotiated outside the European Union between 25 EU member states. This emphasis on austerity is particularly interesting given that only in the case of Greece was fiscal irresponsibility the main cause of the crisis. It is quite obvious that fiscal responsibility must be an essential ingredient in each member state of the monetary union if future disasters are to be rendered less likely.

The problem with austerity is that it is essential for the medium and longer term but it can kill you in the short term. Without economic growth the weaker indebted Eurozone members cannot get out of their current indebtedness. In the European Council the policy emphasis is therefore gradually turning towards ways of stimulating economic growth, although Germany, the Netherlands and Finland still put the greater emphasis on fiscal retrenchment.

While there is general consensus on the im-

portance of generating growth in the European Union, the levers which can be used are not numerous and not obvious. In this climate many member states have turned their attention to using the European Union's budget to support economic growth in spite of the fact that the total annual budget is only around 1% of EU GDP.

Currently the member states are negotiating the multiannual financial framework which covers the seven years from 2014-2020 (MFF 2014-2020) and the search for both efficiency and for economic growth stimuli have figured in the discussions in the Council.

This working paper considers the scope for making the EU budget more supportive of economic growth. It concludes that while this aim is totally feasible, the politics of the EU budget are liable to condemn the MFF 2014-2020 to being extremely similar to its predecessor.



**SEI Working Paper: No 129**

**Poland (mainly) chooses stability and continuity: The October 2011 Polish parliamentary election**

**Aleks Szczerbiak**

A.A.Szczerbiak@sussex.ac.uk  
University of Sussex

**Abstract**

This paper argues that the key to the centrist Civic Platform's victory in the 2011 Polish parliamentary election, the first by an incumbent governing party in post-communist Poland, was its ability to generate fear about the possible consequences of the right-wing Law and Justice party returning to power.

Although many of Civic Platform's supporters were disappointed with its slow progress in modernising the country, most voters viewed the party as the better guarantor of stability at a time of crisis and continued to harbour deeply ingrained concerns about the main opposition party.

The election appeared to provide further evidence of the consolidation and stabilisation of the Polish party system around the Civic Platform-Law and Justice divide. However, other

factors pointed to the dangers of declaring that the Polish party system was „frozen“ around these two political blocs and suggested that it remained vulnerable to further shocks and re-alignments.

This was exemplified by the breakthrough of the Palikot Movement in this election which was able to mobilise a constituency that went beyond the existing anti-clerical electorate and represented a genuinely new phenomenon in Polish politics; although it was questionable whether, given its potential structural weaknesses and limitations of its appeal, this new party would be the long-term beneficiary of any revival on the Polish left.



# New EPERN Briefing Papers

The SEI-based European Parties Elections & Referendums Network (EPERN) produces an ongoing series of briefings on the impact of European integration on referendum and election campaigns. There are four new additions to the series. Key points from this are outlined below. EPERN papers are available free at: <http://www.sussex.ac.uk/sei/research/europeanpartieselectionsreferendumsnetwork/epernelectionbriefings>



**EPERN BRIEFING PAPER:**

**No. 65**

**“Europe and the October 2011 Polish parliamentary election”**

Prof Aleks Szczerbiak  
Sussex European Institute  
University of Sussex

## Research

a.a.szczerbiak@sussex.ac.uk

### Key points

- The election saw a clear victory for the centrist Civic Platform (PO), which thus became the first incumbent governing party to secure re-election for a second term of office since 1989, while the right-wing Law and Justice (PiS) party came a strong but fairly distant second.
- Although many Civic Platform supporters were disappointed with the party's slow progress in modernising the country, most voters saw it as the better guarantor of stability at a time of crisis and continued to harbour deeply ingrained concerns about the possible implications of Law and Justice returning to power.
- The Polish Peasant Party (PSL), Civic Platform's junior coalition partner, held on to its share of the vote, giving the governing coalition a small but workable majority.
- The Palikot Movement (RP), a new anti-clerical liberal party, emerged as the third largest grouping in the new Sejm, overtaking the once-powerful communist successor Democratic Left Alliance (SLD) which suffered its worst ever election defeat.
- Although the election coincided with Poland's first ever turn at the head of the rotating EU presidency, the two main parties focused mainly on domestic issues and treated Europe as a 'valence issue' where they competed over who was most competent to represent and advance Polish national interests within the EU; as well as an opportunity to highlight their different political styles and self-images.
- The re-elected government was likely to continue to function smoothly, although the imperative to introduce more radical reforms might force Civic Platform to threaten the interests of its partner's core rural-agricultural electorate and the election result gave it other coalition options.

### **EPERN BRIEFING PAPER:** **No. 66**

#### **"Europe and the early Latvian election of September 17 2011"**

Daunis Auers  
Department of Political Science  
University of Latvia  
auers@lu.lv

### Key points

- In a dramatic May 2011 televised address to the nation President Valdis Zatlers called a referendum on the recall of parliament citing concerns that Latvia's democracy was on the verge of being „privatized“.
- The following week the Latvian parlia-





<p>ment held its scheduled presidential election. In a two-way contest an absolute majority of deputies voted for a new president, Andris Berzins, in the second round of voting.</p> <ul style="list-style-type: none"> <li>• The public overwhelmingly voted to dissolve parliament in the July 23 referendum and the Central Election Commission set the early election for September 17.</li> <li>• The now ex-President Zatlers formed the „Zatlers Reform Party“ to contest the election. It finished second to the Russian-speaking Harmony Centre, with the governing Unity Alliance coming</li> </ul>	<p>third.</p> <ul style="list-style-type: none"> <li>• Convoluted coalition negotiations ended with the formation of a three-party centre-right Latvian coalition government. Valdis Dombrovskis became the first prime minister to lead three successive Latvian governments.</li> </ul>
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<p><b><u>EPERN BRIEFING PAPER:</u></b> <b><u>No. 67</u></b></p> <p><b>“Europe and the Danish election of 15 September 2011”</b></p> <p>Ann-Christina L. Knudsen Aarhus University alknudsen@hum.au.dk</p> <p style="text-align: center;"><b><u>Key points</u></b></p> <ul style="list-style-type: none"> <li>• On 3 October 2011, the Social Democrat Helle Thorning-Schmidt became Denmark’s new prime minister. She was the country’s 41st prime minister and the first woman to hold this office.</li> <li>• Mrs Thorning-Schmidt headed a minority coalition government consisting also of the Socialist People’s Party and the Social Liberal Party. The new government depended on the left-wing Unity List to make up a parliamentary majority..</li> <li>• The election brought an end to a decade of Liberal-Conservative minority coaliti-</li> </ul>	<p>on governments that depended on the nationalist Danish People’s Party for its parliamentary majority.</p> <ul style="list-style-type: none"> <li>• Despite having to give up government, the Liberal Party won enough votes to remain the single largest party in the <i>Folketinget</i>, and it had three more seats than the Social Democrats. As before, there were eight political parties in parliament.</li> <li>• The most salient topics in the campaign were different models for economic growth, taxation, and welfare services particularly in relation to health and early retirement. Topics regarding the EU were practically absent.</li> </ul>
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**EPERN BRIEFING PAPER:  
No. 68**

**“Europe and the Swiss parliamentary elections of 23 October 2011”**

Clive H. Church  
University of Kent  
c.h.church@kent.ac.uk

**Key points**

- The election campaign was deliberately low key and lacking in discussion of Europe because the mainstream parties tried to de-dramatize the campaign so as not to reward the populist and anti European Swiss People's Party (SVP).
- The National Council election did not produce a fifth successive victory for the Swiss People's Party which failed to make up the losses it had inflicted on itself by the expulsion of its moderate wing, which formed the Conservative Democratic Party (BDP) in 2008. It also failed to increase its influence in the upper house and in government. However, it remains a potent force.
- All the main parties - with the partial exception of the Social Democrats (SSP) and the Greens (GPS) - lost some ground in the National Council elections. However, the Radicals (FDP) lost fewer seats than anticipated and the Christian Democrats (CVP) more.
- These losses were balanced by gains made by new and moderate parties like the Conservative Democratic Party and the

Green Liberal party (GLP). But talk of the 'centre' being strengthened is exaggerated.

- Consensus politics have been reinforced by this and especially by run off elections for the Ständerat and the 14 December governmental elections. The latter saw the Swiss People's Party fail to recapture its second seat or hold on to its allies, so a major shift to the right was delayed if not prevented.

- While entry to the EU remained off the agenda, the question of how to re-shape relations with Brussels remained unanswered. Indeed, finding a mutually agreed solution appeared as unlikely as ever.



# SEI DOCTORAL STUDENTSHIP OPPORTUNITIES

The SEI welcomes candidates wishing to conduct doctoral research in the following areas of our core research expertise:

- Comparative Politics - particularly the comparative study of political parties, public policy, political corruption and comparative European politics.
- European Integration - particularly European political integration, the political economy of European integration, European security and EU external policy and the domestic politics of European integration, including Euroscepticism.
- British Politics - particularly party politics, public policy and the politics of migration.
- Citizenship and Migration - particularly the politics of race and ethnicity.

**The University of Sussex has been made a Doctoral Training Centre (DTC) by the Economic and Social Research Council (ESRC).**

As a result of this, applications are invited for ESRC doctoral studentships through the SEI for UK applicants (fees and maintenance grants) or from those from other EU states (fees only).

Applications are also invited for Sussex School of Law, Politics and Sociology (LPS) partial fee-waiver studentships for applicants from both the UK/EU and non-EU states.

Potential applicants should send a CV and research proposal to Professor Aleks Szczerbiak  
([a.a.szczerbiak@sussex.ac.uk](mailto:a.a.szczerbiak@sussex.ac.uk)).



# Activities

SEI staff and doctoral students and PoICES undergraduates report back on their experiences of the exciting activities they have recently organised and attended.

## 'Wealth and Poverty in Close Personal Relationships'

**Prof Sue Millns**  
**SEI Co-Director**  
**S.Millns@sussex.ac.uk**

A joint initiative by colleagues in Law and Sociology at the University of Sussex has resulted in a successful application to the International Institute for the Sociology of Law in Onāti, Spain to run a two-day workshop on 'Wealth and Poverty in Close Personal Relationships'.



The workshop, which will take place on 3-4 May 2012, is being organised by Professor Susan Millns (Law) and Dr Ruth Woodfield (Sociology) together with Dr Simone Wong from the Law School at the University of Kent.

The interdisciplinary event draws together researchers from Europe and North America with backgrounds in law, sociology, psychology, social policy and economics with a view to investigating the gendered dynamics of the financial aspects of intimate relations.

At a time of global and domestic economic crisis, the financial aspects of domestic and familial relationships are more important and more strained than ever before. The focus of this workshop is on the distribution of wealth and poverty in familial relationships (traditional and non-traditional), co-habiting partners and domestic relationships of care and support.

It aims to explore the way in which money matters

are structured and governed within close personal relationships and the extent to which they have an impact on the nature and economic dynamics of relationships. As such, one of the key areas of investigation is the extent to which participation in the labour market, unpaid care giving, inheritance, pensions and welfare reform have an impact on familial relationships.

The workshop will explore relations of intimacy in sexual and non-sexual domestic relationships, and economic (inter)dependency, by interrogating how, when and why money matters in close personal relationships.

In what way(s) does it affect or lead to individuals being, or willing to become, economically vulnerable? Are some (women, for example) more prone to vulnerability than others? How do familial and domestic relationships affect the acquisition of wealth in households and, equally, how do they contribute to the poverty of individuals?

The workshop will also explore governmental and legal responses by investigating the privileging of certain types of domestic relationships (through fiscal and non fiscal measures), and the differential provision on relationship breakdown. The impact of budget and welfare cuts will be also examined for their effect on (in)equality in domestic relationships.

Participants will present papers which will encourage dialogue and exchange between disciplines and across issues. By providing the conditions for these cross-disciplinary and cross jurisdictional encoun-

ters, the workshop will encourage the emergence of new insights into the area, and participants will have the opportunity to evaluate the way in which law, by regulating the financial aspects of domestic and familial relationships, can be deployed as an effective instrument of governance, in 'stabilising' or 'mainstreaming' forms of domestic relations and in ending or perpetuating inequality in relationships.

The workshop is timely in an age of economic austerity and the benefits of the proposal lie in explaining better the current state of financial dependency and interdependency within domestic relationships. Many states in Europe and across the world are currently facing a time of financial crisis. This has brought with it a need for public spending to be reduced with an immediate impact upon the provision of welfare and the tightening of fiscal policies. In such times of austerity, it is often the vulnerable in society and particularly women who bear the brunt of spending cuts.

A key benefit of the workshop will be to demonstrate to policy makers, those in government, officials and experts, the extent to which those in relationships of dependency through their familial and domestic relationships will be affected through changes in the labour market and in the regulation of inheritance, pensions and welfare.

A further benefit which emerges from the timeliness of the workshop is that in Europe, for in-

stance, many states have recently enacted forms of civil partnership which allow same-sex couples to formalise their relationships and thereby acquire effectively the same rights as married couples.

The passage of such legislation has served to highlight that aside from marriage (and now civil partnerships) other forms of domestic relationships may warrant legal protection because of the economic vulnerability that parties to such relationships may suffer when the relationship breaks down.

The International Institute for the Sociology of Law is part of a very wide socio-legal network, with links to many institutions such as the International Sociological Association, the Law and Society Association and the Socio-Legal Studies Association.

It is expected that papers presented at the workshop will be published as an edited collection in book form by Hart Publishing as part of the IISL's book series, *Oñati International Series in Law in Society*. The next deadline for applications for holding a workshop in 2013 is 13 February 2012. You can find out more about the IISL by visiting its web site: [www.iisj.es](http://www.iisj.es).

To join the Socio-Legal Studies Association, visit: [www.slsa.ac.uk](http://www.slsa.ac.uk).

## SEI Co-Director visits Croatia ahead of EU referendum

Professor of Politics and Contemporary European Studies and Co-Director of the Sussex European Institute (SEI) Aleks Szczerbiak visited Croatia on January 19-20 for a series of meetings and media interviews in the run up to the country's EU accession referendum.

On January 22, Croatians voted by a two-to-one margin to join the EU. During his two-day visit, Prof Szczerbiak, a specialist on European referendums and East European politics, was involved in a number of events with academics, policy makers, journalists and representatives from the business community to present and discuss the findings of his earlier research in this area.

With his SEI colleague Prof Paul Taggart, Prof Szczerbiak co-authored an edited book titled 'EU Enlargement and Referendums' (Routledge 2009) analysing the outcome of the 2003 EU accession referendums in the former communist states of Central and Eastern Europe.

The two Sussex scholars also co-convene the Sussex-based European Parties Elections and Referendums Network (EPERN), set up in 2000 with ESRC funding originally to research Euroscepticism but subsequently expanding its brief to look more broadly at European referendums and the impact of the European issue on electoral and party politics (<http://www.sussex.ac.uk/sei/research/>



## Activities

europeanpartieselectionsreferendumsnetwork).

Prof Szczerbiak's visit was organised by the Academy of Political Development, a Croatian NGO aimed at developing democratic political culture and promoting dialogue and co-operation among future leaders in Croatia by motivating them to participate in public life. The Academy is headed up by Ana Brncic, who graduated on the SEI's MA in Contemporary European Studies (MACES) programme in 2002 and now works as head of communications in the EU delegation in Croatia, having previously been a senior official in the Croatian foreign affairs and European integration ministries.

As well as giving the keynote address on European referendums at a major academic conference hosted by the Zagreb University Political Science Institute, and attended by the Croatian foreign minister, Prof Szczerbiak also spoke at a well-attended evening meeting for young professionals sponsored by the British Council in Croatia.

The 60-strong audience at the latter event, that included more than twenty SEI graduates, comprised members of the Croatian Chevening Association who work for the government, international organisations, think tanks, as well as in the media and business community. During his two-day visit, Prof Szczerbiak also gave several media interviews including, among others, with Croatian national TV and radio news, the German RTL TV channel, the influential Croatian daily paper 'Novi List' and weekly current affairs journal 'Aktual', and 'T-portal', a leading Croatian Internet news portal.

SEI has long-standing links with Croatia. SEI Visiting Professorial Fellow Alan Mayhew helped the Croatian government establish its first Office of European Integration in the 1990s and since 1999 the Croatian government has been sending young civil servants and graduates to Sussex to take the MACES programme in return for signing contracts to work for them for up to five years after returning home. As a result, SEI has now trained nearly 100 Croatian graduates.



Commenting on his visit, Prof Szczerbiak said:

'This was a tremendously exciting time to be visiting Croatia and an excellent opportunity for me to share the findings of Prof Taggart and my research on EU referendums. I've learnt a great deal that I can put to good use both in further research on this topic but also in the Sussex courses that I teach on East European politics.

The visit has also given me a great opportunity to further strengthen SEI's already excellent links with the Western Balkan countries. I was particularly pleased to meet up with so many SEI alumni who are now serving their country in such a wide range of capacities and having a huge, positive impact on public life in their country. It was really gratifying to hear them talk about their positive experiences at Sussex and how helpful this has been to them in their future lives and professional careers.'

# Exception or Rule? Equality in the 21<sup>st</sup> Century: Au Pairs in Europe?

**Dr Charlotte Skeet**  
SEI Lecturer in Law  
C.H.Skeet@sussex.ac.uk



Gender Equality in the 21<sup>st</sup> Century' examined the category in the UK in relation to feminist legal theory and rights discourse and drew on the excellent empirical data on au pairs carried out by Ben Rogaly et al at the Centre for Migration Studies at Sussex. Despite the case of *R (on the application of Payir) v Secretary of State*

The category of 'au pairs' in Europe is little researched and theorised, especially among lawyers, so the invitation to participate in the seminar organised by Kirsten Ketcher and held at the University of Copenhagen in autumn 2011 by the Centre for Legal Studies In Welfare and EU Market Integration (WELMA) was particularly welcome.

The seminar was premised on the absence of au pairs as a concept from the usual regulation of the labour market, social security, the health care and other legal categories. The aim was to map the legal position of au pairs across a range of European countries and analyse this positionality from a range of perspectives.

The Council of Europe drafted a European Agreement on Au Pair Placement in 1969, ostensibly to ensure 'adequate social protection' of the increasing numbers of young European women being placed as 'au pairs' in other member states. It was only signed by Italy, Denmark, France, Spain and Norway but the concept, of the au pair as young, single, without dependents and neither workers nor students, is widely used and accepted across Europe, including the UK.

While there may be some genuine placements on the basis of cultural exchange for people travelling as au pairs, the concept is now used to create a cheap, flexible domestic workforce which is outside the usual regulation. Abuse against au pairs in Europe is rife; the Philippines, which send the majority of au pairs who work in Scandinavia, recently banned their nationals from visiting Denmark and Norway because of the high rates of sexual assaults and physical abuse, and the lack of legal protection offered to au pairs.

My own paper 'Exception or Rule ? : Au Pairs and

*for the Home Department* [2009] ER (EC) 964, the UK government has still not recognised au pairs, who are predominantly female, as eligible for the minimum wage or apparently covered by the Working Time Directive.

Au pairs have no protection from 'dismissal' or eviction without notice, though au pair agencies warn families that they should informally abide by working time regulations and offer holiday pay. Au pairs provide 'services' up to an official maximum of 35 hours a week, though average hours are, in fact, much higher. The continued designation, under the European Agreement, Borders Agency and by au pair agencies and associations of these domestic duties (shopping, cleaning, cooking and caring for children) as 'not work' clearly undermines feminist attempts to get recognition for the value of 'domestic' work. This denigration of tasks is reinforced by the designation of au pairs' remuneration as 'pocket money.'

If it was not clear before, following *Payir* it would seem legally untenable not to apply the minimum wage less reasonable deductions for living expenses. If au pairs really only worked the maximum hours of service, this extension of the minimum wage would not create a considerable increase in remuneration received, but it would provide greater security and access to protections as employees for au pairs.

## Activities

The resistance to the application of the minimum wage is driven by the fact that average hours worked by au pairs greatly exceed the maximum, while the rhetoric around this relates to protection of the au pair position as 'equal to family members.' Though problems are said to arise where au pairs are not treated as family members, perhaps the poor treatment of au pairs actually dispels the myth of equality in family life. Reading the stories of au pairs exploited through long working hours spent on domestic duties and of those turned out of their host family homes with no notice, it is also possible to see the position of au pairs as reflective of normal everyday inequalities within families.

Their position reflects the inequality in allocation

of domestic work within families and also mirrors the vulnerability of adult children who have no right to a home. Thus, reflection on the position of au pairs in the twenty-first century lends itself to reflection on the private/ public divide in the workplace and at home, the gendered nature of exception to categorisation as worker and the lack of legal regulation and persisting inequality within the family.

The group plan to meet again at WELMA later in 2012 and a number of us will be giving papers at the Socio-Legal Studies Conference in Leicester in April. My own paper at the conference locates an analysis on the 'au pair' as an intersectional legal category.

## The Centre for Responsibilities, Rights and the Law

### Jo Bridgeman

SEI Lecturer in Law

J.C.Bridgeman@sussex.ac.uk

The Centre for Responsibilities, Rights and the Law, based in the Sussex Law School, supports the research of faculty and postgraduate students and fosters individual and collaborative research across a variety of areas of law within the broad themes of 'rights' and 'responsibilities'. The Centre also aims to engage with policy makers, government bodies, agencies and NGOs, responding to developments in law and policy in relation to responsibilities and rights, nationally, from the European Union and internationally.

The theme for this year's seminar series, organised by Craig Lind, was 'Rights in an era of Responsibility'. In January 2012, Emilios Christodoulidis, Professor of Legal Theory, University of Glasgow, delivered a seminar entitled 'Social rights constitutionalism: some cautionary remarks', exploring the limits of social rights jurisprudence. Former member of the Sussex Law School, Dr Emily Haslam, now of Kent Law School, spoke on 'Redemption, Colonialism and International Criminal Law: the Nineteenth Century Slave-Trading Trials of Samo and Peters', exploring slavery litigation as international criminal law. The final seminar in the series



will be given on 26 April 2012. In his paper, 'Take A Walk: Law, Bodies, Space', Andreas Philippopoulos-Mihalopoulos will speak on the way

law and its academic teaching is transformed by the radical nature of a spatial justice that demands a re-emplaced corporeality in relation to 'here' rather than 'now'.

A workshop held in October 2011 on the topic, 'Do We Need a UK Bill of Rights?' discussed the questions posed by the Commission on a Bill of Rights' Consultation Paper ([www.justice.gov.uk/about/cbr/index.htm](http://www.justice.gov.uk/about/cbr/index.htm)) and informed the Centre's response to this consultation. The submission, drafted by Deputy Director of the Centre, Elizabeth Craig, can be found online at [www.sussex.ac.uk/law/research/centreforresponsibilities](http://www.sussex.ac.uk/law/research/centreforresponsibilities).

Paul Eden and Craig Barker led a roundtable discussion entitled, 'State Immunity and Human Rights - Analysing the recent International Court of Justice decision in Jurisdictional Immunities of the State' and focusing upon the recent decision in

*Germany v. Italy: Greece intervening* (judgment of 3 February 2012). Paul Eden has also arranged a workshop on Corporate Social Responsibility which will be held on Wednesday 18th April 2012. Speakers at this event include Dinah Rajak (Anthropology) and Jane Claydon (Sociology).

Centre members Jo Bridgeman, Heather Keating and Craig Lind have been awarded a grant from the Modern Law Review to host a seminar in October 2012 during which contributors will examine 'Twenty-one Years of the Children Act 1989'. More than two decades after the implementation of 'the most comprehensive and far-reaching reform of child law...in living memory' (Lord Mackay, then Lord Chancellor, 1988) the seminar will look back to the original ambitions of the Act, examine

the evolution of key concepts and principles of the Act and consider the future challenges which may confront it. The seminar will bring together some of the architects of the original legislation, scholars who have been engaged in critique of that Act as it has been implemented, and judges and practitioners whose work has adapted the Act to current social conditions to explore the key concepts and principles of welfare, parental responsibility, residence, contact, significant harm and working together.

Details of research interests of members of the Centre and of past and future activities can be found on the Centre website at [www.sussex.ac.uk/law/research/centreforresponsibilities](http://www.sussex.ac.uk/law/research/centreforresponsibilities).

# The Phenomenon of Populism

**Dr Cristóbal Rovira Kaltwasser**  
SEI Research Fellow  
[C.Rovira@sussex.ac.uk](mailto:C.Rovira@sussex.ac.uk)

Populism seems to be a pervasive phenomenon in the contemporary world. Many intellectuals ask themselves whether the Arab Spring, the so-called *indignados* in Spain and the Tea Party movement in the US are examples of populist uprisings. Answering this question is not straightforward, since there is an on-going debate about how to define populism and study its impact on democracy. To gain new insights into populism, Jan-Werner Müller (Princeton University) organised a workshop called 'Populism: Conceptual and Normative Aspects' in February 2012 at Princeton University Centre for Human Values.

The first part of the workshop was devoted to historical and theoretical reflections. Michael Kazin (Georgetown University) offered an account of different populist traditions in the US; he argued persuasively that populism is very widespread in American politics. In addition, Jason Frank (Cornell University) and John P McCormick (University of Chicago) developed some tentative ideas regarding not only how to distinguish

between populism and democracy, but also the way in which populism poses difficult questions to democratic theory. Finally, Nadia Urbinati (Columbia University) argued that populism should be conceived of as a pathology of representative democracy that can lead to



Caesarism. Is populism becoming a growing political force in Europe? This was the main topic of the second part of the workshop. Cas Mudde (DePauw University) defended his conceptualisation of populism as a 'thin-centred ideology', and maintained that populism is a relatively new phenomenon in Europe that has been employed almost entirely by radical right parties. Gábor Halmai (Eötvös Loránd University) referred to the Hungarian case and the misuse of direct democratic elements by different political actors. Moreover, Yasha Mounk (Princeton University) elaborated a conceptual approach according to which populism should be defined as the mobilisation of an out-group against an elite that is said to be self-serving.

## Activities

The third part of the workshop was focused on Latin America. I offered an overview of the various historical manifestations of Latin American populism and explained which are the advantages of adopting an ideological conceptual approach similar to that elaborated by Cas Mudde. While Diego von Vacano (Texas A&M University) maintained that scholars interested in Latin American politics have not developed a convincing theory of populism yet, Enrique Krauze (Magazine Letras Libres) presented a 'Decalogue of Latin American populism', which characterised the key of past and present populist experiences in this world region.

The final part of the workshop aimed to expand theoretical perspectives. Paulina Ochoa Espejo (Yale University) developed a theoretical approach regarding how populist actors tend to defend a notion of 'the people' that fosters political misrepresentation. In addition, Dirk Jörke (Greifswald University) argued that neither liberal nor deliberative democratic theories are capable of offering convincing proposals concerning how to deal with the populist challenge. Finally, Rahul Sagar

(Princeton University) maintained that populism is not necessarily a modern phenomenon, since it also appeared in ancient Greece and Rome.

In summary, this workshop was extremely constructive in terms of opening up a debate among scholars of different disciplines, nationalities, and generations. While it is true that no consensus on the concept of populism was reached, it is worth noting that the discussions dealt with various aspects of the populist phenomenon and evaluated the advantages and disadvantages of the existing conceptual approaches. In this sense, one of the main conclusions is that elaborating a general theory of populism is anything but simple, because there are many different manifestations of populism that to a certain extent are quite dissimilar. There is no better illustration of this than the current political situation in the US, since both the Tea Party and Occupy Wall Street movement can be considered as paradigmatic examples of populist uprisings.

## 2012 Francois Duchene European Travel Bursaries awarded

The 2012 Francois Duchene European Travel Bursaries have been awarded to three Sussex doctoral students:

- Satoko Horii - to conduct two research trips to Greece and Brussels as part of her doctoral project on understanding the role of the Frontex border agency in the EU external border regime.
- Mari Martiskainen - to conduct a research visit to Finland as part of her research on the innovation of community energy projects in Finland and the UK.
- Gentian Elezi - to conduct fieldwork in Albania and Brussels as part of his doctoral research on explaining the implementation challenges in preparing Albania for EU membership.

Duchene Bursaries provide up to £1000 for travel, accommodation, subsistence, and research expenses for doctoral researchers at the University of Sussex in any discipline to: pursue field work in continental Europe connected with their thesis on issues

of European integration broadly construed; or contribute to a collaborative project in another European country and connected to their research. The Bursary scheme is funded by the Sussex European Movement and administered by the SEI.

Francois Duchene, who died in 2006, was an administrator, policy analyst, journalist, academic, a published poet and a keen musician and an enthusiast for a united Europe. He was present at the birth of modern integrated Europe as an assistant to Jean Monnet when Monnet was setting up the European Coal and Steel Community, a precursor to and an inspiration for the European Union as we know it today. He was founding director of the International Institute for Strategic Studies, Professor of European studies and Director of the European Research Centre (the precursor of SEI) and finally Emeritus Professor at the University of Sussex. He was author of a hugely admired and influential biography of Jean Monnet. All of his life he was an enthusiastic member of the European Movement and the Sussex branch in particular. This Duchene Bursary was set up with funding from the SEI, friends of Francois and from members of the Sussex branch of the European Movement.



Two of the scholars who were awarded the 2011 Bursaries presented reports of their research visits at the Sussex European Movement AGM last December. Javier Mato-Veiga spent three weeks observing journalists at work in two of Spain's leading national newsprints, 'El País' and 'El Mundo', as part of his research on the adaptations now required of the traditional

print journalist as the Internet emerges as a powerful tool for rapid social communication. Marko Stojic undertook two research trips to carry out an intensive series of interviews in Zagreb and Brussels as part of his doctoral thesis examining the positions of the national parliamentary political parties in Serbia and Croatia towards the EU and European integration.

## **The Socio-Legal Studies Association Postgraduate Conference 12-13 January 2012, Queens University, Belfast**

### **Nick Beard**

**SEI DPhil student**

**m.beard@sussex.ac.uk**

I was unsure what to expect from the Socio-Legal Studies Association (SLSA) Postgraduate Conference! I had never been to a postgraduate conference before and, as I was new to interdisciplinary studies, I wasn't familiar with the SLSA. I was lucky enough to meet postgraduate research students from all over the UK and Ireland (although none from my alma mater, Trinity College Dublin!).

Rather than focusing on our specific research interests, the conference focused on career advice for postgraduate students, particularly those who wished to become academics. As such, the best advice given was:

Remember that your priority needs to be working on your PhD! It can be easy for students to become bogged down in teaching hours and presenting at conferences, but there should be nothing more important than ensuring that you finish a PhD of good quality on time.

Think carefully about what you're trying to achieve by attending conferences. If your ideal goal is to be published, present your paper at as many different conferences as you can and try to encourage interest. If you would like to make sure your paper has impact outside of academic interests, consider presenting to a professional conference. The most important thing is to make sure that you have considered what conference you will be attending and make sure that it will not impact on your PhD!

If you're thinking about publishing an article, make sure you have researched which publication you



will submit it to. In the UK, it is quite important to only send your article to one publication exclusively, so consider which one it would fit. Is your paper technical or would it work better as a general legal article? Make sure your citations fit with the publication you're submitting to and follow all submission guidelines closely!

If you decide to pursue an academic career, it's important to consider institutional ethos when choosing where to apply. Is the institution willing to help you develop your research skills or do you need more teaching experience? Ethos is important to determine if you will be a good fit.

The more teaching experience you have, the better. You will be an asset to any law school if you have some experience and willingness to teach any of the core subjects. A willingness to teach areas related to your PhD is not as helpful as having some flexibility!

Finally, I saw how important it is to have a supportive research community. The PhD students at the University of Sussex are already lucky enough to have an opportunity to present our research through the SEI and to hear feedback from other students through our DPhil seminars. Mentoring first year postgraduates further along in your PhD, chatting with other students on your research: all of this is essential to one's development as a PhD student! I finished the SLSA Postgraduate Conference both energised about completing my PhD and about participating in the Sussex community.

# The winners and losers of UK government immigration policy

**Rebecca Partos**  
SEI DPhil student  
Rp215@sussex.ac.uk



A statue of Earl Haig on horseback marked the location of the Westminster Legal Policy Forum's one-day seminar on immigration policy on 20 March 2012. With keynote speeches by Prof David Metcalf, chair of the government's Migration Advisory Committee, and Glyn Williams, head of the Home Office's immigration policy directorate, as well as presentations by business people and practitioners, it was a busy day.

Educational institutions, students, and the income they bring to the UK proved to be an important topic. Prof Eric Thomas of Universities UK argued that international students should be regarded as 'temporary residents' – not migrants – so that they would not fall foul of restrictive legislation. But Andrew Green of MigrationWatch said students make up 60% of 'immigrants' to the UK; removing them from the figures would take away credibility.

The business community had mixed feelings about the impact of recent changes to immigration legislation. Nichola Carter of Penningtons Solicitors referred to the practical difficulties for businesses, which have to cope with constant changes and suffer severe sanctions for noncompliance. She recommended that the government have clearer rules, fewer changes, and more of an evidence-based policy. The CBI's Guy Bailey (who I interviewed 18 months ago during my Junior Research Associate research) said that 'no one' had been stopped from entering the UK because of the limit on numbers.

Human rights, in the context of immigration policy, were brought up by Ian Macdonald QC and president of the Immigration Law Practitioners' Association. He referred to his son, who had met a young woman in Mexico, but who would find it difficult to bring her to the UK if they married because of the new language test. However, if she were Spanish, but couldn't speak English, there would be no problem. Macdonald said that there was so much emphasis on abuse in the system that policy seemed to forget that the majority are decent people who would be punished by tougher legislation. This was reiterated by Ruth Grove-White of the Migrants' Rights Network.

Looking at immigration policy in a more theoretical way, Dr Martin Ruhs, director of the Migration Observatory, underscored the need to distinguish between positivist accounts and normative approaches to immigration. Ruhs said that researchers should look at immigration sector by sector and consider why certain employers 'prefer' immigrants. Ruhs said that the agricultural industry, for example, likes employees to be tied to specific work permits, presumably to ensure loyalty.

Due to lack of time, I was not able to put my question to Glyn Williams, but I did catch him at the end. I asked him if, as he had earlier said 'evidence will only take you so far', and given that the previous government had been provided with 'the same' evidence as the current one but had drawn different conclusions, what place was there, if any, for evidence-based research in formulating immigration policy? What is driving immigration policy other than an urge to 'reduce the numbers' to the tens of thousands? Mr White was circumspect; while he stressed that his staff try to use 'evidence' in reports, he did say that there was a strong political influence to immigration policymaking and that 'you can take what you like from evidence'.

# The Unreliability of Alleged War Criminals

**Dr Richard Vogler**  
SEI Lecturer in Law  
R.K.Vogler@sussex.ac.uk

One of the highlights of the LLM programme is the annual visit to the international courts at the Hague, which has been a feature of the course for the last 17 years!

This is a particularly important study trip as many of our postgraduate students have developed important research relationships with these institutions and go on to take up internships at the courts. This year, law faculty members Richard Vogler and Elizabeth Craig took 23 LLM Students from a number of different programmes (but predominantly from the LLM International Criminal Law, the LLM International Law, and the LLM Criminal Law and Criminal Justice) on the three-day trip.

We had arranged to attend part of the trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY) of Radovan Karadžić, who is charged with two counts of genocide and other war crimes committed in Srebrenica, Prijedor, Ključ, and other districts of Bosnia. However, we discovered on arrival that he was unwell and could not appear that day, so his case had been adjourned. Notwithstanding our disappointment at the unreliability of alleged war criminals, we were briefed by Rupert Elderkin, a British Barrister working for the Office of the Prosecutor. We also toured the e-court facilities offered by the ICTY, which enable it to consider virtual and digital evidence, protect the identity of vulnerable witnesses and record proceedings in a variety of formats for posterity.

Sussex University has a longstanding relationship,



through the Sussex/Harvard programme run by SPRU, with the United Nations *Organisation for the Prohibition of Chemical Weapons*. Its Headquarters, along the street from the ICTY, is therefore another regular stop on our itinerary and on this occasion we were briefed by Karim Hammoud, one

of the Senior Legal Officers, before participating in a question and answer session. On our final day, we attended a hearing at the International Criminal Court (ICC) in Voorburg in the case of Jean-Pierre Bemba Gombo, former Vice-President of the Transitional Council of the Democratic Republic of the Congo from 2003-6. We were also given a presentation by the Secretariat.

Our visit had to be slightly rearranged because of the unexpected arrival and subsequent remand of Laurent Gbagbo, on the previous day. The former President of the Ivory Coast is the first Head of State to appear before the ICC. He is charged with four counts of crimes against humanity, including murder and rape, following the disputed Presidential elections last year. We were welcomed at the ICC by one of our former LLM and current Doctoral students, Sean Summerfield. We went on to the *Special Court for Sierra Leone* and were addressed by Solomon Moriba from the Secretariat. Whilst it is true to say that the opportunity to witness international criminal justice at first hand is one of the main attractions of the trip, the social aspects of the visit to the beautiful city of the Hague and its cafes and restaurants, also continues to be very appealing!

## Politics undergraduate trip to Berlin an unbridled success

**Dr Daniel Hough**  
SEI Reader in Politics  
D.T.Hough@sussex.ac.uk

The first week in March once again saw Dan

Hough lead a group of intrepid Sussex undergraduates to Berlin for three days.

As in previous years, the trip involved discussions with politicians from a range of political parties, a

## Activities

visit to the British Embassy to talk Anglo-German relations, a tour around the infamous Stasi remand prison in East Berlin and trips to the Holocaust Memorial and what's left of the Berlin Wall.

Three days is not long, so the students – all participants on the second year UG governance course on Modern Germany – found themselves congregating at Brighton station at the unseemly time of 04h45 on Tuesday morning in order to catch the early flight over to Berlin Schoenefeld.

Once that particular challenge had been safely negotiated, the group headed out to see one of the most fearsome institutions in the now defunct GDR; the Stasi's remand prison in Hohenschönhausen.

The sight of interrogation rooms and torture cells, coupled with descriptions of the Stasi's methods as well as the experiences of inmates, certainly opened a few eyes, and made everyone anywhere of the lengths that the East German secret police would go to get people to behave as they wanted.

Following a free evening, Wednesday saw the first of the group's meetings with prominent politicians, namely Dagmar Enkelmann, the chief whip of the Left Party. Ms Enkelmann was very open in elaborating both on her experiences during the unification period, as well as what her party perceived as Germany's ineffective handling of the current Eurocrisis.

Indeed, the Eurocrisis was a regular topic of inter-



est in of all the discussions, with Lisa Paus (Greens) and Petra Merkel (SPD) largely agreeing with Enkelmann that Germany needed to do more to help Greece in particular back on the path to economic growth.

Other topics did, however, also make an appearance; Zachary Schubert tested Lisa Paus on Germany's position on the current Iran/Israel standoff, for example, whilst Luke Williams grilled Petra Merkel on Germany's attitudes to the UK.

Andrew Noble from the British Embassy rounded off the discussions with an entertaining tour de force on the Embassy's role in getting the UK message across to German politicians and public alike. Again, the topics discussed were certainly wide-ranging, with the UK's veto at the December 2011 European Council being discussed as well as how one might look to pursue a career in the diplomatic service.

As ever, though, it was not all work, work, work. Indeed, the trip enjoyed a couple of firsts; it had its very first birthday boy, with the group helping Andy Horrell celebrate his 20<sup>th</sup> birthday on Wednesday, whilst Luke Williams gained the (in) auspicious honour of becoming the first student in the trip's seven year history to be told that he'd eaten enough at the hostel's 'all you can eat' breakfast! Work that one out if you can!

## Politics undergraduate trip to Paris

**Dr Sue Collard**  
SEI Lecturer in French  
S.P.Collard@sussex.ac.uk



In March 2012 I took 10 students on a three day / two night study trip to Paris: six second-years following my course in 'The Politics of Governance: France', and four third-years taking my special option on 'France in the Mitterrand Years'. We were blessed with beautiful sunny weather, which meant

I was able to take them on a mega walking tour of some of the capital's most significant sites that give a sense of how the turbulence of French history, marked by 'Franco-French wars', continues to impact on its politics today.

We were there at an exciting time given that the presidential election (the centre piece of French politics) will be taking place in two rounds on 22 April and 6 May, and we kept a close eye on the billposting across the city: the hard Left were defi-



## Activities

nately the most visible in this respect, and after an interesting encounter with some militants from the 'Front de Gauche' (alliance of communist and hard Left) late one evening, we were given some posters and flyers to bring home 'to spread the word' in the UK about the evils of social democracy!

The downside of the election season meant that no politicians could spare any time away from the campaign trail to speak to us, and the National Assembly had already ended its last session, but that also meant that we were able to get a much closer look (and feel!) of the semi-circular debating chamber which perpetuates the seating distribution for deputies of the Left and Right that began with opposition to, or support of, the king.

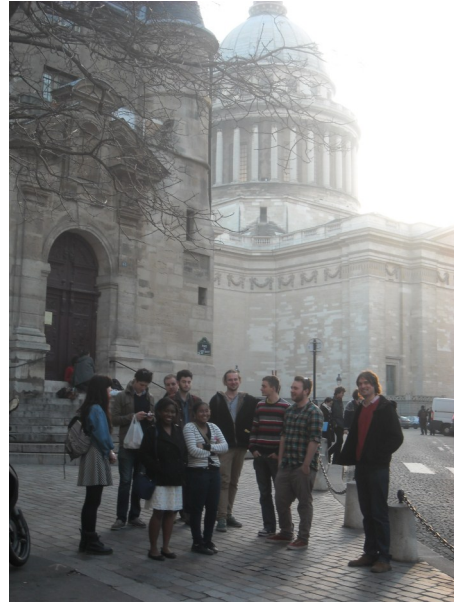


### Students getting a feel for the National Assembly.

Students noted how republican France has ironically perpetuated monarchical practices by housing of all its political activities in monumental palaces and by bestowing upon its highest representatives significant privileges in kind, such as the official residence of the President of the National Assembly (roughly equivalent to the British Speaker in the House of Commons), in the magnificent Hotel de Lassay.

They also saw how France's attitude towards its difficult past can be traced through various statues and monuments which indicate how it 'remembers' its heroes and villains: the impressive Panthéon, which has housed tombs of Great French Men (and one or two women) since the Revolution of 1789, Napoleon Bonaparte's magnificent tomb, which lies in great pomp at Les Invalides (though there is controversy as to whether it is actually his

body inside!). The elaborate marble recumbent statues of all French monarchs in the Basilica at St Denis are but empty tombs, since all the bodies were dug up during the Revolution and thrown into a communal pit simply marked with a plaque in the garden. Only the tombs of Louis XVI & XVII (thanks to the Restoration) are the real thing.



### Students in the shadow of France's 'Panthéon' of Great Men.

I also showed them how the use of public space is also highly significant in Paris, and the strong contrasts between the different parts of the old historic centre, the modern business district at La Défense, and the suburb of St Denis hopefully brought this home to them. They also got several opportunities to see the reality of the 'oppressive state' that we had discussed in seminars: we identified five different types of police and noted a strong army presence (with machine guns), and were unable to get to the Prime Minister's 'palace' (Hôtel Matignon) because the street was cut off due to a student protest .

So although we didn't get to meet any politicians, I hope the trip will have given the students some insights into what drives French politics, and helped them to get a better grasp of the background to the presidential elections.



## Activities

# Update on European Union Society

**Yiannis Korkovelos**  
**Sussex EU Society**  
**lk67@sussex.ac.uk**

As the EU faces the biggest crisis in its history and the UK finds itself in its most Eurosceptic mood ever, voices predicting the collapse of the Union and its dissolution are not rare. So called 'problematic' countries such as Greece are constantly making the headlines and the future seems unpromising to say the least. The European Union Society has been, once more, extremely active this term. Our weekly meetings have been highly successful and well-attended.

Lectures and discussions have been organised around the following topics:

1. Germany and the EU
2. Democratic deficit
3. When does EU expansion end? ( culture - identity)
4. Moving towards 'more' or 'less' Europe?

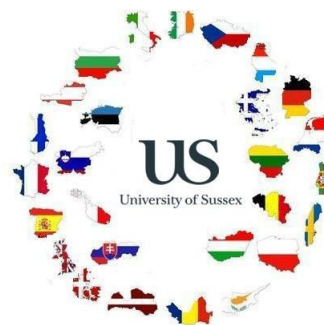
The events that we have organised this term have attracted even more members than previously, and we are confident that if we maintain the same level of 'readiness' more will join our student thinktank!

It was with great pleasure that we organised a public lecture, with guest speaker Dr Roman Gerodimos,

President of the Greek Politics Specialist Group. The topic of the event in question was : 'Is the Greek Crisis symptomatic of EU failure? A discussion'. It was, overall, an enjoyable event in that both the questions and answers were challenging and stimulating. The slides from Dr Gerodimos' lecture and a video podcast are available on our Facebook page.

Our next guest speaker is Green Party MEP Keith Taylor. The lecture topic will be announced soon, while the event will take place at some point between 30 April and 2 May (date to be announced).

Meanwhile, do not hesitate to join us on Facebook for updates or by email at [US.EUsoc@gmail.com](mailto:US.EUsoc@gmail.com).



EUROPEAN UNION SOCIETY

# Politics Society: The Year So Far

**India Thorogood**  
**Sussex Politics Society**  
**Irt21@sussex.ac.uk**

Sussex University Politics Society has been busy creating a society of which we hope politics students and enthusiasts can be proud. We have set about forming an organisation that we feel can appeal to a wide audience and bring those interested in politics together. Our Politics Society film club has screened films such as *The Wave*, *Enron: The Smartest Guys in The Room*, and *Lefties: Property is Theft*. Our most popular screening was John Pilger's *The War You Don't See*, which high-

lights the media's coverage of war and led to some heated debate in the room!

At the beginning of the academic year we thought it important to host Caroline Lucas, MP for Brighton Pavilion: her constituency includes Sussex University. Aware that not everyone is interested in politics, it seemed vital for students and staff to hear what their representative stood for, and what she had achieved in Parliament in the year since she was elected.

The event on 21 October was attended by around 80 people from the Sussex community and touched on everything from cycling in Brighton to

the economic crisis, and Dr Lucas' experience of being the lone Green MP in the Commons.

On 7 March we hosted a Politics Society pub quiz where we put to test the brightest minds of Sussex. During the course of the evening, I begged and pleaded for donations to the Clock Tower Sanctuary - a local charity that helps homeless young people. After a successful night at East Slope Bar, and a morning of counting alcohol-soaked pennies, we had raised £85 to help people of our own age get off the streets.

April sees the beginning of an exciting new term for the Politics Society. We have worked hard to organise some interesting events. On 24 April, we will hold a debate entitled 'Is Socialism Dead?', which will feature Paul Richards of the thinktank Progress, Alex Callinicos, the editor of *International Socialism and the Law*, Politics and Sociology school's very own Luke Martell. On 9 May, Mark Serwotka of the PCS union will address students on trade unions and politics, and the future of unions under the coalition government. On 24 May,

we will host David Lammy, the MP for Tottenham and author of the recently published book *Out of the Ashes: Britain After the Riots*. This should be an thought-provoking insight into explanations for, and the after-effects of, the UK riots last August.

With the French Presidential elections set to dominate the news in April, Politics Society is helping to organise a roundtable event on the elections on 25 April. With the first stage of the two ballot elections taking place just days earlier on 22 April, we will be able to take a look at how the election is playing out for Francois Hollande and Nicolas Sarkozy, as well as far-right candidate Marine Le Pen.

We would love to see Euroscope readers at some of our upcoming events. Anyone interested in getting involved with the society can find us on Facebook, Twitter or by emailing [politics-soc@ussu.sussex.ac.uk](mailto:politics-soc@ussu.sussex.ac.uk). The Politics Society committee were pleased to find out that we have been nominated for 'Most Improved Society' at the Sussex Student Awards, so keep your fingers crossed for us.



# **Sussex Undergraduate Politics Journal: From conception to (almost) reality.**

**Emma Aston**  
**Sussex Politics Society**

A very well attended and frantic Politics Society meeting in the aftermath of Freshers week was the catalyst of what turned me into an email fiend. “Why don’t we do an academic journal?” a new first year piped up (without any intention to take the project on). The idea being well-received, it was noted down for further consideration.

A second polsoc meeting later and it was decided that I, as student rep, should drive the project, as it was important that the journal was closely linked to the department as well as to the society. With Paul Taggart on-board and his advice noted, I sent my first email to all politics students asking who was interested in editing. Surprised by the interest I received in return,

the decision was made to keep the editor positions within final years. All final years that replied to my second editor email were given a role to play. Now with a team of editors, I held an information session (un-surprisingly awfully attended) for potential authors and opened submissions.

The idea was to give students a way of showcasing their best work. Having an essay ‘published’ would enhance CVs and postgraduate applications; editing essays would also help students in writing their own.

Twenty-six submissions and a tough two-hour meeting choosing between them later and the SUPJ was beginning to come together. Next began the complicated process of sending the essays back and forth between the editor and author. By the original timetable plan, the first volume would be out by now.

However, indicative of student-led anything, the

SUPJ is a few weeks behind. Keeping to deadlines has proved difficult for authors and editors alike and my constant barrage of emails, each slightly more frustrated than the last, has done nothing to speed things up.

In the pipeline for the first volume are three leading essays and seven supporting. We tried to incorporate a range of subjects and disciplines: political history, political theory, political science and global politics and institutions. Deciding not to have similar essays also helped in the decision of which to pick; the marks that the essays had received weren’t particularly enlightening as most fell into the first-class bracket.

We hope that the journal will be continued next year despite the on-going difficulties caused by students that are unwilling or unable to get involved. Believing that students should be proud of their essays (plenty of time and tears goes into their production), the SUPJ is there for those students who want to share their creativity with their peers.

Doing so not only shows-off the student, but also the tutors that helped them and, of course, the department that recognised their potential in the first place.



# Dispatches

As usual, this Dispatches section brings views, experiences and research updates from SEI members and practitioner fellows from across Europe and beyond.

## **How likely is it that the EU will disintegrate?** **A critical analysis of competing theoretical perspectives**

**Prof Douglas Webber**  
Professor of Politics, INSEAD  
Douglas.Webber@insead.edu



In classic intergovernmentalist theories, as expounded by Stanley Hoffmann or, in his early work, Andrew Moravcsik, disintegration would result from the growing divergence of interests between the EU's big powers: France, Germany and the UK.

During the last half century, the EU has proved to be an extremely robust regional organisation, bearing out the prognosis of its founding father, Jean Monnet, that 'Europe will be forged in crises and will be the sum of the solutions adopted for these crises'. The on-going crisis of the euro since 2010 has nonetheless raised the spectre of the disintegration of the eurozone, if not of the EU itself. Given that in history most other regional organisations have failed, it would be naïve simply to assume that the EU will be spared this fate.

How can we go about investigating the probability of the EU's survival or demise? One potentially fruitful way is to trawl already existing integration theories and, turning them on their head, to identify under what conditions they would anticipate regional disintegration to occur and to observe to what extent these conditions presently exist. Several strands of theoretical literature can be distinguished:

Realist theories, of which the US international relations scholar, John Mearsheimer, is one exponent, tend to predict the collapse of the EU as a consequence of the end of the Cold War, the demise of the Cold War blocs, the withdrawal of US troops from Europe, and the re-emergence of traditional competition between regional big powers in a multipolar Europe.

Actor-centered institutional analyses, such as that of Fritz Scharpf, who compares the EU with (other) federal political systems, are implicitly sceptical as to the EU's prospects, in so far as they expect the EU's institutional arrangements to produce either illegitimate policy decisions or suboptimal ones that are increasingly poorly adapted to the issues that they are intended to address.

For their part, international relations institutionalists, such as Robert Keohane, anticipated when the Cold War ended, that the EU would grow stronger – but only provided that member states continued to have common interests and that there was or were still, hegemonic powers supporting it.

Historical institutionalist theories, as developed, for example, by Paul Pierson, argue that, over time, the EU has grown ever deeper roots, with ever more punitive 'exit' costs making disintegration increasingly improbable, at least in the absence of a

generally externally-induced crisis or 'critical juncture'.

Liberal intergovernmentalism, the theoretical stance of the later Moravcsik, is implicitly very optimistic about the EU's survival prospects, as the high level of economic interdependence between European states, including the largest ones, leaves them, as Moravcsik has recently written, 'no choice but to cooperate'.

Neo-functional-cum-transactionalist theories – exemplified by the work of Stone Sweet and Sandholtz – are the most 'optimistic' of all, in so far as in this view a 'self-sustaining dynamic of institutionalisation' has developed that makes European integration impervious even to severe economic crises that could reduce intraregional levels of economic exchange and interdependence.

These competing theoretical perspectives thus divide roughly into two groups. Short of an unanticipated process of de-institutionalisation, a collapse of economic interdependence in Europe, or a deep crisis that destroys the EU's 'very sticky' institutional arrangements, neo-functionalists, transactionalists, liberal intergovernmentalists and historical-institutionalists all minimise the risk of European disintegration. Actor-centred and international relations institutionalists and, more so, classical intergovernmentalists – not to mention realists, whose scenario of a collapse of NATO and US military withdrawal from Europe, however, shows little sign of materialising – are at least implicitly more circumspect about the EU's future. They view European integration as a rather more contingent phenomenon, dependent on the scope of member states' common interests and/or the extent of hegemonic leadership and the convergence of interests between the EU's big powers.

Which of these two fundamental perspectives on the EU's future is history more likely to verify? Comparative analysis – comparing contemporary with past EU politics and Europe with other regions – points to European integration being a more contingent and therefore more reversible process than that portrayed by the most 'optimistic' theories.

Rooted as much of it is in the analysis of international relations and Cold War (pre-1989) Europe, much integration theorising has neglected to absorb the extent to which in the last two decades, and especially since the turn of the century, the old 'permissive consensus' that provided a benign context for national political elites to forge closer integration and insulated EU decision-making from mass political pressures, has collapsed. Growing volumes of intraregional exchange and levels of political integration have not fostered a corresponding growth of a common European political identity.

As, in the post-Maastricht era, the EU has become associated with economic crisis and austerity, popular support for the EU has waned, closer European integration and EU enlargement have become more controversial, and national-populist political movements have prospered in numerous member states. They increasingly constrain member governments' leeway in EU negotiations, as do also growing pressures on member governments to legitimise steps towards closer integration in popular referenda and protests and strikes against EU-mandated austerity policies. Nonetheless, the growing 'revolt of the periphery' shows no very serious sign yet of derailing European integration. The theoretical 'optimists' may well be right in respect of these states in arguing that they have no real choice but to 'cooperate' in and with the EU.

Comparing Europe with other regions suggests that it is at the 'core' or 'centre' that the European integration process may be most vulnerable. Contrary to what neo-functional-cum-transactionalist analyses imply, there is no close correspondence between levels of intra-regional trade and political integration. Various regions, including East Asia and North America, exhibit levels of intraregional trade that are not very much smaller than that in Europe, but they are nowhere nearly as closely politically integrated. Europe's singularity in respect of political integration is attributable primarily to the fact that with Germany it has a big power that has strongly and consistently supported the creation of a quasi-federal regional state.



The Federal Republic has played one of the two classic roles of a hegemonic power in the EU – that of regional paymaster. Without its financial largesse as the biggest contributor to the EU's budget, the EU that we know today would not have developed. In the past, Germany did not provide a consistent focal point for EU policy – the other defining trait of a hegemonic power. However, as the Euro crisis has progressed and the financial demands on Germany to 'rescue' the Euro have mounted, Berlin has increasingly shed its reserve in this regard, making it more genuinely and visibly 'hegemonic' than previously.

The proverbial \$64,000 question for the EU and European integration is whether, in the long run, Germany will remain 'pro-European'. Successive German governments and political leaders have acted on the conviction that a politically integrated Europe was in both Germany's economic and political interests, as it secured Germany's unhindered

access to its most important markets and served to avert the danger of Germany's diplomatic isolation and a potentially disastrous return to traditional 'balance-of-power' politics on the continent. This remains the case today. Although 'anti-European' or 'Euro-sceptical' sentiment has grown in Germany, both at the level of public opinion and that of business, judicial, media and political elites, the current federal government is less vulnerable to these pressures than many of its counterparts in the EU, as the principal opposition parties are more 'pro-European' than those in the governing coalition and there is still no credible German 'anti-European' political party.

This political constellation could change, however, in the future, while, economically, Germany may become also become less dependent on European markets. In so far as Germany's commitment to, and engagement in, the EU may wane, a scenario in which the EU begins to disintegrate cannot be completely excluded.

## Comparing the New Zealand and UK referendums on electoral reform

**Prof Charles Lees**  
University of Bath, SEI Visiting Fellow

My current research project represents a new departure for me, in that it is only tangentially linked to 'European' issues and there is no substantive role for Germany within it, as either a paradigmatic example or – as was the case with my earlier work on (the lack of) party-based Euro-scepticism in Germany - as a 'control' or 'negative' case alongside more fruitful country case studies. I am carrying out this research with Jonathan Olsen (University of Wisconsin-Parkside).

Our research compares and contrasts two sets of referendums on electoral reform: in New Zealand in 1992/3 and in the United Kingdom in 2011. We ask why the referendums in New Zealand ended in the successful replacement of the country's First-Past-the-Post (FPTP) system with a Mixed Member Proportional (MMP) system whilst the single



referendum in the UK on replacing FPTP with an Additional Vote (AV) system failed. We do this through a comparative analysis of (1) public opinion; (2) the positions of the main political parties on the proposed changes; and (3) the procedures leading up to the

referendum(s) in the two countries.

### Significance

This research is important because the UK Coalition's referendum on electoral reform was so badly lost; a defeat that was humiliating in its totality, with even the South-West of England and Scotland

- regions that the Liberal Democrats (the main proponents of AV) consider to be their *de facto* heartlands - rejecting the proposition.

The defeat of the AV referendum has put back the case of electoral reform for a generation. This will have profound consequences for the direction of British politics for years to come. This is because electoral systems have a concrete impact on party systems, at both a structural level and also in terms of the cognitive effects those structural attributes have on electors and political parties alike. Our research shows that there is a clear relationship between the degree of disproportionality of the electoral system and the effective number of parties. It should be pointed out here that AV is not a proportional system and the only major democracy that uses AV (Australia) is to be found in the centre of the scatterplot, with relatively few effective parties. By contrast, First-Past-the-Post (FPTP) systems (the UK, Grenada, St Vincent and the Grenadines, etc) are to be found at the right-hand side of the plot (signifying few effective parties and a relatively disproportionate system), whilst the various PR systems can be found towards the left-hand side of the plot. Incidentally, the two MMP systems of New Zealand and Germany (OK, I have mentioned it!) are to be found towards the left hand side but yielding fewer effective parties than true proportional systems such as Israel or Belgium.

These structural attributes can also generate cognitive effects that amplify the impact of party systems. More than half a century ago, Maurice Duverger explored this impact and in particular assessed how Plurality/Majority systems foster 2-party/2-party dominant systems because they create an incentive structure in which small parties 'fuse' with other small parties and voters 'discount' and eliminate small parties. This so-called 'Duverger's Law' has been criticised on empirical grounds, not least because we know that there are many instances – such as in New Zealand - in which changes in party systems precede changes in electoral systems, contrary to Duverger's narrative.

The key analytical point to be made here is that a country's choice of electoral system is not a tech-

nical one but rather highly political and, once in place electoral systems are notoriously difficult to change. As Taagepera and Shugart observed: 'electoral systems do not arise from a vacuum but from political debate and struggle. They mirror the politics of the time of their creation and are altered when politics change to the point where the existing electoral system becomes too restrictive' (Taagepera and Shugart, 1989: 234). Thus, in the UK there has been strong resistance to change, characterised by the ultimate failure of the 1993 Plant Commission or the 1998 Jenkins Report. However, any student of UK politics will tell you that FPTP is not as entrenched as one might think. Up until 1885 most parliamentary seats were two member seats and some such seats remained until 1950 and, after the recent wave of devolution in the UK, other systems now operate in Scotland, Wales, Northern Ireland, and London.

### Preliminary Findings

Our preliminary findings are that there were similarities between the cases in terms of the initial state of public opinion in the two countries and also the positions of the main political parties on the proposed changes. Where we found significant differences was in the procedures leading up to the referendums in the two countries. In New Zealand, political elites set up a Royal Commission on Electoral Systems (RCES), made up of expert opinion drawn from the civil service and – crucially – academia. As Nagel observes the RCES 'were not initially advocates of proportional representation but they embarked on a thorough enquiry, carried out a systematic analysis, and did not hesitate to draw a radical conclusion ..... from the viewpoint of most [party] leaders they became, in effect, a runaway commission' (Nagel, 1994: 526). As a result, although a subsequent Parliamentary Select Committee on Electoral Law report defended the plurality system, the path to a referendum was set. As Vowles points out, even after a change of government, it was 'hoped to blunt the edge of change with a referendum they were confident would confirm the status quo, given their control of the process of definition. Too late, established political and business elites realised the danger' (Vowles, 1995: 113).

In the UK, no attempt was made to establish a corpus of analysis that might inform the referendum and the subsequent quality of debate was lamentable. As a result, the 'status quo bias ... is likely to be strong if people do not understand or are not engaged' (Whiteley et al, 2011: 19).

So why did the Liberal Democrats make such a hash of the referendum? We argue that one should reverse the polarity of the analysis and ask not 'what did the Liberal Democrats do wrong' but rather 'what did the Conservatives do right?' As Austin Mitchell MP observed 'The coalition is like merging the Parachute Regiment with a Brownie pack – it's bound to be messy'.

Thus, the New Zealand process was characterised by a higher quality of political information, with a sequence of two referendums with increasing

turnout from 55.2 per cent in 1992 to 85.2 per cent in 1993. By contrast, the 2011 AV referendum in the UK was a poor advert for the quality of UK political debate, with a low quality of political information, leading to a single referendum with a low turnout of 41.9 per cent. But our point is that this was *exactly* how the Conservatives wanted it. In New Zealand, political elites unleashed a process of deliberation over which they lost control. In the UK, no such process took place. The Conservatives, as the defender of the status quo position, outmanoeuvred their Liberal Democrat coalition partners and bounced them into fighting a referendum based on a lack of deliberation and a proliferation of misinformation. Under such circumstances it is almost inevitable that the referendum was lost. To borrow Mitchell's imagery, this was a victory for the Parachute Regiment and one of many tactical defeats for the Brownies.

## Is the EU really much healthier than you think?

**Dr Michael Shackleton**  
SEI Visiting Practitioner Fellow  
shackletonuk@gmail.com

It is now not much more than two years since the Lisbon Treaty came into force and I am struck by how outdated much of the discussion at the time now seems. For many the arrival of the treaty marked a welcome moment when the EU could stop 'institutional navel-gazing' and start concentrating on facing up to the many policy challenges faced by Europe. The debate about the shape of the institutions which had dominated so much of the agenda from Nice to Lisbon via the constitutional convention was widely seen as a diversion which could now be happily set aside to allow serious business to begin.

In fact, the intervening two years have shown that the institutional debate in the EU is not an irksome diversion. Rather, it is a fundamental reflection of the balance of forces across Europe, a balance that is constantly being challenged by those who perceive it as inadequately reflecting their interests. Moreover, new challenges are proving to be the source of fresh institutional debates that are an integral part of the search for policy solutions.

There are those who may doubt the ability of the institutions to solve the present problems facing the EU - it is even claimed that the present structure has outlived



its usefulness - but there is no questioning the ingenuity that is being employed to find ways out of the difficulties that all the member states and the institutions are confronted with.

To illustrate the idea of the institutions as the battleground of ideas about the nature of the EU, I will give you four examples to consider. First, look at the contrasting fortunes of the two posts that were specifically created by the Lisbon Treaty, the President of the European Council and the High Representative for Foreign Affairs and Security Policy. Most saw the first of these as a helpful way of improving the organisation of the European Council, but placed much greater stress on the potential of the second, a post whose creation was accompanied by the establishment of a substantial European External Action Service.

In fact, we have discovered that creating an institution is not the same as ensuring that it will work. As the Finnish foreign minister pointed out earlier in March, the commitment of the member states to work together on foreign policy is arguably less than it was before Lisbon, quoting as an example UK opposition to the creation of a command centre in Brussels for EU military opera-

tions.

By contrast, the role of the Herman Van Rompuy has developed in ways that could not have been imagined two years ago, despite his much more limited resources. Instead of three or four meetings of the European Council per year, we have had nine, including eurozone summits, in 2011. These meetings have been crucial in brokering deals on how to deal with the financial crisis and in which the President has been able to play a critical role in finding solutions. The institutional role has filled out in a way that could not have been imagined two years ago and is in stark contrast to the position of the High Representative.

Second, we have seen how difficult it is for a member state to block further institutional change where enough member states think it is worthwhile. The December veto of the proposed treaty changes relating to fiscal discipline by David Cameron – no doubt concerned by the difficulty of getting such changes through the UK parliament – did not prevent 25 of the 27 signing an intergovernmental treaty on 2 March incorporating an obligation to keep national budgets in balance or in surplus, with financial sanctions for those failing to respect the treaty's provisions. Moreover, unlike a normal treaty change, it does not require the agreement of all the member states to be ratified. It will come into force once it has been ratified by 12 of the 17 eurozone states.

And the signatories have also agreed that the substance of the treaty should be incorporated into EU law within five years, opening the prospect of a difficult discussion with the UK after the next general election. So not only did Lisbon not constitute the end of institutional innovation but member states were willing to go far beyond its provisions to seek to ensure that the euro could survive with all of its present members. Political determination was reflected in institutional development of a dramatic kind.

Third, Lisbon contains the new provision whereby the European Council will propose a candidate for President of the European Commission, 'taking into account the elections to the European Parliament'. Such a phrase might be interpreted simply as an injunction to the Heads of State and Government to choose someone from the political family that won the most seats in the Parliament.

This is, after all, effectively what happened in 2004 and 2009 with President Barroso. However, the main European political parties represented in the Parliament have interpreted this as an encouragement to go further and to propose candidates for the post of Commission

President in advance of the 2014 elections, with the candidate defending a particular manifesto and being ready to engage in political debate in the run-up to the elections.

There are plenty of sceptics about the potential success of such an approach to improving turnout at the EP elections – will national parties, for example, be willing to choose, and then accept to campaign for, someone of a different nationality? – but the central point is that the process of institutional change continues even when a treaty is signed. Institutional provisions are open-textured and do not prescribe the direction of change: it is for political actors to decide how to take them forward.

Finally, the Lisbon Treaty reflected very different conceptions of what it means for the EU to become more democratic. Defenders of the European Parliament can look to the improved role of the Parliament in legislative and budgetary decisions, whilst national parliamentarians can draw attention to the recognition – for the first time – that they should be enabled to take an active part in the legislative procedure of the Union.

However, the Treaty also offered a small opening for a more direct form of democracy in the shape of the European Citizens' Initiative, which formally came into being on 1 April of this year. Here is the opportunity for a million people from a quarter of the member states to invite the Commission to present a legislative proposal. There are plenty of ideas out there, ranging from calls for a work-free Sunday to the legalisation of gay marriage throughout the European Union (have a look for yourself at [www.initiative.eu](http://www.initiative.eu)).

No-one knows whether this will work or whether it will create a high level of frustration at initiatives that are blocked by a recalcitrant Commission or a Parliament eager to protect its own prerogatives as a law maker. However, the point is precisely that institutional design does not resolve differences; rather, it opens the way for new arguments about how power should be distributed in the EU.

No-one should be surprised that Lisbon did not end the institutional argument in the EU. Rather, we should acknowledge that this argument reflects the continuing differences of view across Europe about what the Union should become. If the argument had indeed ended, the situation would be much more serious: it would suggest that no-one cared or that no-one was in a position to change a sclerotic polity. For the moment, both these scenarios seem far away: the EU remains in rude institutional health.

## Is a New Political EU Landscape Emerging in the Wake of the Euro-area Crisis?

**John Palmer**  
**SEI Visiting Practitioner Fellow**  
**John.Anthony.Palmer@gmail.com**

As the financial storms generated by the crisis in the euro-area subside – for the time being at least – are the outlines of a new political landscape in both the euro-area and the wider European Union gradually taking shape? Questions remain about the capacity of all 17 Member States in the euro-area to meet the tough economic challenges involved in continuing participation in the euro. But a remarkable politicisation of the European integration process now seems to be underway.

The emerging structure of euro-area governance – for which 25 of the 27 existing EU governments have already signed up – remains a work-in-progress. But a major transfer of national sovereignty over key areas of economic policy to a shared sovereignty at the European level has been agreed. The transitional legal character of the new Stability Pact – as an ‘Inter-governmental Agreement’ outside the EU Treaties – cannot disguise the enhanced role given to the European Commission, the European Court of Justice and the European Parliament.

This process will have to be taken further before the ambitious goal of a ‘European Economic Government’ becomes reality. It is still possible that the new phase of integration might yet be halted or seriously reversed if sustainable economic growth proves illusive. Recession or protracted economic stagnation could still undermine the fiscal rectitude demanded by the new Pact and the possibility of another financial market tsunami which could eventually tear the euro-area apart cannot be totally excluded.

That said, less attention has been paid to the way in which the crisis is profoundly politicising the entire EU/euro-area decision making process. The euro-area economic governance changes and the related structural economic reforms have impact-

ed profoundly on public awareness of EU affairs. However unpopular some of these measures, EU decision-making can no longer be regarded as of marginal or esoteric political significance.

An EU-wide political debate has already begun on whether and to what extent the EU/euro-area should counter-balance Fiscal Compact austerity with a strategy for economically, socially and environmentally sustainable growth. The conservative Council majority now faces a challenge to austerity orthodoxy from mainstream oppositional social democrat and Green parties – as well as the radical left.

The rising political temperature was reflected in the refusal of Chancellor Merkel and Prime Minister Cameron to meet the French socialist Presidential candidate, François Hollande, who insists on renegotiating the Fiscal Compact to strengthen the commitment to jobs and sustainable growth. But after next year’s German election, Berlin will probably have to lean in the same direction, even if the election does not result in an SPD/Green coalition, which is something even now debated in the Netherlands.

These developments may prefigure a wider political conflict within the Council of Ministers over the policy direction which should be taken by the new European economic governance. Voters in the next European Parliament election may be faced with real political choices for the first time as a result of the more politicised debate at the EU/euro-area level. Meanwhile, unease at the inadequate democratic accountability of the new system of euro-area economic governance demands are encouraging new demands for the election of both the next President of the Commission *and* even the President of the European Council.



## Activities

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Each short-listed candidate will be invited for a 20-minute interview; these will be conducted either in person or by telephone. The one condition of the scholarship is that the student devotes at least part of their MACES studies to the central issues and themes of European integration.

**For all enquiries:**

**Dr S. Collard**  
**s.p.collard@sussex.ac.uk**

## Next edition of EUROSCOPE

If you would like to contribute a piece to the Features section, or write about your research or a relevant event, then please contact the editors and submit your article by the 1st September 2012: email the team at: [euroscope@sussex.ac.uk](mailto:euroscope@sussex.ac.uk).

