

# Transnational Law Institute

## In This Newsletter

[TLI Think! Papers](#)

[Contesting Globalisation lectures](#)

[Recent events](#)

[Upcoming events](#)

[Additional activities](#)

## Contact us

For further information on the Transnational Law Institute please contact [tl@kcl.ac.uk](mailto:tl@kcl.ac.uk)

Follow us on twitter

[TLIKings](#)

## Transnational Law Institute Newsletter

January 2017

The Dickson Poon School of Law, King's College London

## Recent TLI Think! Papers



The TLI Think! Papers Series covers a broad range of methodologies and topics of transnational legal scholarship. The papers are published electronically and are freely available online or through email distribution. The most recent TLI Think! Papers are:

- ['Reading RP Anand in the Postcolony: Between Resistance and Appropriation'](#) by Prabhakar Singh
- ['Sovereignty'](#) by Guglielmo Verdirame
- ['Abortion in Latin America in International Perspective: Limitations and Potentials of the Use of Human Rights Law to Challenge Restrictions'](#) by Natalie Sedacca
- ['The Rule of Law, Legal Pluralism, and Challenges to a Western-Centric View: Some Very Preliminary Observations'](#) by Peer C. Zumbansen

The TLI Think! paper series [is online at SSRN](#) and can be subscribed to [here](#). The series is edited by [Dayan Farias-Picon](#), TLI Research Fellow, and [Professor Peer Zumbansen](#), TLI Director.

## Contesting Globalisation (post-Brexit) - Transnational Law Signature Lectures



*Report written by PhD Candidate and Transnational Law Institute Research Fellow Laura Knopfel.*

After the electorate's decision on 23 June 2016 that the UK should withdraw from the European Union, Nigel Farage, head of the anti-EU UK Independence party articulated that 'the Eurosceptic genie is out of the bottle and it will now not be put back'. Further, he predicted that the 'EU's finished, EU's dead'. This term's Signature Lectures were dedicated to this life-changing event, its causes and its implications for the UK, Europe and beyond. The most renowned, critical minds examined in their lectures the nature, origin and appearance of the 'Eurosceptic genie' and explored possible futures for the European project. Thereby, the lectures addressed some of the most pressing problems of today's globalized world: Economic, political and social marginalization; fast growing inequalities and on-going disenfranchisements; lack of political accountability and legal legitimacy. Amid the series, Donald Trump was elected as president in the United States, which once more revealed the lectures timely enquiries into manifestations of 'globalization and its discontents'.

The Signature Lectures took off with Professor Guy Standing (SOAS) presenting his new book on the Corruption of Capitalism: Why Rentiers Thrive and Work Does Not Pay. Professor Standing situated his description of 'the precariat', a class in the making that is defined by insecure and instable working conditions, into the current global transformation - the painful construction of a global system characterized by rentier capitalism, weakening power of labour, stagnating wages and mounting private debts. Whilst work is no longer a way out of poverty, rentier capitalists' income stems from (unproductive) rents on assets. Today's institutional structure favours rentiers: Wealth taxes are lower than income taxes, 'the commons' such as public parks, water supply and services get privatized and corporations benefit from intellectual property rights and free trade agreements. Professor Standing calls for entirely new systems of income distribution, which would consist of an unconditional universal basic income and democratic wealth funds.

The second lecture was delivered by Professor Daniel Drache (York University, Toronto). He examined the causes and effects of the current anxieties and public resistance to the 'third generation free trade agreements' - CETA, TTIP, TPP - manifested in the initial Belgium's Wallonia rejection of the trade deal between the European Union and Canada. Following Guy Standing's thoughts on an emerging class of people in precarious working conditions,

Professor Drache locates part of the anxieties in the worry that free trade agreements would lead to higher unemployment (due to the pressure of hyper competitiveness and to the burden of adjustment), impose new rules and regulations on governments, granting corporations a charter of rights whilst not protecting public services. Brexit exemplifies this deep skepticism about the benefits from the free trade system. According to Professor Drache, this creates a complicated problem for the Europe Union as these new free trade deals constitute 'mixed agreements', therefore requiring the approval of all national parliaments.

In the third Signature Lecture, Professor Wolfgang Streeck (Max Planck institute), launching his new book, asked not when but How Will Capitalism End? He argued that since capitalism had a beginning it has as well an end; the questions is when and how. The institutions of neoliberalism have undermined and thus 'disembedding' capitalism from its necessary governance by democratic, stable structures. As a victim of its own excess, neoliberal capitalism is in slow decay, a process of disorientation, social disintegration and great uncertainty in which the most bizarre things such as Donald Trump's election can happen. Related and thinking about the relationship between capitalism and democracy, Professor Streeck argued that neoliberal regimes, ungoverned by democratic procedures, produced a growing group of people excluded from social, political and cultural life.

Professor Kenneth Armstrong (University of Cambridge) in the fourth lecture of the series discussed one of Brexit's key challenges; how to match the effects, the outcome of the negotiations with the European Union, with the perceived causes? Or in other words: How to reconcile economic internationalism with political nationalism? Although the causes for the decision to leave are multiple (new nationalism, migration, austerity, globalisation and free trade), Professor Armstrong emphasized that the outcome was only narrow from a nation-wide perspective since the effects of de-industrialization, non-human manufacturing processes, migration of low skilled workers and cheap non-EU imports were experienced very differently across the UK. At the end, he discussed several options for a post-Brexit UK which range from an association agreement with an inclusive trade and political cooperation arrangement over a sector by sector approach to a comprehensive free trade agreement.

Professor Joseph Weiler (EUI and NYU) concluded this term's Signature Lectures. Professor Weiler reflected on the meta-state of democracy. Three long-term processes that started after the Second World War have been shaping the current spiritual crisis of Europe: the present form of democracy is an impoverished one, a European demos and patriotism - the very foundations of democracy - are absent. Further, social relations have turned into a primarily rights-based discourse. The self-centered individual figures prominently which thwarts a political narrative of normativity and duties. Lastly, secularization has contributed to this disappearance of a discourse focusing on individual

responsibilities towards the society. These processes rupture de facto solidarity and hinder the construction of a multinational demos which were to be embedded in a community of faith.

## Recent events

### SIGNATURE LECTURE: HOW WILL CAPITALISM END?

Professor Wolfgang Streeck, Emeritus Director, Max Planck Institute for the Study of Societies

09/11/2016

Today, capitalism is in a critical condition. Growth is giving way to secular stagnation; inequality is leading to instability; and confidence in the capitalist money economy has all but evaporated. Capitalism's shotgun marriage with democracy since 1945 is breaking up as the regulatory institutions restraining its advance have collapsed, and after the final victory of capitalism over its enemies no political agency capable of rebuilding them is in sight. Instead, we are facing at least five worsening disorders for which no cure is at hand: declining growth, oligarchy, starvation of the public sphere, corruption and international anarchy. The lecture's central question is whether we are witnessing a long and painful period of cumulative decay: of intensifying frictions, of fragility and uncertainty, and of a steady succession of normal accidents - and what can be done about it.

Professor Streeck's lecture can be viewed [here](#).

Professor Peer Zumbansen's interview with Professor Streeck is online [here](#).

### ARBITRAL LAWMAKING AND STATE POWER: AN EMPIRICAL ANALYSIS OF INVESTOR-STATE ARBITRATION

Professor Alec Stone Sweet, National University of Singapore

14/11/2016

This Transnational Law Institute Colloquium presented the results of a research focusing on (i) arbitral lawmaking, conceived as the development of precedent-based frameworks of argumentation and justification, and (ii) state responses to that lawmaking, as registered in subsequent treaty-making.

### BREXIT AND FREE TRADE: CAUSES AND EFFECTS

Professor Kenneth Armstrong, University of Cambridge

23/11/2016

The aftermath of the UK's referendum vote to leave the European Union has been dominated by uncertainty as to what 'Leave' really means. At the heart of this uncertainty are competing visions of the UK's future trade relationship with the EU and its Member States. More particularly, much has been made of an apparent difference between 'accessing' the EU Single Market and 'membership' of the Single Market. But as the UK seeks to define and negotiate a new trading relationship with the EU, 'Brexit' itself dramatizes deeper debates about the nature and conduct of global free trade. The issue is not merely one of which model the UK should, or could, adopt, but also what these models tell us

about the possibilities for, and limitations of, ordering trade relations in the world on a regional, bilateral, multilateral or sectoral basis. At the same time, the politics of trade is itself increasingly under the spotlight. In the UK's referendum and in the US Presidential election, Left and Right politics each displays conflicting views about the value of, or threat from, free trade. The argument that underlies the lecture is that while Brexit is a phenomenon to be studied, it can only be understood in terms of the wider law and politics of global free trade.

Professor Armstrong's lecture can be viewed [here](#).

An interview with Professor Armstrong by TLI Research Fellow and PhD Candidate Laura Knopf is online [here](#).

#### THE DEFENCE BEFORE INTERNATIONAL CRIMINAL TRIBUNALS

24/11/2016

On the occasion of the Fourth Meetings of Defence Offices at the International Criminal Courts, a panel discussion was held, hosted by Dr Nicola Palmer (The Dickson Poon School of Law, King's College London) and moderated by Dr. Mark Ellis, Executive Director of the International Bar Association. The panel consisted of Ms Roula El Derbas, Acting Chef de cabinet of the Defence Office of the Special tribunal for Lebanon, Mr Iain Edwards, Barrister (England and Wales), former defence counsel at the ICTR and STL, Ms Catherine Mabile, Lawyer at the Paris Bar, former defence counsel at the ICTR and defence counsel at the ICC and Mr David Hooper QC, Barrister (England and Wales), President of the ICC Bar Association.

#### READING LAB: THE GLOBALIZATION PARADOX

30/11/2016

During the current academic year, the Reading Lab is hosted by the Transnational Law Institute in collaboration with the International Development Institute at King's College London. Accompanying the Reading Lab is a Transnational Law LL.M. module of the same title at The Dickson Poon School of Law, which is cross-listed to the International Development Institute and the Department of War Studies. At this session, the group discussed Dani Rodrik's 'The Globalization Paradox' (2011).

#### TLI SIGNATURE LECTURE: EUROPE AS A SPIRITUAL CRISIS

Professor J.H.H. Weiler, University Professor at NYU Law School and Senior Fellow at the Center for European Studies at Harvard.

01/12/2016

The current European crisis -- from 2008 to Brexit -- is typically described in redistributive terms (winners and losers in globalized markets) or as a failure of governance institutions -- democracy deficit, Taking Back Control etc. There is considerable truth in these characterizations. But there are, too, other deeper long term processes, several unconnected to the Integration Project which have had a deep impact on the anthropology and sociology of the European circumstance -- on the self-understanding of the self and society. These factors provide an additional -- spiritual -- dimension to our understanding of the crisis, of potential

importance because not easily addressed by redistributive policies or institutional re-engineering.

Professor Weiler's lecture can be viewed [here](#).

#### READING LAB: BANANAS, BEACHES AND BASES

18/01/2017

At this session of the Reading Lab, the group discussed Cynthia Enloe's 'Bananas, Beaches and Bases: Making Feminist Sense of International Politics' (2014).

#### TLI SIGNATURE LECTURE: POST BREXIT: ESCAPE FROM THE ECONOMISED SOCIETY

Professor Michelle Everson, Professor of European Law in the School of Law, Birkbeck and Assistant Dean for Programme Development

24/01/2017

This lecture addressed populism and anti-cosmopolitanism in the post-Brexit era, arguing that a core cause of current malaise is a crisis within economic liberalism. The concept of Neo-liberalism was evolved in the 1930s, not only to defend the liberal market and its constitution, but also to act as a bulwark against the Europe of the dictators. Modern economic liberalism, by contrast, has lost its founding mission and normative outlook. In this setting, the urgent task for a (liberal) political right, but also for a political left, is one of identifying an escape from *societas economicus* through the refounding of economic liberalism within society, politics and the constitution

An interview with Professor Everson by Farnoush Ghadery, TLI Research Fellow and PhD Candidate is online [here](#).

### Upcoming events

#### TLI SIGNATURE LECTURE: EUROPE'S CRISIS OF LEGITIMACY: GOVERNING BY RULES AND RULING BY NUMBERS IN THE EUROZONE

Location: SW1.17 Somerset House East Wing

When: Today (18:00-19:30)

Registration URL <http://bit.ly/2dclRz6>

Speaker: Vivien A. Schmidt, Jean Monnet Professor of European Integration, Pardee School of Global Studies, Boston University  
Although 'Brexit' and the refugee crisis have grabbed the headlines, the Eurozone crisis continues to be of major concern for the European Union. The Eurozone's comparatively poor economic performance and increasingly volatile politics have combined with the governance processes focused on 'governing by the rules and ruling by the numbers' to generate a crisis of legitimacy. Prof. Schmidt theorizes about this legitimacy crisis in terms of 'output' policies, 'input' politics, and 'throughput' processes. She argues that in response to such problems, EU institutional actors-ECB, Council, Commission, and EP-all incrementally reinterpreted the rules and recalibrated the

numbers 'by stealth,' that is, without admitting it in their public discourse. To theorize about such processes of ideational innovation and discursive legitimation during the Eurozone crisis, Prof. Schmidt uses the neo-institutionalist framework of discursive institutionalism.

**TLI SIGNATURE LECTURE: REFUGEE FLIGHT AND MOBILITY: LESSONS FROM THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGES THEN AND NOW**  
Location: SW1.17 Somerset House East Wing  
When: 08/02/2017 (16:30-18:30)  
Registration URL <http://bit.ly/2j52uMA>

Speaker: Cathryn Costello, Andrew W. Mellon Associate Professor in International Human Rights and Refugee Law, at the Refugee Studies Centre (RSC), Oxford, with a fellowship at St Antony's College.

By definition, refugees are outside their country of nationality. Their flight generally takes them across many borders, but increasingly that flight and onward movement are suppressed. This talk will examine the Refugee Convention's approach to refugee mobility, considering in particular Article 31, the provision whereby States parties not to penalize refugees for their illegal entry or stay. The lecture will explore how the drafters of the Convention envisaged refugees' flight and search for protection in a bordered world, and survey contemporary state practice interpreting and applying this provision.

**READING LAB: COLONIALISM IN QUESTION**  
Location: SW1.18 Somerset House East Wing  
When: 15/02/2017 (18:00-20:00)  
Registration URL <http://bit.ly/2gflSpJ>

This Reading Lab text is Frederick Cooper's 'Colonialism in Question: Theory, Knowledge, History' (2005). Background Text (recommended): Mark Mazower, 'Governing the World. The History of an Idea' (2012).

**TLI SIGNATURE LECTURE:THE APPEAL OF INDEPENDENCE EUROPE'S WAY OF POLITICAL LEGITIMACY**  
Location: SW1.18 (Somerset House East Wing) Strand Campus  
When: 01/03/2017 (16:30-18:00)  
Registration URL <http://bit.ly/2hUI5b1>

Speaker: Professor Antoine Vauchez, Université Paris 1  
The current polymorphous crisis of the 'European project' commands that we question once again what has been up to now Europe's own specific form of government. Bringing together recent streams of scholarship in historical sociology, critical legal scholarship and political science, the talk will suggest a renewed narrative of EU polity-formation, whereby 'independence' and 'expertise' form the very terrain on which Europe's political capacity and specialised form of authority have been shaped, staged and consolidated. Scholars generally agree that institutions

'independent' from the political are an ubiquitous and pervasive feature of EU polity. The critical role of the European Court of Justice, the salient position of the European Central Bank and of the Commission (particularly its powerful and quasi-autonomous DG Comp) or the more recent blossoming of regulatory agencies have exemplified an overall process of delegation of governmental functions to institutions put at distance from direct political and electoral 'pressures'. Yet, most accounts of this 'rise of the unelected' have stuck to sector-specific explanations providing idiosyncratic reasons for the 'functionality' of statutory independence in the different judicial, monetary, executive branches of EU government. As a result, we still fail to grasp the deep and cross-sectorial entanglement between 'independence' and the 'European project'. This paper suggests that we recognize EU historically-rooted idiosyncrasy and adapt our democratization strategies accordingly by addressing the conditions under which the independents could be integrated into Europe's public sphere and be opened to more democratic responsibilities. Insofar as the 'independents' are the keystones of the European edifice, any major overhaul of the political union should therefore prioritise the bid to develop new forms of democratic connections with the various institutions that make up Europe's tricephalous independent branch.

## **Additional news**

The TLI was an organising partner of the 4th edition of the [Law and Social Sciences Research Network Conference](#), in December in New Delhi. Professor Peer Zumbansen spoke on "Before, Behind and Beneath the 'Case': Reversing the Jurisprudential Perspective on Legal Reasoning". In addition, a Transnational Law Institute Featured Roundtable was held on the theme of "Voice - Intervention - Connection".

Dr Holger Hestermeyer Appointed Specialist Advisor to House of Lords Sub-Committee - [report](#).

Professor Satvinder Juss contributes to Women & Equalities Select Committee Inquiry on Brexit - [report](#).

Transnational Law LLM Graduate scoops up a merry number of academic awards - [report](#).

Dr Octavio Ferraz [wrote](#) on 'Moving the Debate Forward in Right to Health Litigation'.

Dr Eva Pils was [interviewed](#) by the *Washington Post* on developments in China's legal system.

Stephen Minas [interviewed](#) Sharon Turner, European Climate Foundation & Jake White, Friends of the Earth on the topic of 'What lawyers can do about climate change'.

King's College London, Strand, London, WC2R 2LS United Kingdom