The Impossibility of Disentangling Integration:

Post-Referendum and Pre-Brexit Contestations

Antje Wiener

University of Hamburg and Lauterpacht Centre for International Law, University of Cambridge (email: antje.wiener@wiso.uni-hamburg.de)

Chapter for publication in: Outhwaite William: *Brexit: Sociological Responses*, London: Anthem Press (in preparation)

The Impossibility of Disentangling Integration:

Post-Referendum and Pre-Brexit Contestations

"**We make this report for debate**."

House of Lords (2016: 3; emphasis in original text)[1]

Introduction[2]

This chapter offers an analysis of the mid- to long-term effect of the Brexit referendum from the perspective of norms research in international relations theory and recognition theory. To that end, it focuses on key *contestations* about fundamental norms that have been at the centre of the debate following the referendum vote on June 23rd 2016, namely, fundamental human rights and sovereignty. It suggests that the contestations are *indicators* for potential mid- to long-term effects which the manifold debates about the referendum had on normative change both in the UK and, relatedly, in the European Union (EU). Contestations are defined as objections to norms. They are crucial for a society's normative structure of meaning, because contestations effectively mean the practices of 're-enacting normative meaning in use' (Milliken 1999): 132). Contestations obtain such a

[1] See: House of Lords, 2016: Report on *The Process of withdrawing from the European Union*, London: House of Lords, European Union Committee, HL Paper 138

[2] A first version of this chapter has been presented at the UACES annual conference at Queen Mary, University of London, 5-7th September 2016; the current version benefits from the discussions at UACES. Thanks for these helpful comments are extended towards all participants, and especially to Brigid Laffan, Amanda Hadfield, Geoffrey Edwards, Willie Patterson, Simon Bulmer, Thomas Christiansen, David Phinnemore and Cahal McCall. Additional thanks are extended to William Outhwaite for inspiration and editing.

central role for politics because they are conducted by a diversity of involved stakeholders (i.e. ranging from individual voters to government representatives) and therefore reveal the individual normative positions of individuals. As such, contestations are both indicative of the robustness of norms, and constitutive for the revision of norms. The argument developed in this chapter maintains that the referendum debate is therefore a welcome opportunity to recall where British and European stakeholders stand on fundamental norms. Two norms stand out in the debate between the vote-leave campaign and the vote-remain campaign (hereafter: leavers vs. remainers): the fundamental right of freedom of movement and sovereignty in parliament. The former represents one of the four freedoms of the EU; the latter is the principal right of democracy in Britain. The essay will present the argument about contestation and normative change and the related effects in three steps: *step one* presents the politico-legal and societal context of the UK within the EU, taking into account the four decades of European integration which the UK has shared with the other EU member states. *Step two* zooms in on the current scenario of normative meaning in crisis, with reference to two fundamental norm contestations in the UK. And *step three* derives preliminary conclusions from that analysis with regard to the next stage of post-referendum and pre-Brexit political debate in Britain.

Step One: The Context

Family Resemblances

> "Why do we call something a 'number'? Well, perhaps it has a direct-relationship with several things that have hitherto been called number; and this may be said to give it an indirect relationship to other things that we call the same name. And we

> extend our concept of number as *in spinning a thread we twist fibre on fibre. And the strength of the thread does not reside in the fact that some one fibre runs through its whole length, but in overlapping many fibres*."
>
> Wittgenstein (2005: 28; emphasis added)

Akin to Ludwig Wittgenstein's (Wittgenstein 2005 (1st ed 1953)) metaphor of a thread that gains its identity through the practice of twisting fibre on fibre, the European Union's identity has emerged through the practice of integrating member states. While the thread was spinning, new members were included, strengthening the thread through enlargements in 1973, 1981, 1986, 1990, 1995, 2004, 2007 and 2013, with the UK joining in the first enlargement in 1973, along with Denmark and Ireland. This identity persists, despite many contestations regarding the EU's democratic deficit and the legitimation of the EU's political role in light of them. If we stick with the metaphor of a thread, spun fibre on fibre, it bears the footprints of all members that participated in the practices of 'spinning' the European Union (EU) over time, through partaking in the multiple areas of integration. Many of these practices of integration have been overlapping, creating interfaces where norms have been re-enacted through the practices of the involved stakeholders to form common 'transnational' meanings (Wiener 2008). These meanings cannot be undone but require re-enacting to change. In the process, multiple areas in policy and politics have been changed to form common norms (standards, rules, principled procedures) through this practice. The result was the EU's *acquis communautaire*, i.e. the shared set of EU primary and secondary law. Given that law is generated through practice and always re-enacted within a given socio-cultural environment, it has been argued that this environment needs to be taken into account when assessing the robustness of a norm (Finnemore and Toope 2001). In the EU this environment is provided by the 'embedded *acquis communautaire'*

which comprises the result of EU law making at any time (Wiener 1998). Over more than five decades of a steadily growing practices of law making, the EU has become more than an international organisation of states. Despite its legal foundations as an – albeit considerably advanced and constitutionally sustained – international organisation (Craig and De Burca 1998), its socio-cultural foundations have long passed the stage of a 'naked' treaty.[3] In other words, it is impossible to withdraw from the EU like cancelling membership in a club. If anything, the Brexit debates stand to demonstrate why and how the long-time club vs. community debate among integration theorists comes down in favour of the community side.

> "Over the longer term, *disentangling* the UK from the substantial body of EU legislation which applies in the UK would be a massive task which would take many years to complete." (*Financial Times* 24 June 2016)[4]

Taking account of the past two months, a preliminary analysis of the public contestations which have been unfolding with regard both to the referendum's result and regarding procedures to be followed (i.e. political, regulatory and constitutional), the metaphor of a thread which is impossible to disentangle implies the following two scenarios. The *first* – retrospective – scenario suggests that instead of getting Britain 'back', the referendum result is likely to trigger a process of disentanglement with no completion date in sight,

[3] It is ironic that much of what the EU's quasi-constitutional quality entails today has been constituted through the practice of legal integration (Capelletti et al. 1986). The process reveals quite clearly how regulatory practices and cultural practices are interrelated and, as such, equally constitutive for political entities (compare Tully 1995). This is demonstrated by much of the regulatory practices of law making that have become closely intertwined with the cultural practices of everyday life. It is best revealed by the argument about 'European Citizenship' presented by the then Advocate General Miguel P Maduro in the *Rottmann* case (C-135/08 Janko Rottmann v Freistaat Bayern, judgment of 2 March 2010); see also Liste (2013).

[4] Judith Aldersey-Williams in: FT 24 June 2016; https://next.ft.com/content/81a4004e-3965-11e6-9a05-82a9b15a8ee7

despite the regulatory procedure stated in Article 50 TEU (more detail below). According to this scenario, the process following the required Article 50 procedure triggering Brexit will be complex and long-winded, if not cumbersome. As such it will be hard to follow, let alone understand, for those who are not directly involved. Given the anticipated duration and complexity, it should become a politician's nightmare, for voters will predictably feel even more alienated from the process than prior to the 'leave vote'. The expected 'gain' from voting to leave, i.e. taking Britain back from the EU, will thus be turned into a disappointing 'loss'. This is echoed by David Davis, Secretary of State for Leaving the European Union, who warns British stakeholders that a 'frustrating' period lies ahead, until Prime Minister May triggers the Article 50 procedure.[5] This will become particularly embarrassing when it transpires that the UK has not only lost the power to direct its own exit from the EU, but that the completion of the BREXIT procedure will take a long time in coming.

In turn, the *second* – prospective – scenario suggests that instead of removing the UK from an EU that is heralded by the leave campaign as an undemocratic supranational organisation, the Brexit referendum is more likely to generate a boost for the EU. For the ongoing contestations create novel opportunities for a broad spectrum of stakeholders across all EU member states, including the UK, to engage with the EU's lingering democratic deficit. This process generates a growing public awareness about the EU's principles and procedures which is generated through the contestatory practices of a growing number of stakeholders. According to this scenario, the post-referendum and pre-Brexit process has an effect on how the EU is perceived by a diversity of stakeholders (citizens and government representatives alike) both in the UK and beyond. It is therefore likely to ultimately contribute to a more positive image of the EU, making it stronger, and

[5] See: *The Telegraph* 12 September 2016, at: http://www.telegraph.co.uk/news/2016/09/12/david-davis-says-process-for-leaving-the-eu-will-be-the-most-com/)

the UK weaker, as it were. Both scenarios are detrimental to what the British voters were promised by the leave campaign when it was set in motion by the then Prime Minister David Cameron's decision to call for a referendum on the UK's membership of the EU in 2015 (see the European Union Referendum Act 2015). In the best case, these scenarios will be received as a caution to think, pause and re-think, prior the British Prime Minister Theresa May taking any decision to trigger the Article 50 procedure. As Alan Green wrote on the day following the June 23rd referendum:

> "The fact is that the longer the Article 50 notification is put off, the greater the chance it will *never be made at all*. This is because the longer the delay, the more likely it will be that events will intervene or excuses will be contrived." And he added, "In my view, if the Article 50 notification was not sent yesterday – the very day after the Leave result – there is a *strong chance it will never be sent*." (See: Green 24th June 2016; emphasis added AW)[6]

This may be interpreted as a suggestion to move fast, which with hindsight does not appear to be Theresa May's preference; nor was it David Cameron's, for that matter. As Cameron said in his resignation statement:

> "A negotiation with the European Union will need to begin under a new Prime Minister, and I think it is right that this new *Prime Minister takes the decision about when to trigger Article 50* and start the formal and legal process of leaving the EU." (Downing Street, 24th June 2016)[7]

The new Prime Minister Theresa May, on her first visit to Chancellor Angela Merkel in Berlin, was not in a hurry to trigger Article 50, saying that Britain needed to 'take *time* to

[6] See reference to a blog by David Allen Green in *The Guardian* (details of the Guardian article here: http://www.theguardian.com/politics/2016/jun/26/who-will-dare-pull-trigger-article-50-eu; details of the blog entry, here: http://jackofkent.com/2016/06/why-the-article-50-notification-is-important/

[7] See details here: https://www.gov.uk/government/speeches/eu-referendum-outcome-pm-statement-24-june-2016

determine its objectives' before initiating the Article 50 procedure as the procedure set by the Lisbon Treaty for any country to leave the European Union (see: Reuters 20th July 2016; emphasis added AW).[8] It underlines the most likely path of action, namely, that the process leading up to the decision to trigger the Article 50 procedure, as well as the process following the decision – if it is made – will be accompanied by contestations involving stakeholders beyond the UK and all across the EU. To appreciate the time required for preparing the UK's potential exit, it is helpful to compare Greenland's exit in 1985 which did not come into effect until three years after their 1982 referendum. At the time, fisheries policy was the main chapter to be negotiated)[9]. In the British case, notably, the decision must be ratified by Parliament in the UK, once the Article 50 procedure has formally been completed and the exit vote has been taken by the EU's various political organs (including Council and Parliament).

> "The withdrawal agreement is not subject to any of the constitutional safeguards in the EU Act 2011, but, *following the usual procedures for ratification, would have to be laid before Parliament* with a Government Explanatory Memorandum *for 21 sitting days before it could be ratified, in which time either House could resolve that it should not be*. Part 2 of the Constitutional Reform and Governance Act 2010 put the 21-sitting day 'Ponsonby Rule' on a statutory footing and gave legal effect to a resolution of the House of Commons that a treaty should not be ratified. If the Commons resolves against ratification, the treaty can still be ratified if the Government lays a statement explaining why the treaty should nonetheless be ratified and the House of Commons does not resolve against ratification a second

[8] See Reuters: http://www.reuters.com/article/us-britain-eu-may-time-divorce-idUSKCN1002DZ
[9] See: House of Commons, Research Briefings on Leaving the EU (2013: 12), details: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP13-42

time within 21 days (this process can be repeated *ad infinitum*)" (see: House of Commons RB 2013: 13; emphasis added).

Notably, Article 50 (TEU) first refers to a member state's obligation to proceed according to their constitutional framework:

> "Any Member State may decide to withdraw from the Union in accordance with its own *constitutional requirements*". (Article 50(1) TEU; emphasis added AW)

The decision to trigger Article 50 then is first of all a constitutional issue which stands to be handled with regard to the relevant constitutional norms by the government of the member state that wishes to exit the EU. Once this decision has been taken – taking constitutional norms into account – the following applies:

> "A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That *agreement shall be negotiated in accordance with Article 218(3*) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the *Council, acting by a qualified majority, after obtaining the consent of the European Parliament*." (Article 50(2) TEU; emphasis added AW)

The exit decision will not enter into force until the Article 50 procedures are completed. Importantly, however, these negotiations stand to be conducted without the member state that triggers the exit procedure. This adds to the interest on the part of the British government to extend the pre-Article 50 process negotiations as much as possible.

> "The Treaties shall cease to apply to the State in question *from the date of entry into force of the withdrawal agreement* or, *failing that, two years after the*

notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period." (Article 50(3) TEU)

At the time of writing this essay, a "legal challenge bid to prevent the Government from triggering Article 50 of the Lisbon Treaty without the prior authorization of Parliament is due to be heard in the High Court in October."[10] And the Prime Minister says that "no attempt will be made to hold a 'sort of backdoor' attempt to remain in the EU by holding a second referendum"[11]. Yet, as she adds at the same Press Briefing, "we will be looking for *opportunities*" (Ibid; emphasis added AW). Which opportunities she has in mind remains subject to specification through further debate. And, as is beginning to dawn on the politicians involved, Brexit is not a step but a "process": there is ample time for post-referendum pre-Brexit contestations. As David Davis finds, leaving the EU will be the most "complicated negotiation of all time."[12] In light of the expected lengthy process, it is worthwhile for academic observers to "zoom in" on the contestations (Hofius 2016) to analyse the Brexit crisis and identify its mid- to long-term effect on European politics in the UK and beyond. To that end, the following section sketches a practice-based approach.

Step Two: Fundamental Norm Contestations

"The UK legal system incorporates a vast body of EU law. *Disentangling* EU and domestic UK laws, to the extent required by the eventual terms of withdrawal, will be *an enormous task, and the practical and legal implications will vary* in each area of economic activity. There are *major and unresolved constitutional issues* concerning the relationships between

[10] See: *The Evening Standard,* at: http://www.standard.co.uk/news/politics/brexit-theresa-may-could-trigger-article-50-without-parliaments-approval-a3330951.html

[11] See: *BBCRadio4* News at Five, 31st August 2016

[12] See: *The Telegraph* 12 September 2016, at: http://www.telegraph.co.uk/news/2016/09/12/david-davis-says-process-for-leaving-the-eu-will-be-the-most-com/)

different parts of the United Kingdom, and their future relationships with the European Union, which will have an important bearing on this." (emphasis added)[13]

The practice-based argument on the effect of Brexit which this essay advances, draws on norms research, broadly defined as a range of studies focusing on 'soft institutions' such as norms, principles and routinized practices, especially, though not exclusively, in the disciplines of European integration, international relations, recognition theory and legal anthropology (see e.g. Schmidt 2000; Merry 2011). Roughly, the approach centres on three leading assumptions: First, while norms may be qualified as legal or cultural, they are always by definition social; norms require prior social interaction in order to come into being (Morris 1956; Wiener 2007). Second, and relatedly, norms entail a dual quality as both socially constructed and structuring. That is, they acquire meaning within a social environment and they have an effect on behaviour (March and Olsen 1989). Third, and related to the two prior assumptions, the effect of norms depends on the way they are interpreted within a given societal environment (Finnemore and Toope 2001). It follows that, in order to examine the robustness of a norm, research needs to examine the practices of norm validation that are carried out at distinct stages of the process of norm implementation. By studying these practices it becomes possible to identify normative change and to derive policy strategies to address the deeper moral issues of human rights obligations and constitutional principles. Both are at stake in current European politics.

In light of the referendum campaign claim that leaving the EU would re-establish democratic legitimacy in Britain, the practices that matter for the analysis are those which address the norms which lie at the core of liberal democracies such as the UK, namely,

[13] See: Mayer Brown Legal Consulting at: https://www.mayerbrown.com/experience/Brexit-The-UK-and-the-EU/

fundamental rights of individuals, sovereignty, democracy and the rule of law (Rosenfeld 1994). To evaluate the promises made by the vote-leave campaign, for example the claim to re-establish British sovereignty, three practices of norm validation matter. All contribute to the way normative meaning-in-use is re-enacted at distinct stages of norm-implementation, each of which allows for contestation by the stakeholders involved. They include formal validation at the stage of treaty making (EU) or constitution-making (UK) by the 'masters' of British fundamental norms. The second practice is social validation – known as 'social recognition' (March and Olsen 1989; Finnemore and Sikkink 1998). Social recognition reflects the degree of appropriateness assigned to the implementation of these norms by British stakeholders. When social recognition is high, a norm is by and large considered as 'taken for granted' (Price 2003). The third practice is cultural validation (Wiener 2008). It reflects the projection of individual background experience when re-enacting normative meaning. Carried out by individual stakeholders, it reveals, for example, how an individual voter validates a given norm. According to the vote-leave promise, following Brexit the following changes would need to be realised in order to match the promises made and, accordingly, the expectations that had been raised with the voters. This includes the following three claims: First, the UK government should be able to re-own their constitutional norms (as opposed to sharing them with other member states in the EU, e.g. based on the organising principle of 'pooled sovereignty'). Second, British stakeholders (i.e. advocacy groups, NGOs, trade unions, parties and the like) should converge on the social recognition of these fundamental norms (as opposed to having the shared interpretation of British fundamental norms challenged by a multiverse of Union citizens residing in the UK). And third, the degree of variation with regard to the individual validation of these fundamental norms should decline, given the rise in social recognition due to the process of 'renationalisation' induced by Brexit. It follows that – quite different

from the rest of the globalised world in the 21st century, the impact of cultural validation would be expected to cease in the UK, due to the decline of cultural diversity in light of enhanced thresholds vis-à-vis migration, and the declining tolerance vis-à-vis the acceptance of refugees. Contrary results would undermine the promise and hence cause political frustration among the supporters of the 'vote-leave' campaign. Many indicators revealed by the post-referendum political discourse suggest that this is a likely scenario. The remainder of this section highlights some of these so as to provide a view on the likely mid- to long-term effects of the Brexit referendum and ensuing contestations.

In the post-referendum and pre-Brexit process two norm contestations stand out: the first is about the fundamental right of freedom of movement and whether it should be restricted for workers, while making exceptions for incoming bankers and outgoing capital as the leavers hold, or whether it should be implemented in compliance with the Treaty on European Union (TEU) [14] as the remainers wish. The second is about whether or not sovereignty in parliament must be upheld as the remainers argue, or whether sovereignty lies with the voters, as the leavers hold. With regard to the former, the contestations ensuing from the two referendum campaigns disagreed on whether to restrict the fundamental norm of freedom of movement including all four (freedom of movement for goods, services, capital, and labour) to capital only, restricting the freedom of movement for labour. The latter effectively demands access to the EU market while at the same time restricting the freedom of movement of labour, thereby effectively undermining the fundamental right of free movement of persons, goods, services and capital which is stated in Article 45 (TEU). This contestation (*#C1*) evolved around the 'migration crisis' by a range of stakeholders including politicians, advocacy groups and most of the media in the UK, who sought to restrict migration. Notably, the so-called migration crisis cuts deeper

[14] Here and throughout references to the Treaty on European Union (TEU) are based on the publication of the treaties in the *Official Journal of the European Union*, C 202, Vol. 59, 7th June 2016.

than market access. While market access is presented as a policy issue in the political arena, the crisis ultimately extends to the question about the UK's position on respecting its moral obligation to grant the fundamental human right of asylum (Ignatieff 2016). By presenting a poster of refugees waiting at the Austrian-German border in order to seek asylum in the EU, calling them 'migrants', Nigel Farage, the then UKIP leader and prominent leave campaigner, conjured up fear among British voters.[15] While this rhetoric was widely condemned as unfair and adding to the canon of outright lies, its effect stood.[16]

While the contestations with regard to the 'migration crisis' have been a central point of discussion in the media, the 'sovereignty crisis' has only just begun to emerge as the post-referendum process begins to unfold, thereby raising questions about which political procedure and constitutional principles legitimate the decision to trigger the Article 50 procedure for exit negotiations with the EU. Here the contested issue is whether the referendum vote suffices as a mandate for the Prime Minister to take the decision, or whether a debate in Parliament is required. Effectively and fundamentally, this contestation (*C#2*) is about the location of sovereignty in the UK: with the individual voter or in Parliament. Both contestations address deeper issues of contested normativity in the UK and beyond. They are unlikely to be resolved quickly. As such, the manifold practices of contestation involved with regard to each norm offer important information regarding the contested meanings of fundamental norms. To 'disentangle' the body of legal regulations alone – notwithstanding cultural, societal, educational or constitutional changes that have been forged through four decades of 'spinning' the 'thread' together with the other EU

[15] For a rare comment on the distinction between the terms of migrant, refugee and asylum seeker, see *The Guardian* 28 August 2015, at: https://www.theguardian.com/world/2015/aug/28/migrants-refugees-and-asylum-seekers-whats-the-difference

[16] See: *The Huffington Post* 16th June 2016 at: http://www.huffingtonpost.co.uk/entry/nigel-farages-eu-has-failed-us-all-poster-slammed-as-disgusting-by-nicola-sturgeon_uk_576288c0e4b08b9e3abdc483

members - has been rightly identified as a 'nightmare' which is likely to last decades.[17] In fact, as Simon Bulmer noted, the post-referendum contestations suggest a coming 'constitutional decade in the UK.'[18]

The decision to actually walk down the path towards leaving the EU, which – even though repeatedly confirmed – does not appear more doable or, for that matter, likely as the referendum day is further and further behind us. Academic research on the embeddedness of the *acquis communautaire* confirms this view. For the *acquis* entails the body of primary and secondary law which stands to be interpreted with reference to the social environment of its implementation (Joergensen 1998; Finnemore and Toope 2001). The notion of the "embedded *acquis communautaire*" (Wiener 1998); (Merlingen et al. 2000) sustains the importance of the Wittgensteinian thread metaphor: In light of the previous practices of integration along multiple levels of government, layers of society and scales of goods (see e.g. Hooghe and Marks 2001; Cini 2003; Puetter 2012), by a multitude of actors, the task of disentangling will be difficult – arguably impossible. A repetition of the Greenland exit negotiations from 1982-85 is ruled out in light of this massive difference in complexity on all dimensions of integration (i.e. levels, layers and scale). It will be up to the negotiations between the UK and the EU, then, to forge a viable exit procedure. This is the challenge that lies ahead. As this essay argues, they are performed by the involved stakeholders both in government and outside of government, both in the UK and outside the UK; the practices of these negotiations reveal potential pathways to

[17] "It would have been relatively easy to persuade the EU to take another look at free movement – easy compared with sorting out the unknowable *nightmare* of disengagement. It should be the EU that provides funding for extra social housing, extra healthcare, extra school places, extra physical infrastructure, in places that are prosperous enough to attract migrant workers. It should be the EU that raises concerns when people are leaving one place in large numbers, and rolls up its sleeves to assist them in solving those problems locally. Europe will realise that soon enough, and we will be looking on as it does" (emphasis added, AW). See: Deborah Orr, *The Guardian*, 1 July 2016: https://www.theguardian.com/commentisfree/2016/jul/01/brexit-britain-elites-run-amok

[18] See Simon Bulmer's contribution to the discussion at the roundtable 'The EU in Crisis', UACES conference, London 5th September 2016.

participation. Based on detailed reconstructive research involving interviewing and more encompassing discourse analysis than this short essay is able to provide, these pathways stand to be traced, based on specific attention to what is actually said (or not) and done (or not).[19]

Step Three: Conclusions – Back to What and Where to Next?

> "(O)nce negotiations begin, they will be extremely complex. The UK will need to determine numerous transitional procedures for *disentangling* itself from EU regulations, settling the status of the millions of UK citizens residing in the EU and non-UK EU citizens in the UK, and deciding the future of UK-EU security cooperation."
>
> (Council of Foreign Relations; emphasis added[20])

Most distinctively, the post-referendum pre-Brexit contestations demonstrate a clash among the 'vote-leave' and the 'vote-remain' campaigns, respectively, based on exclusive preferences with regard to the fundamental norms of democracy and free movement. With regard to the sovereignty norm the question is whether the 'referendum result must be respected', as the vote-leave campaign holds, or whether "Parliament must have a say" as the vote-remain campaign would argue; with regard to free market access (UK to EU) vis-à-vis rejecting the fundamental EU principle of the right of free movement (EU to UK).[21]

[19] In detail, this research would be carried out by applying the method of abductive reasoning (compare Bueger 2014; Bueger and Gadinger 2015; Hofius 2016; Wiener et al. 2016).
[20] See Council of Foreign Relations, Backgrounders Series, at: http://www.cfr.org/united-kingdom/debate-over-brexit/p37747
[21] Compare for example the interview with Ian Begg on BBC Radio 4; News at Five on 31st August 2016.

In each case, the contestations stand to reveal the stakeholders' preferred meaning attached to either of the alternative options. While the contestations about the fundamental right of free movement which lie at the centre of the dispute over free market access to the EU's market for British citizens have been receiving ongoing publicity, given their prominence in the pre-referendum campaign of the vote-leave supporters, the second norm at stake, i.e. sovereignty, has only begun to emerge after the referendum. The clashes of normative meaning have become visible with regard to the highly contested issue of the political and constitutional follow-up of the referendum result. The key point regarding the norm of sovereignty consists in the dispute over the 'place' of sovereignty, i.e. whether it resides with the individual voter (the referendum option) or ought to be located in parliament (the constitutional option).

With regard to the parliamentary vote in connection with the decision to trigger the Article 50 procedure, *The Guardian* reports that the shadow international trade secretary, Barry Gardiner, spoke out against May's plans, saying that

> "(T)he logic of saying the prime minister can trigger article 50 without first setting out to parliament the terms and basis upon which her government seeks to negotiate – indeed, without even indicating the red lines she will seek to protect – would be to *diminish parliament and assume the arrogant powers of a Tudor monarch*." (*The Guardian*, 27th August 2016; emphasis added AW)[22]

In effect, this Article 50 related contestation involves MPs who demand that

> "Parliament cannot be side-lined from the *greatest constitutional change* our country has debated in 40 years." (Ibid.)

[22] For the report in *The Guardian* on 27 August 2016, see: http://www.theguardian.com/politics/2016/aug/27/theresa-may-acting-like-tudor-monarch-in-denying-mps-a-vote-over-brexit

The bets are on, and at the time of writing, more weight is put behind the former by the vote-leave campaign and more behind the latter by those who favour remaining in the EU.[23]

Effectively and ironically, the unintended consequences of the referendum campaign consist in the most far-reaching contestations so far about the EU. While originally cast by David Cameron in 2013 as offering 'a simple choice' to the British people, ignoring warnings by the then German Foreign Secretary Guido Westerwelle that "cherry picking" was not an option following that choice, the actual path following the referendum remains undecided.[24] Three years later, however, what had appeared to Tony Blair as if Britain were shooting itself in the head at the time (ibid.), now seems to entail a different option altogether. As the Brexit discourse reveals, through multiple contestations including stakeholders across the UK and Europe, the situation has unwittingly changed from a threat to the EU (i.e. a weakening of the EU following a British exit) to a window of opportunity (i.e. countering the EU's perceived legitimacy deficit through stakeholder involvement in contestations). This shift from threat to opportunity represents a rather welcome development for the crisis-battered EU of the 2010s. From the perspective of recognition theory, it could be argued that this is the best possible outcome. As James Tully notes, for example, 'reasonable disagreement and thus dissent are inevitable and go all the way down in theory and practice'; as a result, there 'will be democratic agreement and disagreement not only *within* the rules (…) but also *over* the rules (…)' (Tully 2002): 207, emphasis in original text). After decades of 'permissive consensus' and the 'democracy deficit' Brexit has kicked off long-overdue contestations. This facilitates a welcome 'valve' for dissenters of all stripes to chime in. And as such it may create a novel

[23] Compare for the most recent contribution to the latter position, ex-Prime Minister Tony Blair's intervention on the 1st of September, see: *The Guardian* 1 September 2016

[24] See: BBC News, 23 January 2013, at: http://www.bbc.com/news/uk-politics-21148282

'site' for contestation to voice views that are more likely to be heard in light of the threat of further EU exits.[25]

Thus the actual effects of the practices which have been displayed by a multitude of stakeholders in the aftermath of the vote suggest that the ongoing contestations about when and how to trigger the Article 50 procedure contribute to (1) enhancing information about the EU; yet at the same time they also (2) have an impact on the EU's democratic quality. In effect then (3) the complex practices of disentangling the UK from the EU are less likely to deliver on the promise of re-establishing British sovereignty vis-à-vis the EU than instead to strengthen the EU's legitimacy. In the end, the resignation of multiple political leaders in the UK might have been too early, and Prime Minister May may win in the long run if she reconsiders her decision in favour of Brexit and is able to demonstrate to all voters in Britain (leave and remain) that the UK has triggered the most effective democratisation process the EU has been confronted with since its inception. This insight would lead May to engage more fully with the spectrum of democratic practices and procedures available to her, beginning with a proper debate in Parliament.

Much of the referendum campaign language claimed to get Britain 'back' from the EU. While getting something back suggests that the voters retain something which rightly belongs to them, and which had been occupied – unlawfully presumably – by someone else. The discourse is one of righting a wrong. Its public claim for legitimacy is high. In the aftermath of the referendum 'disentangling' has become a central term. Now, the task is to identify the parts which actually belong to Britain at the end of the day when all areas of integration have been 'disentangled'. Whereas the leave campaign was outward oriented, boasting that it would re-establish the old ways (of what?) and through them political legitimacy, the direction of the process triggered by the 'leave-vote' now became

[25] Compare, for example, Marine Le Pen's call for a French exit referendum, 5th September 2016.

inward oriented, suggesting a degree of complexity difficult to comprehend for the non-involved voters. In fact, the looming complexity of the respective political and legal processes involved with triggering and carrying out the Article 50 procedure has begun to sound more like bringing the EU into Britain than taking Britain out of the EU. This was also quickly realised by the leaders of the remain campaign and the Prime Minister who had brought on the referendum in the first place. After the party, the vote-leave campaigners noted that delivering on the promise of getting Britain 'back' did not equal a pole position towards legitimacy. Instead, it was the beginning of a somewhat tedious long-term process, and, in addition, a process which might actually not result in getting back the Britain that had once joined the EU, but something rather different instead, namely, a Britain in parts. So far, the legitimacy promise has proved hard to deliver, and before the vote-leave supporters realised what was next, most of those with political responsibility for the referendum process had resigned. Clearly, not delivering on a promise of the proportions alluded to by the Brexit discourse would have meant political suicide.

The change in the Brexit discourse demonstrates the dawning realisation that, rather than getting back what had been put into the EU, the task entails the more detailed process of disentangling legislation, regulations, procedures and other details and, second, that contrary to what the British voters were led to believe, the task is likely to be massive and time-consuming. It may, in fact, not even lead to leaving the EU. In other words, instead of the frequently proclaimed clear-cut 'never-again' 'once-and-for-all' decision that was promised by Cameron, a murky and long-winded process stands to be expected. A process that was supposed to introduce a leaner politics with less interference from 'Brussels' begins with the creation of new administrative and political posts in the UK and in Brussels, such as the 'Brexit' portfolio in the new Prime Minister Theresa May's

cabinet, and the post of chief Brexit negotiator for Michel Barnier of the European Commission[26], and Guy Verhofstadt for the Parliament. As the shock of the referendum result is gradually replaced by day-to-day politics, the question of who actually won becomes increasingly hard to answer. Apart from lacking a clear-cut solution, the post-referendum landscape in Britain is marked by political turmoil, emotional exhaustion, regional division and economic loss. The absence of joy and perspective in a country that conducted a referendum that few wanted, some thought necessary and now all have come to loathe is startling. As this essay's practice-oriented analysis suggests, the challenging situation for politics, voters, and the economy alike is ultimately due to an under-estimation of what the EU has become after more than five decades of integration and how the UK, and with it the British people, have changed through their taking part in this process over more than four decades.

[26] Compare *The Independent*, 27 July 2016, at http://www.independent.co.uk/news/uk/politics/european-commission-appoints-chief-brexit-negotiator-but-says-he-wont-speak-to-uk-until-article-50-a7157731.html

References

Cini, Michelle, ed. 2003. *European Union Politics*. Oxford: Oxford University Press.

Craig, Paul, and Grainne De Burca. 1998. *EU Law - Text, Cases, and Materials (2nd ed.)*. Oxford: Oxford University Press.

Finnemore, Martha, and Stephen J. Toope. 2001. "Alternatives to 'Legalization': Richer Views of Law and Politics." *International Organization* 55 (3):743-58.

Hofius. Maren (2016). 'Community at the border or the boundaries of community? The case of EU field diplomats.' *Review of International Studies*, FirstView, 1–29. doi:10.1017/S0260210516000085

Hooghe, Lisbeth, and Garry Marks. 2001. *Multi-Level Governance and European Integration*. Lanham: Rowman & Littlefield.

Joergensen, Knud Erik. 1998. The Social Construction of the *Acquis Communautaire*. A Cornerstone of the European Edifice. Paper read at International Studies Association, at Minneapolis, Minnesota, 17-21 March.

Liste, Philip. 2012. *Speaking International Law*, Baden-Baden: Nomos.

March, James G., and Johan P. Olsen. 1989. *Rediscovering Institutions. The Organizational Basis of Politics*. New York et al.: The Free Press.

Merlingen, Michael, Cas Mudde, and Ulrich Sedelmeier. 2000. "Constitutional Politics and the 'Embedded Acquis Communautaire': The Case of the EU Fourteen Against the Austrian Government." *Constitutionalism Web-Papers, ConWEB, ConWEB,* http://www.qub.ac.uk/ies/onlinepapers/const.html (4/2000):17 pp.

Merry, Sally Engle. 2011. "Measuring the World: Indicators, Human Rights and Global Governance." *Current Anthropology* 52 (3):83–95.

Milliken, Jennifer. 1999. "The Study of Discourse in International Relations: A Critique of Research and Methods." *European Journal of International Relations* 5 (2):225-54.

Morris. 1956. "A typology of norms." *American Sociological Review* 21 (5):610-3.

Price, Richard. 2003. "Transnational Civil Society and Advocacy in World Politics." *World Politics* 55:579-606.

Puetter, U. 2012. "Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance." *Journal of European Public Policy* 19 (2):161-78.

Schmidt, Vivien A. 2000. "Democracy and Discourse in an Integrating Europe and a Globalising World." *European Law Journal* 6 (3):277-300.

Tully, James. 2002. "The Unfreedom of the Moderns in Comparison to their Ideals of Constitutionalism and Democracy." *Modern Law Review* 65 (2):204-28.

Wiener, Antje. 1998. "The Embedded Acquis Communautaire: Transmission Belt and Prism of New Governance." *European Law Journal* 4 (3):294-315.

———. 2007. "The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to 'Interaction'." *Critical Review of International Social and Political Philosophy* 10 (1):47–69.

———. 2008. *The invisible constitution of politics: contested norms and international encounters*. Cambridge: Cambridge University Press.

Wittgenstein, Ludwig. 2005 (1st ed 1953). *Philosophical Investigations. The German Text, wit a Revised English Translation (Translated by G.E.M. Anscombe)*. Oxford: Blackwell Publ.